



Form 59  
Rule 29.02(1)

### Affidavit

No. NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**WESTPAC BANKING CORPORATION ABN 33 007 457 141** and another named in the Schedule

Applicants

**FORUM FINANCE PTY LIMITED ACN 153 301 172** and others named in the Schedule

Respondents

Affidavit of: NIGEL DAVID EVANS  
Address: Level 1, 84 William Street, Melbourne, Victoria  
Occupation: Solicitor  
Date: 22 September 2022

#### Contents

Document number	Details	Paragraph	Page
1	Fourth Affidavit of <b>NIGEL DAVID EVANS</b> affirmed on 22 September 2022	1	1
2	Annexure " <b>NDE-3</b> ", being copy of a paginated bundle of true copies of documents referred to in this affidavit ( <b>the Exhibit Bundle</b> )	8	5

I, **NIGEL DAVID EVANS**, Solicitor, of Level 1, 84 William Street, Melbourne, Victoria, **DO SOLEMNLY AND SINCERELY DECLARE AND AFFIRM** as follows:

#### A INTRODUCTION

1 I am an Australian Legal Practitioner and Director of Aptum Legal (**Aptum**).

Filed on behalf of (name & role of party)	Third Respondent
Prepared by (name of person/lawyer)	Nigel Evans
Law firm (if applicable)	<b>APTUM LEGAL</b>
Tel	(03) 7020 9230
Email	nigel@aptumlegal.com.au
<b>Address for service</b> (include state and postcode)	C/- Aptum Legal, Level 1, 84 William Street Melbourne, Victoria 3000

2 Aptum is the solicitor for the Third Respondent (**Mr Tesoriero**) and his associated entities (collectively, the **Respondents**):

2.1 in this proceeding and proceeding number NSD681/2021 (collectively, the **Main Proceedings**); and

2.2 in proceeding VID778/2021 and NSD224-232/2022 (**Winding Up Proceedings**).

3 Aptum is also engaged (by separate engagement) as the solicitor for the Forty-Fifth Respondent (**Mr Tesoriero Snr**) in this proceeding.

4 I am authorised by the Respondents to make this affidavit on their behalf.

5 I make this affidavit in support of the interlocutory application by the Tesoriero Parties (as set out in Schedule 2 to that interlocutory application) dated 23 September 2022 seeking (among other things) a variation to the freezing orders made against him on 2 July 2021 (as varied on 9 July 2021; 27 August 2021; 12 November 2021; and 20 July 2022) (**Freezing Orders**).

6 By making this affidavit, I do not intend and have no authority to waive any legal professional privilege of the Respondents. Nothing in or exhibited to this affidavit ought to be construed as waiving privilege.

7 Except where otherwise stated, I make this affidavit of my own knowledge. Where I state in this affidavit that I depose to any matter based on any information known to me or based on a belief, I believe those matters to be true and correct.

8 Now produced and shown to me and marked "**NDE-3**" is a paginated bundle of true copies of the documents referred to in this affidavit (**the Exhibit Bundle**).

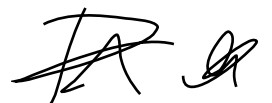
**B VARIATION APPLICATION**

9 I also affirm today a separate affidavit (**my Third Affidavit**). In that affidavit, I depose (at paragraph 13.5) to orders made by the Honourable Justice Lee on 20 July 2022 to vary the Freezing Orders.

10 The orders of 20 July 2022 were made on the application of Mr Tesoriero (**the Variation Application**). Mr Tesoriero has sworn the following affidavits in this proceeding which I understand he relied on for the purposes of the Variation Application:

10.1 affidavit of Mr Tesoriero dated 21 July 2021 – a true copy appears from pages 6 to 26 of NDE-3;

10.2 affidavit of Mr Tesoriero dated 19 October 2021 – a true copy appears from pages 27 to 226 of NDE-3;





- 10.3 affidavit of Mr Tesoriero dated 17 June 2022 – a true copy appears from pages 227 to 297 of NDE-3;
  - 10.4 affidavit of Mr Tesoriero dated 12 July 2022 – a true copy appears from pages 298 to 712 of NDE-3; and
  - 10.5 affidavit of Mr Tesoriero dated 18 July 2022 – a true copy appears from pages 713 to 718 of NDE-3.
- 11 I understand that Mr Tesoriero also relied on various affidavits sworn by solicitors of Madgwicks (his former solicitors) on the Variation Application, being the following:
- 11.1 affidavit of Sarwar Nasimi sworn on 9 November 2021 – a true copy appears from pages 719 to 975 of NDE-3;
  - 11.2 affidavit of Sarwar Nasimi sworn on 8 February 2022 – a true copy appears from pages 976 to 993 of NDE-3;
  - 11.3 affidavit of Sarwar Nasimi sworn on 8 February 2022 – a true copy appears from pages 994 to 1029 of NDE-3;
  - 11.4 affidavit of Sarwar Nasimi sworn on 28 June 2022 – a true copy appears from pages 1030 to 1083 of NDE-3; and
  - 11.5 affidavit of Sarwar Nasimi sworn on 18 July 2022 – a true copy appears from pages 1084 to 1100 of NDE-3.
- 12 The Variation Application was heard on 1, 19 and 20 July 2022. A true copy of the transcript of those hearings appears from pages 1101 to 1299 of NDE-3.
- 13 A true copy of his Honour’s reasons for the orders made on 20 July 2022 appears from pages 1300 to 1326 of NDE-3.

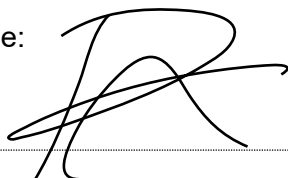
Affirmed at **MELBOURNE**  
 in the State of Victoria  
 by Nigel David Evans  
 on 22 September 2022

)  
)  
)  
)



Signature of **NIGEL DAVID EVANS**

Before me:



Signature of **DAVID JEFFREY MASON ADASON**

of Level 1, 84 William Street, Melbourne, Victoria,  
 an Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria),  
 a person authorised under section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the *Electronic Transactions Act 2000* (NSW).
2. I saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I have known the person for at least 12 months.

Form 59  
Rule 29.02(1)

## Annexure certificate

No. NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**WESTPAC BANKING CORPORATION ABN 33 007 457 141** and another named in the  
Schedule

Applicants

**FORUM FINANCE PTY LIMITED ACN 153 301 172** and others named in the Schedule

Respondents

## ANNEXURE "NDE-3"

Before me:



Signature of **DAVID JEFFREY MASON  
ADASON**

of Level 1, 84 William Street, Melbourne,  
Victoria, an Australian Lawyer, a person  
authorised under s 19(1) of the Oaths and  
Affirmations Act 2018 to take an affidavit in  
the State of Victoria.

Filed on behalf of (name & role of party)	Third Respondent
Prepared by (name of person/lawyer)	Nigel Evans
Law firm (if applicable)	<b>APTUM LEGAL</b>
Tel (03) 7020 9230	
Email nigel@aptumlegal.com.au	
<b>Address for service</b> (include state and postcode)	C/- Aptum Legal, Level 1, 84 William Street Melbourne, Victoria 3000

[Form approved 01/08/2011]

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 3/08/2021 1:16:04 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 v FORUM  
FINANCE PTY LIMITED & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 3/08/2021 1:18:02 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59  
Rule 29.02(1)

### Affidavit

No. 616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141**

Applicant

**Forum Finance Pty Limited ACN 153 301 172 and others**

Respondents

Affidavit of: **Vincenzo Frank Tesoriero**  
Address: 64-66 Berkley St, Hawthorn VIC  
Occupation: Director  
Date: 21 July 2021

#### Contents

Document number	Details	Paragraph	Page
1	Affidavit of Vincenzo Frank Tesoriero in response to orders made by Justice Lee on 2 July 2021 sworn on 20 July 2021		
2	Annexure "A", being a schedule of the assets which lists assets which I have a direct or indirect interest in.		
3	Annexure "B", being a schedule which lists bank accounts that I have control over.		
4	Annexure "C", being a schedule which lists motor vehicles which are registered in my name and are in my custody.		
5	Annexure "D", being a schedule which lists shares held in my name.		

Filed on behalf of Vincenzo Frank Tesoriero, Third Respondent  
 Prepared by Christopher Nehme  
 Law firm Fortis Law  
 Tel 02 9233 2722 Fax 02 9233 2755  
 Email [cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)  
 Level 11, 75 Elizabeth Street, Sydney NSW  
**Address for service** Email: [cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)

*[Handwritten signature]*

I, Vincenzo Frank Tesoriero, director of 64-66 Berkeley St, Hawthorn VIC 3122 say on oath:

1. I am the third respondent.
2. I make this affidavit in connection with my obligations under paragraph 8 of the orders made by Justice Lee on 2 July 2021 and extended to 16 July 2021.
3. Annexed and marked "A" to this affidavit is a copy of a schedule which lists assets which I have a direct or indirect interest in.
4. Annexed and marked "B" to this affidavit is a schedule which lists bank accounts that I have control over particularly in respect of the assets identified in Annexure A.
5. Annexed and marked "C" to this affidavit is a schedule which lists motor vehicles which are registered in my name and are in my custody.
6. Annexed and marked "D" to this affidavit is a schedule which lists shares held in my name.
7. In relation to loan account balances listed in Annexure "A" and bank account balances in Annexure "B" I have attempted to retrieve those via the internet banking portals and via accessing loan documentation. Where I have not been able to identify bank account balances or loan account balances it is because I either have no access or have limited access due to restrictions placed on the accounts.
8. I am not aware of any transactions which have taken place on any of the bank accounts listed in Annexure "B", other than the possibility of monthly account fees being charged with respect to some of the accounts and monthly interest charges being direct debited for loan obligations.
9. I believe that certain loan facilities have not been debited.
10. I also have some household furniture and personal belongings which are nominal in value.
11. In some instances where I am disclosed as a shareholder in an entity, as identified in Annexure "D", I say that those shares are either held by me beneficially or otherwise on behalf of the relevant trust in which a company is acting as a trustee.

Filed on behalf of	Vincenzo Frank Tesoriero, Third Respondent
Prepared by	Christopher Nehme
Law firm	Fortis Law
Tel	02 9233 2722
Fax	02 9233 2755
Email	<a href="mailto:cnehme@fortislaw.com.au">cnehme@fortislaw.com.au</a>
<b>Address for service</b>	Level 11, 75 Elizabeth Street, Sydney NSW Email: <a href="mailto:cnehme@fortislaw.com.au">cnehme@fortislaw.com.au</a>

[Version 3 form approved 02/05/2019]

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12. In respect of the list of companies in Annexure "D", I have identified the companies which are acting as a trustee of a trust which is referable to Annexure "A".
13. I believe that those shares have a nominal value due to the fact that those companies are acting as a trustee of a trust.
14. I believe that the shares in the companies which are not acting as trustees have nominal value due to there being no trading or business activity in them.

### Loan to Forum

15. I believe that I have a loan (approximately \$10m in value) that is owing from within the Forum Group to myself or an entity which I am associated likely to be the TIT Trust in respect of advances made over a period of time. I do not presently know the full particulars of the monies advance and I will endeavour providing further details and particulars regarding this asset.

### Intercompany/Trust Loans

16. I also believe that there are intercompany/trust loans within the group of which ultimately, I may be a beneficiary given my interest in various trusts in particular the TIT Trust. I will endeavour to provide further details and particulars regarding this asset.

### Further enquiries

17. Although I believe I have disclosed all my interests in assets, I am in the process of undertaking further checks and enquiries to ensure that I have not omitted any interest that I might have in any entity or otherwise I am not aware of.

### Cooperation with the Liquidators


18. On 19 July 2021, I caused and instructed my solicitor to arrange a video-conference with Mr Jason Ireland, Mrs Kathy Sozou of McGrath Nicol, whom are the provisional liquidators and liquidators appointed pursuant to orders made by Justice Lee over certain entities involved in these proceedings.

Filed on behalf of	Vincenzo Frank Tesoriero, Third Respondent
Prepared by	Christopher Nehme
Law firm	Fortis Law
Tel 02 9233 2722	Fax 02 9233 2755
Email	<a href="mailto:cnehme@fortislaw.com.au">cnehme@fortislaw.com.au</a>
<b>Address for service</b>	Level 11, 75 Elizabeth Street, Sydney NSW Email: <a href="mailto:cnehme@fortislaw.com.au">cnehme@fortislaw.com.au</a>

[Version 3 form approved 02/05/2019]

- 19. I attended that meeting along with my solicitor and without waiving confidentiality to that meeting, I provided information (with the assistance of my solicitor) and answered certain enquiries.
- 20. I have undertaken to provide further information to the Liquidators, as may be reasonably requested and required by law in order to assist with the Liquidators enquiries and investigations into the affairs of entities involved in these proceedings.

Sworn by the deponent  
 at Sydney  
 in New South Wales  
 on 21 July 2021  
 Before me:

)  
 )  
 )   
 ) Signature of deponent  
 )



Signature of witness  
 Christopher Nehme, Solicitor

Witnessed via audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000*.

Filed on behalf of	Vincenzo Frank Tesoriero, Third Respondent
Prepared by	Christopher Nehme
Law firm	Fortis Law
Tel 02 9233 2722	Fax 02 9233 2755
Email <a href="mailto:cnehme@fortislaw.com.au">cnehme@fortislaw.com.au</a>	
<b>Address for service</b>	Level 11, 75 Elizabeth Street, Sydney NSW
	Email: <a href="mailto:cnehme@fortislaw.com.au">cnehme@fortislaw.com.au</a>

[Version 3 form approved 02/05/2019]





## Annexure A – List of interests

### Key Ultimate Holdings Entities Legend

	Entity Name	Type	Nature of interest or control held by Vincenzo Tesoriero <i>(beneficiary, shareholder, trustee, appointor)</i>
1.	Tesoriero Investment Group Pty Ltd (ACN 161 088 115) as trustee for the Tesoriero Investment Trust (' <b>TIT TRUST</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Co-Appointor</li> <li>• Director of Trustee</li> <li>• Default Beneficiary</li> </ul>
2.	Vincenzo Tesoriero as trustee for Tesoriero Enterprises Trust (' <b>TET TRUST</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Trustee</li> <li>• Appointor</li> <li>• Default Beneficiary</li> </ul>
3.	65 Nelson Street Enterprises Pty Ltd (ACN 612 614 632) as trustee for 65 Nelson St Enterprises Trust (' <b>65 NELSON TRUST</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Appointor</li> <li>• Director of Trustee</li> <li>• Default Beneficiary</li> </ul>
4.	23 Margaret Street Pty Ltd (ACN 623 715 373) as trustee for the 23 Margaret Street Trust (' <b>Margaret St Trust</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Appointor</li> <li>• Director of Trustee</li> <li>• Default Beneficiary</li> </ul>
5.	Vintes QLD No 3 Pty Ltd as trustee for the MAZ Trust No 3 (' <b>MAZ 3 TRUST</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Appointor</li> <li>• Director of Trustee</li> </ul>
6.	Vintes No 4 Pty Ltd ACN 639 726 524 as trustee MAZ Trust No 4 (' <b>MAZ 4 TRUST</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Appointor</li> <li>• Director of Trustee</li> </ul>

	Property Address	Legal Owner	Extent of Interest or control (refer to Key Entities Legend)	Liability (approx.)	Value (approx.)	Location	Monthly Interest Expense (approx.)	Rental Income (approx.)	Bank account where Interest Expenses is Paid
	<b>Various</b>								
1.	Property: 305/308 Carlisle St, Balaclava VIC 3185 being land contained in folio identifier:	308 Carlisle Street Holdings Pty Ltd as trustee for the 308 Carlisle Street Holdings Unit Trust (' <b>308 Trust</b> ')	100% of the Units on issue in the 308 Trust are held by the TIT Trust.	Cross collateralised loan of \$1.600,000 to Commonwealth Bank (CBA)	\$2,000,000	Australia	\$2,000 per month	\$750 per week	CBA
2.	306/308 Carlisle St, Balaclava VIC 3185 being land contained in folio identifier:	308 Trust	100% of the Units on issue in the 308 Trust are held by the TIT Trust.			Australia	\$2,000 per month	\$800 per week	CBA
3.	12 Hartington St, Elsternwick VIC 3185 being land contained in folio identifier:	Canner Investments Pty Ltd (' <b>Canner</b> ')	100% of the shares on issue in Canner are held by the TET Trust.	\$1.1m owing to CBA	\$1,500,000	Australia	\$4,000 per month	N/A	CBA
4.	5 Bulkara Street, Wagstaffe NSW 2257 being land contained in folio identifier:	5 Bulkara Street Pty Ltd as trustee for the 5 Bulkara Street Unit Trust (' <b>5BK Trust</b> ')	50% of the Units on issue in the 5BK Trust are held by the TIT Trust.	\$4,000,000 to National Australia Bank (NAB)	\$6,000,000	Australia	\$17,500	Sporadic income derived from short term occupation.	NAB

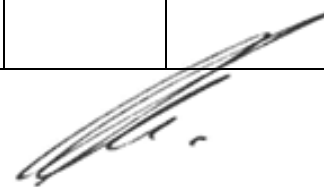
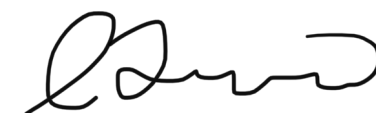
5.	6 Bulkara Street, Wagstaffe NSW 2257 being land contained in folio identifier:	6 Bulkara street Pty Ltd as trustee for the 6 Bulkara Street Unit Trust (' <b>6BK Trust</b> ')	50% of the Units on issue in the 5BK Trust are held by the TIT Trust.	\$6,000,000 to NAB	\$8,500,000	Australia	\$28,000	Sporadic income derived from short term occupation.	NAB
6.	64-66 Berkeley Street, Hawthorn VIC 3122 being land contained in folio identifier:	64-66 Berkley Street Hawthorn Pty Ltd as trustee for the 64-66 Berkley St Hawthorn Unit Trust (' <b>Berkley St Trust</b> ')	50% of the Units on issue in the Berkley Trust are held by the TIT Trust.	\$7,000,000 to Judo Bank (JUDO)	\$8,000,000	Australia	\$30,000	N/A.	NAB
7.	23 Margaret St, Rozelle NSW being land contained in folio identifier:	23 Margaret St Trust	Refer to Key Ultimate Holding Entities Legend.	\$4,000,000 loan made up of: (a) 2,900,000 owing to AFHS; and (b) \$1,100,000 from a related entity.	\$4,100,000	Australia	\$13,000	N/A.	NAB
8.	26 Edmonstone Rd, Bowen Hills QLD being land contained in folio identifier:	26 Edmonstone Road Pty Ltd as trustee for the 26 Edmonstone Road Unit	50% of the Units on issue in the 26 Edmonstone Trust are held by the TIT Trust.	\$2,100,000 owing to La Trobe Financial (La Trobe)	\$3,000,000	Australia	\$9,000 per month	\$20,000 per month	NAB

		Trust ('26 Edmonstone Rd Trust')							
9.	2-4 Atherton Road, Oakleigh VIC 3166 being land contained in folio identifier:	Forum Group of Financial Services Pty Ltd ('FGFS')	50% of the shares on issue in FGFS are held by Vincenzo Francesco Tesoreiro	\$3,400,000 owing to ThinkTank (Think Tank)	\$4,000,000	Australia	\$13,000 per month	\$3,000 per month	NAB
10.	1160 Glen Huntly Road, Glen Huntly VIC 3163 being land contained in folio identifier:	1160 Glen Huntly Road Pty Ltd as trustee for the 1160 Glen Huntly Road Unit Trust ('Glen Huntly Rd Trust').	100% of the Units on issue in the Glen Huntly Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust	\$998,000 owing to Denvull Investments Pty Ltd (Denvull)	\$1,650,000	Australia	\$7,000 per month	\$2,000 per month	NAB
<b>James St Properties</b>									
11.	8 Olive Street, Clayton South VIC 3169 being land contained in folio identifier:	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust ('James St Trust')	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by MAZ 3 Trust	Cross collateralised loan of \$3,000,000 to NAB	\$4,600,000	Australia	\$9,000 per month	\$1,735 per month	NAB

12.	10 James Street, Clayton South VIC 3169 being land contained in folio identifier:	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust (' <b>James St Trust</b> ')	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust		Australia		\$2,579 k per month	NAB
13.	12 James Street, Clayton South VIC 3169 being land contained in folio identifier:	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust (' <b>James St Trust</b> ')	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust		Australia		\$3,750 per month	NAB
14.	14 James Street, Clayton South VIC 3169 being land contained in folio identifier:	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust (' <b>James St Trust</b> ')	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust		Australia		TBA	NAB
15.	16 James Street, Clayton South VIC 3169 being land contained in folio identifier:	14 James Street Pty Ltd as trustee for the 14 James Street Unit	100% of the Units on issue in the James St Trust are held as follows:		Australia		\$1,200 per month	NAB

		Trust (' <b>James St Trust</b> ')	(a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust						
16.	18 James Street, Clayton South VIC 3169 being land contained in folio identifier:	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust (' <b>James St Trust</b> ')	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust			Australia		N/A	NAB
17.	Lot 1, 9 Parsons Street, Clayton South VIC 3169 being land contained in folio identifier:	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust (' <b>James St Trust</b> ')	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust			Australia		1,800 per month	NAB
18.	Lot 2, 9 Parsons Street, Clayton South VIC 3169 being land contained in folio identifier:	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust (' <b>James St Trust</b> ')	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and			Australia		\$1,750 per month	NAB

			(b) 50% by the MAZ 3 Trust						
19.	Lot 3, 9 Parsons Street, Clayton South VIC 3169 being land contained in folio identifier:	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust ('James St Trust')	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust			Australia		\$1,670 per month	NAB
<b>Petrol Stations</b>									
20.	2-4 Cowslip Street, Violet Town VIC 3669 being land contained in folio identifier:	4 Cowslip Street Violet Town Pty Ltd as trustee for the 4 Cowslip Street Violet Town Unit Trust ('4 Cowslip St Trust')	100% of the Units on issue in the 4 Cowslip St Trust are held by BV Holdings VT Pty Ltd as trustee for the BV Holdings VT Unit Trust ('VT Holdings Trust')  The VT Holdings Trust is owned 100% by the TIT Trust.	\$2,265,000 owing to JUDO.  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA Holdings Pty Ltd (AKSARA)	\$3,400,000	Australia	\$7,600 per month	\$20,000 per month	NAB
21.	Lot 9, 269-275 High Street, Golden Square VIC 3555 being land contained in folio identifier:	275 High Street Golden Square Pty Ltd as trustee for the 275 High Street Golden	100% of the Units on issue in the 275 High St Trust are held by BV Holdings GS Pty Ltd as trustee for	\$2,300,000 owing to JUDO  There is also a second facility that is cross	\$3,500,000	Australia	\$7,500 per month	\$21,000 per month	NAB

		Square Trust ('275 High St Trust')	the BV Holdings GS Unit Trust ('GS Holdings Trust')  The GS Holdings Trust is owned 100% by the TIT Trust.	collateralised amongst the petrol station properties owing to AKSARA					
22.	124 High Street, Taradale VIC 3447 being land contained in folio identifier:	123 High Street Taradale Pty Ltd as trustee for the 123 High St Tardale Unit Trust ('123 High St Trust')	100% of the Units on issue in the 123 High St Trust are held by BV Holdings TD Pty Ltd as trustee for the BV Holdings TD Unit Trust ('TD Holdings Trust')  The TD Holdings Trust is owned 100% by the TIT Trust.	\$360,000 owing to JUDO.  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$560k	Australia	\$1,200 per month	\$4,000 per month	NAB
23.	9-15 Main Street, Derrinallum VIC 3325 being land contained in folio identifier:	9 Main Street Derrinallum Pty Ltd as trustee for the 9 Main Street Derrinallum Unit Trust ('9 Main St Trust')	100% of the Units on issue in the 9 Main St Trust are held by BV Holdings DN Pty Ltd as trustee for the BV Holdings DN Unit Trust ('DN Holdings Trust')  The DN Holdings Trust is owned	\$800,000 owing to JUDO.  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	1,250,000	Australia	\$2,700 per month	\$8,500 per month	NAB



			100% by the TIT Trust.						
24.	22 Hight St, Rushworth 3612 being land contained in folio identifier:	22 High Street Rushworth Pty Ltd as trustee for the 22 High Street Rushworth Unit Trust (' <b>22 High St Trust</b> ')	100% of the Units on issue in the 22 High St Trust are held by BV Holdings RW Pty Ltd as trustee for the BV Holdings RW Unit Trust (' <b>RW Holdings Trust</b> ')  The RW Holdings Trust is owned 100% by the TIT Trust.	\$810,000 owing to Australia and New Zealand Banking Group Ltd (ANZ).  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$1,350,000	Australia	\$2,200 per month	\$9,000 per month	ANZ
25.	55 Nolan Street, Maryborough VIC 3465 being land contained in folio identifier:	55 Nolan Street Maryborough Pty Ltd as trustee for the 55 Nolan Street Maryborough Unit Trust (' <b>55 Nolan St Trust</b> ')	100% of the Units on issue in the 55 Nolan St Trust are held by BV Holdings MB Pty Ltd as trustee for the BV Holdings MB Unit Trust (' <b>MB Holdings Trust</b> ')  The MB Holdings Trust is owned 100% by the TIT Trust.	\$720,000 owing to ANZ  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$1,200,000	Australia	\$1,900 per month	\$8,000 per month	ANZ
26.	31 Ellerman Road, Dimboola VIC 3414 being land contained in folio identifier:	31 Ellerman Street Dimboola Pty Ltd as trustee for the 31	100% of the Units on issue in the 31 Ellerman St Trust are held by BV Holdings DB Pty	\$630,000 owing to ANZ	\$1,050,000	Australia	\$1,700 per month	\$7,000 per month	ANZ

		Ellerman St Dimboola Unit Trust (' <b>31 Ellerman St Trust</b> ')  	Ltd as trustee for the BV Holdings DB Unit Trust (' <b>DB Holdings Trust</b> ')  The DB Holdings Trust is owned 100% by the TIT Trust.	There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA					
27.	160 Murray Valley Highway, Lake Boga VIC 3584 being land contained in folio identifier:	160 Murray Valley Hwy Lake Boga Pty Ltd as trustee for the 160 Murray Valley HWY Lake BOGGA Unit Trust (' <b>160 Murray Valley Trust</b> ')  	100% of the Units on issue in the 160 Murray Valley Trust are held by BV Holdings LB Pty Ltd as trustee for the BV Holdings LB Unit Trust (' <b>LB Holdings Trust</b> ')  The LB Holdings Trust is owned 100% by the TIT Trust.	\$1,068,000 owing to ANZ  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$1,800,000	Australia	\$2,800 per month	\$17,200 per month	ANZ
28.	9 Gregory St, Ouyen VIC 3490 being land contained in folio identifier:	9 Gregory Street Ouyen Pty Ltd as trustee for the 9 Gregory Street Ouyen Unit Trust (' <b>9 Gregory St Trust</b> ')  	100% of the Units on issue in the 9 Gregory St Trust are held by BV Holdings OY Pty Ltd as trustee for the BV Holdings OY Unit Trust (' <b>OY Holdings Trust</b> ')  The OY Holdings Trust is owned	\$540,000 owing to ANZ  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$900,000	Australia	\$1,500 per month	\$6,000 per month	ANZ

			100% by the TIT Trust.						
29.	14 Kirwin Road, Marwell VIC 3840 being land contained in folio identifier:	14 Kirwin Road Morewell Pty Ltd as trustee for the 14 Kiriwin Road Moreville Unit Trust (' <b>14 Kiriwin Rd Trust</b> ')	100% of the Units on issue in the 14 Kiriwin Rd Trust are held by BV Holdings MW Pty Ltd as trustee for the BV Holdings MW Unit Trust (' <b>MW Holdings Trust</b> ')  The MW Holdings Trust is owned 100% by the TIT Trust.	\$684,000 owing to ANZ  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$1,140,000	Australia	\$1,800 per month	\$8,200 per month	ANZ
30.	89 Betka Road, Mallacoota VIC 3892 being land contained in folio identifier:	89 Betka Road Mallacoota Pty Ltd as trustee for the 89 Bekka Road Mallacoota Unit Trust (' <b>89 Betka Rd Trust</b> ')	100% of the Units on issue in the 89 Betka Rd Trust are held by BV Holdings MC Pty Ltd as trustee for the BV Holdings MC Unit Trust (' <b>MC Holdings Trust</b> ')  The MC Holdings Trust is owned 100% by the TIT Trust.	\$740,000 owing to JUDO  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$1,200,000	Australia	\$2,200 per month	\$7,050 per month	NAB
	<b>Leasehold</b>								

31.	Lease at 64 Nelson St Enterprises Trust (operates café business)	65 NELSON TRUST	Refer to Key Legend re extent of interest.				\$6,500 per month		ANZ
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## Annexure B – Bank Account Balances

	Bank	Account Number	BSB	Legal Owner	Balance
1.	ANZ	460998561	013214	65 Nelson Trust	\$39,158.52CR
2.	NAB	926496249	082080	9 Main St Trust	Unable to obtain access balances
3.	NAB	448010047	082080	275 High St Trust	Unable to obtain access to balances
4.	NAB	975544112	082080	123 High St Trust	Unable to obtain access to balances
5.	NAB	421958540	082080	4 Cowslip St Trust	Unable to obtain access to balances
6.	NAB	777179310	082080	89 Betka Rd Trust	Unable to obtain access to balances
7.	NAB	328159963	082080	Berkley St Trust	Unable to obtain access to balances
8.	ANZ	476344095	013405	14 Kiriwin Rd Trust	\$17,662.47CR
9.	ANZ	320262552	013405	55 Nolan St Trust	\$32,936.29CR
10.	ANZ	320266238	013405	31 Ellerman St Trust	\$32,141.56CR
11.	ANZ	320268137	013405	9 Gregory St Trust	\$23,979.95CR
12.	ANZ	320271117	013405	160 Murray Valley Trust	\$49,548.28
13.	ANZ	427920295	013456	Vincenzo Tesoriero	\$70.15CR
14.	CBA	30013264675	-	Canner	\$342.00CR
15.	CBA	301013480794	-	286 Carlisle St Pty Ltd	\$12,055.42CR
16.	CBA	310410572179	-	TIT	\$1268.18CR



## Annexure C – List of Motor Vehicles

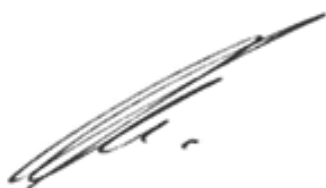
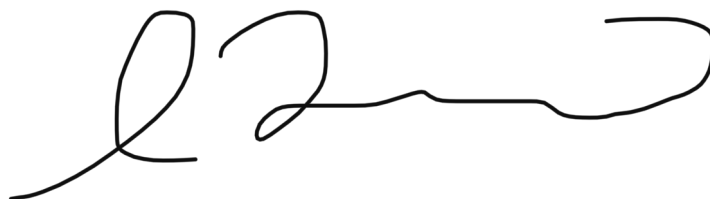
MAKE	MODEL	VIN/REGO	VALUE	ENCUMBERANCE
Porsche	2018 Cayenne	TBA	150,000	TBA
Alfa Romeo	2014 4C	TBA	60,000	TBA
Mini	2020 Cooper S	TBA	60,000	TBA
Ducati	2008 1098R	TBA	20,000	TBA
BMW	2020 S1000	TBA	15,000	TBA
Chevrolet	1957 Bel Air	TBA	100,000	TBA



## Annexure D– List Companies where shares are held

Name of Company Shares are Held in	Acting as trustee	Amount and Type of Shares	Beneficially Owned	Value of Shares (approx.)
308 CARLISLE STREET HOLDINGS PTY LTD	YES	1 ORD	YES	Nominal
286 CARLISLE STREET PTY LTD	NO	1 ORD	YES	Nominal
23 MARGARET STREET PTY LTD	YES	100 ORD	YES	NOMINAL
MAGNUSTA (VIC) PTY LTD	YES	2 ORD	YES	NOMINAL
26 EDMONSTONE ROAD PTY LTD	YES	1 ORD	YES	NOMINAL
VINTES QLD PTY LTD	YES	1 ORD	YES	NOMINAL
CANNER INVESTMENT PTY LTD	NO	2 ORD	NO	\$400,000
65 NELSON STREET ENTERPRISES PTY LTD	YES	1 ORD	YES	NOMINAL
TESORIERO INVESTMENT GROUP PTY LTD	YES	1 ORD	YES	NOMINAL
193 CARLISLE STREET ENTERPRISES PTY LTD	YES	100 ORD	YES	NOMINAL
5 BULKARA STREET PTY LTD	YES	1 ORD	YES	NOMINAL
VINTES NO 4 PTY LTD	YES	2 ORD	YES	NOMINAL
BV HOLDINGS VT PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS TD PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS GS PTY LTD	YES	100 ORD	YES	NOMINAL
BV HOLDINGS DB PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS RW PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS MB PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS LB PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS MC PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS MW PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS OY PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS DN PTY LTD	YES	100 ORD	NO	NOMINAL
1160 GLEN HUNTLY ROAD PTY LTD	YES	50 ORD	YES	NOMINAL
14 JAMES ST PTY LTD	YES	50 ORD	NO	NOMINAL
VINTES QLD NO 3 PTY LTD	YES	100 ORD	NO	NOMINAL

89 BETKA ROAD MALLACOOTA PTY LTD	YES	100 ORD	NO	NOMINAL
6 BULKARA STREET PTY LTD	YES	1 ORD	YES	NOMINAL
9 MAIN STREET DERRINALLUM PTY LTD	YES	100 ORD	YES	NOMINAL
123 HIGH STREET TARADALE PTY LTD	YES	100 ORD	YES	NOMINAL
4 COWSLIP STREET VIOLET TOWN PTY LTD	YES	100 ORD	YES	NOMINAL
9 GREGORY STREET OUYEN PTY LTD	YES	100 ORD	YES	NOMINAL
160 MURRAY VALLEY HWY LAKE BOGA PTY LTD	YES	100 ORD	YES	NOMINAL
55 NOLAN STREET MARYBOROUGH PTY LTD	YES	100 ORD	YES	NOMINAL
22 HIGH STREET RUSHWORTH PTY LTD	YES	100 ORD	YES	NOMINAL
31 ELLERMAN STREET DIMBOOLA PTY LTD	YES	100 ORD	YES	NOMINAL
275 HIGH STREET GOLDEN SQUARE PTY LTD	YES	100 ORD	YES	NOMINAL
14 KIRWIN ROAD MOREWELL PTY LTD	YES	100 ORD	YES	NOMINAL
64-66 BERKLEY STREET HAWTHRON PTY LTD	YES	50 ORD	YES	NOMINAL
8-12 NATALIA AVE OAKLEIGH PTY LTD	YES	100 ORD	YES	NOMINAL
SAN PEL ONE PTY LTD	NO	100 ORD	NO	NOMINAL
SAN PEL TWO PTY LTD	NO	100 ORD	NO	NOMINAL
FORUM GROUP FINANCIAL SERVICES PTY LTD	NO	1 ORD	NO	NOMINAL



## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/10/2021 8:52:44 AM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 20/10/2021 8:52:49 AM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59  
Rule 29.02(1)

## Affidavit

No. NSD of 616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporations ABN 33 007 457 141** and another named in the Schedule  
Applicants

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others named in the Schedule  
Respondents

Affidavit of: **Vincenzo Frank Tesoriero**  
Address: 64-66 Berkley Street, Hawthorn VIC  
Occupation: Director  
Date: 19 October 2021

### Contents

Document number	Details	Paragraph	Page
1.	Affidavit of Vincenzo Frank Tesoriero sworn 19 October 2021		2
2	Exhibit VFT being a paginated bundle of documents		1

Filed on behalf of (name & role of party) Vincenzo Frank Tesoriero, Third Respondent  
Prepared by (name of person/lawyer) Alexandra Lawrence  
Law firm (if applicable) Madgwicks Lawyers  
Tel 03 9242 4720 Fax 03 9242 4777  
Email [Alexandra.lawrence@madgwicks.com.au](mailto:Alexandra.lawrence@madgwicks.com.au)  
Address for service Level 6, 140 Williams Street, Melbourne 3000 VIC  
(include state and postcode)

[Version 3 form approved 02/05/2019]

I, Vincenzo Tesoriero, Director, of 64-66 Berkeley Street, Hawthorn VIC 3122 in the State of Victoria, director, say on oath

1. I am the third respondent in this proceeding.
2. Exhibited to me at the time of swearing this affidavit is a paginated bundle of documents marked "Exhibit VFT-1" (**VFT-1**). Throughout this affidavit I make reference to documents which appear at VFT-1.

### Freezing Order

3. A number of my assets are currently frozen pursuant to a freezing order made against me by Justice Lee dated 2 July 2021 and subsequently varied on 9 July 2021 and on 27 August 2021 (**Freezing Order**). A copy of the freezing order is at page 2-15 of VTF-1.
4. I have a number of accounts with the National Bank of Australia (**NAB**) which are subject to the Freezing Order. I have visibility on 16 accounts which were for various business matters, though I believe I may have up to 30 accounts with NAB. There is a total of \$255,055.06 in the accounts I have visibility on set out as follows:

Account name	Account Number	BSB	Account balance (\$)
Business Account #0047	448010047	082-080	72,335.05
Business Account #1512	317881512	082-080	14,062.99
Business Account #1984	777331984	082-080	12,440.45
Business Account #2511	916282511	082-080	0
Business Account #4060	913604060	082-080	0
Business Account #4112	975544112	082-080	14,078.20
Business Account #4593	178684593	082-080	13,654.00
Business Account #5778	205665778	082-080	3,476.72
Business Account #6249	926496249	082-080	12,178.43
Business Account #6975	777426975	082-080	0
Business Account #7866	777487866	082-080	0
Business Account #8540	421958540	082-080	65,368.91
Business Account #9078	777549078	082-080	763.92
Business Account #9116	205819116	082-080	6,224.58

*A Lawrence*

Business Account #9119	204569119	082-080	3,183.61
Business Account #9310	777179310	082-080	33,637.44
Business Account #9963	328159963	082-080	3,650.76
Business Account #0012	708900012	082-080	0

5. Rental from my various properties is currently being paid into the accounts and NAB, with my consent, is making interest payments on some of the mortgages in my name.

### Exception to the Freezing Order

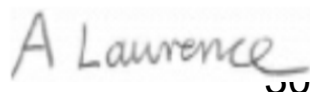
6. Clause 10 of the Freezing Order states that:

*“This order does not prohibit:*

*(a) You paying up to \$5,000 a week on your ordinary living expenses;*

*(b) Paying \$30,000 per month (up to the sum of \$350,000 unless varied by subsequent order) on your reasonable legal expenses”.*

7. On or about 24 August 2021 my previous solicitors (**Fortis Law**) wrote to NAB requesting that \$66,000 be distributed to me for reasonable legal expenses for the months of July and August 2021 pursuant to clause 10 of the Freezing Order (**payment request**). A copy of the email and attachments is at page 16-31 of VTF-1.
8. On or about 13 September 2021 NAB’s solicitors (**Dentons**) wrote to Fortis Law to inform them that they (Dentons) intended to write to Westpac Banking Corporation (**Westpac**)’s solicitors (**MinterEllison**), to confirm whether MinterEllison agreed that the Freezing Orders did not prevent the payments being made. A copy of the email and attachments is at page 32-51 of VTF-1.
9. On or about 16 September 2021, Dentons wrote to MinterEllison requesting their response as to whether they agreed the payment request was not prohibited under the Freezing Order. Dentons noted that NAB intended to comply with the payment request if MinterEllison agreed. A copy of the email is at page 52-53 of VTF-1.
10. On or about 20 September 2021 MinterEllison wrote to Dentons stating that paragraph 10 of the Freezing Orders was an exception not a permission and it would not be appropriate for NAB to comply with the payment request. A copy of the letter is at page 54-55 of VTF-1.

A Lawrence  




11. On or about 21 September 2021, my current solicitors (**Madgwicks**) wrote to Dentons stating that I was entitled to a monthly allowance for legal fees under the exclusions in the Penal Notice. A copy of the email is at page 56 of VTF-1.
12. On or about 28 September 2021, MinterEllison sent an email to Madgwicks and copied in Dentons. The email acknowledged that Westpac's consent was not required for the proposed payments however expressly stated that Westpac did not intend to consent to the payment request. A copy of the email is at page 57-58 of VTF-1.
13. On or about 7 October 2021 Madgwicks wrote to Dentons stating that I was entitled to \$30,000 in legal fees and \$20,000 in living expenses per month pursuant to the exclusions in the Freezing Order and noted that order 15 of the penal notice states that no bank needs make enquiries into the proposed payments if the withdrawal appears permitted by the Freezing Order. Madgwicks requested that the sum of \$200,000 be transferred to Madgwicks Trust Account set out as follows:

	<b>Legal Expenses</b>	<b>Living expenses</b>	
July	\$30,000	\$20,000	
August	\$30,000	\$20,000	
September	\$30,000	\$20,000	
October	\$30,000	\$20,000	
Total	\$120,000	\$80,000	
		Total Funds	\$200,000

14. A copy of the letter is at page 59-61 of VTF-1.
15. On or about 12 October 2021 Dentons wrote to Madgwicks stating that MinterEllison had stated that Westpac did not consent to the payment and they did not accept that the payment was permitted as per the Freezing Order. Dentons stated that NAB would not be making the payment request without the appropriate court orders. A copy of the email is at page 62-63 of VTF-1.
16. I have not received any funds from the NAB account to date. Since July 2021 I have been unable to access any funds for payment of my legal costs or my day to day living expenses.

*A Lawrence*

### 8-12 Natalia Avenue deposit

17. On or about 16 December 2019 I entered into a contract for the purchase of 8-12 Natalia Avenue Oakleigh South 3167 (**contract**). The purchaser was identified as “*Vince Tesoriero &/or nominees*”. A copy of the contract is at page 64-177 of VTF-1.
18. Pursuant to the contract, I paid a deposit of \$1,172,000 to the vendor (**deposit**).
19. My intention at the time of entering into the contract was to transfer the contract to a nominee and. However, on or about July 2021 my intended nominee decided to pull out and I did not have the funds to proceed with the settlement. The completion date for the sale was 3 August 2021
20. On or about 4 August 2021 I received a notice of default from the vendor’s solicitors. A copy of the notice of default is at page 178-179 of VTF-1.
21. In order to mitigate the loss of the deposit and a potential court case against me for breach of contract, I reached out through various connections and was able to find an associate of mine who was willing to take over the contract (**Nominee**). The Nominee is not a related party to this proceeding. It was agreed that the Nominee would take over the contract and would return the deposit to me less expenses payable. The total to be returned to me after expenses came to \$773,362.88 (**deposit funds**).
22. On or about 20 August 2021 at approximately 11:34am MinterEllison wrote to Fortis Law and copied in the Nominee’s solicitor, Mr Ken Grey from Arnold Bloch Lieber. MinterEllison stated that:
- “We do not consider it necessary or appropriate to engage with Mr Gray or his client. It is a matter for your client and Mr Gray’s client about what steps are taken by them in connection with the proposed transaction...”*
23. A copy of the correspondence is at page 180-181 of VTF-1.
24. On or about 20 August 2021 at approximately 1:47pm MinterEllison wrote to Fortis Law and stated that Westpac consented to the deposit funds being held by Fortis Law’s trust account on the basis of an undertaking that the deposit would not be dealt with until a joint account controlled by MinterEllison and Fortis Law was established. Fortis Law consented to this arrangement. A copy of the correspondence is at page 182-184 of VTF-1.
25. On or about 10 September 2021 Fortis Law wrote to Minter Ellison to confirm the deposit funds had been paid into Fortis Law’s trust account. A copy of the email is at page 185 of VTF-1.

A Lawrence 2

26. On or about 21 September 2021 Fortis Law ceased acting for me. The deposit funds were still in Fortis Law's trust account at this time and Fortis Law wrote an email to Minter Ellison to inform them that it purported to exercise a lien over these funds. A copy of the email is at page 186 of VTF-1.

27. On or about 1 October 2021 Justice Lee ordered that Fortis Law pay the deposit funds into the Court. The deposit funds were paid into the Court funds pursuant to this order. The Court currently controls the deposit funds. A copy of the order is at page 187-189 of VTF-1.

### **My current access to finances**

28. Due to the Freezing Order and the deposit funds being held by the Court, I currently do not have any access to any funds whatsoever. As NAB has refused to release the requested payments without Westpac's consent, I do not even have access to funds to cover my daily living expenses or my legal funds and am currently relying on loans from family to survive.

29. Fortis Law has told me they have already incurred a sum of \$233,600.52 in legal fees for which I am currently awaiting the final invoice and until such time as they have paid that amount they will continue to exercise a lien over my files. An agreement has been reached between Madgwicks and Fortis Law whereby Fortis Law's lien will take priority over Madgwicks' lien, except that Madgwicks will have priority in respect of the initial funding required seeking the release of funds. Madgwicks has not currently billed me for work done so far, however I understand the work conducted by Madgwicks Lawyers since approximately 22 September 2021 to be extensive. The work conducted by Madgwicks Lawyers includes:

- a. Extensive correspondence with MinterEllison in relation to this matter;
- b. Appearance at the hearing before Justice Lee on 1 October 2021;
- c. Correspondence with MinterEllison in relation to the deposit funds held by Fortis Law;
- d. Correspondence with Dentons and MinterEllison in relation to the release of funds for legal payments;
- e. Corresponding with numerous stakeholders in connection with entities related to me.
- f. Perusing and considering documents in relation to these proceedings and considering the legal issues.

A Lawrence  
33

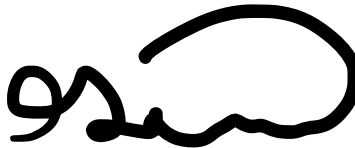
30. Whilst the Freezing Order makes some allowance for my legal fees, the reality is that I am connected to at least 20 defendants (31 if you include entities in external administration). Therefore my legal expenditure is far greater than what has been allowed for.

31. I am informed by Fortis Law that Westpac has paid \$15 million into MinterEllison's trust account in relation to this proceeding. I believe Fortis Law learned this via a conversation between the partner in charge of my matter, Christopher Nehme, and the liquidator, Kathy Sozou, who I understand have a family connection.

32. I currently have no ability to pay any bills to Madgwicks and will be unable to defend the significant claims brought against me without access to significant funds.


The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

Sworn by Vincenzo Tesoriero )



at Melbourne on 19 October 2021 ) -----

Before me:



Alexandra Lawrence  
6th Floor, 140 William St, Melbourne, Vic, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW).
2. I saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I has confirmed the person's identity based on the following identification document presented to me: Drivers Licence



## Schedule of Parties

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141

Second Applicant Westpac New Zealand Limited (company registration  
number company number 1763882)

### Respondents

First Respondent Forum Finance Pty Limited (in liquidation) ACN 153 301 172

Second Respondent: Basile Papadimitriou

Third Respondent Vincenzo Frank Tesoriero

Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional  
liquidators appointed) ACN 623 033 705

Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation)  
ACN 153 336 997

Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed)  
ACN 168 709 840

Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators  
appointed) ACN 607 484 364

Eighth Respondent 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662

Ninth Respondent 14 James Street Pty Ltd (in liquidation) ACN 638 449 206

Tenth Respondent 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129

Eleventh Respondent 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160

Twelfth Respondent 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473

Thirteenth Respondent 23 Margaret Street Pty Ltd ACN 623 715 373

Fourteenth Respondent 1160 Glen Huntly Road Pty Ltd ACN 639 447 984

Fifteenth Respondent 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093

Sixteenth Respondent Canner Investments Pty Ltd ACN 624 176 049

Seventeenth Respondent 123 High Street Taradale Pty Ltd ACN 639 872 512

Eighteenth Respondent 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921

Nineteenth Respondent 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887

Twentieth Respondent 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352

Twenty-First Respondent 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912

Twenty-Second Respondent 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179

Twenty-Third Respondent 9 Gregory Street Ouyen Pty Ltd ACN 641 392 707

Twenty-Fourth Respondent 9 Main Street Derrinallum Pty Ltd ACN 639 872 736

Twenty-Fifth Respondent 286 Carlisle Street Pty Limited ACN 610 042 343

Twenty-Sixth Respondent 275 High Street Golden Square Pty Ltd ACN 639 870 545

Twenty-Seventh Respondent Mazcon Investments Hellas IKE

Twenty-Eighth Respondent Palante Pty Ltd ACN 135 344 151

Twenty-Ninth Respondent Anastasios Giamouridis

Thirtieth Respondent The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626

Thirty-First Respondent Iugis Pty Ltd (in liquidation) ACN 632 882 243

Thirty-Second Respondent Iugis (UK) Limited

Thirty-Third Respondent Iugis Holdings Limited

Thirty-Fourth Respondent Iugis Global Financial Services Limited

Thirty-Fifth Respondent Iugis Finance Limited

Thirty-Sixth Respondent Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544 ACN

Thirty-Seventh Respondent Intrashield Pty Ltd (in liquidation) ACN 133 426 534

Thirty-Eighth Respondent Tesoriero Investment Group Pty Ltd ACN 161 088 115

Thirty-Ninth Respondent Mangusta (Vic) Pty Ltd ACN 631 520 682

Fortieth Respondent 193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237

Forty-First Respondent 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626

Forty-Second Respondent Iugis Hellas IKE

Forty-Third Respondent Iugis Energy SA

## Exhibit certificate

Federal Court of Australia  
District Registry: New South Wales  
Division: General

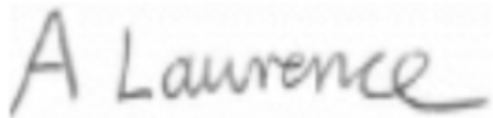
No. NSD 616 of 2021

**Westpac Banking Corporations ABN 33 007 457 141**

Applicant

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others according to the Schedule  
Respondents

This is the exhibit marked "**VFT-1**" now produced and shown to Vincenzo Frank Tesoriero at the time of swearing his affidavit on 19 October 2021 before me:

A handwritten signature in cursive script that reads "A Lawrence". The signature is written in dark ink on a light-colored background.

---

Alexandra Lawrence  
Solicitor



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD616/2021

**WESTPAC BANKING CORPORATION ABN 33 007 457 141** and another named in the schedule  
Applicant

**FORUM FINANCE PTY LIMITED** and others named in the schedule  
Respondent

### ORDER

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 27 August 2021

**WHERE MADE:** Sydney

#### THE COURT ORDERS THAT:

##### Freezing Order

1. Without admissions, and on the same basis as to onus identified by senior counsel for the applicants on 9 July 2021, the freezing order made against the third respondent, Vincenzo Frank Tesoriero, by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 2 July 2021 (as varied on 9 July 2021) be varied in the form of **Annexure A** and be extended and apply until further order.

##### Rozelle Property

2. Upon the undertaking of the third respondent, Vincenzo Frank Tesoriero to the Court, on behalf of himself and the thirteenth respondent, 23 Margaret Street Pty Ltd ACN 623 715 373 (**23 Margaret Street**) that, until hearing of the applicants' interlocutory process filed 25 August 2021, they will not take any further steps to market or sell the property comprised in Folio Identifier 106/1021924, known as 23 Margaret Street, Rozelle NSW 2039 (**Rozelle Property**), or otherwise dispose of an interest in or encumber the Rozelle Property, the Court orders that prayers for relief 6 to 13 of the



interlocutory application filed 25 August 2021 be adjourned to 2.15pm on 3 September 2021 for a case management hearing before Lee J.

**THE COURT NOTES THAT:**

3. The third and thirteenth respondents shall permit the applicants' nominated valuer access to inspect the Rozelle Property on 24 hours' notice.

Date that entry is stamped: 27 August 2021

*Sia Lagos*  
Registrar



**ANNEXURE A – FREEZING ORDER**

**PENAL NOTICE – FREEZING ORDER**

**TO: VINCENZO FRANK TESORIERO**

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO VINCENZO FRANK TESORIERO**

This is a ‘*freezing order*’ made against you on 2 July 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order. This freezing order was varied on 9 July 2021 and on 27 August 2021 by Justice Lee with notice to you.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) [Deleted]
- (2) Subject to the next paragraph, in accordance with the order 1 of the orders made by Justice Lee on 27 August 2021, this order has effect until further order of the Court.
- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
  - (a) ‘*applicant*’, if there is more than one applicant, includes all the applicants;
  - (b) ‘*you*’, where there is more than one of you, includes all of you and includes you if you are a corporation;



- (c) 'third party' means a person other than you and the applicant;
  - (d) 'unencumbered value' means value free of mortgages, charges, liens or other encumbrances.
  - (e) 'Relevant Amount' means the amount of AUD\$253,766,555.76 and NZD\$44,097,969.
- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia ('Australian assets') up to the unencumbered value of AUD\$253,766,555.76 and NZD\$44,097,969 (the *Relevant Amount*).
- (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (c) If the unencumbered value of your Australian assets is less than the Relevant Amount, and you have assets outside Australia (**Worldwide Assets**):
- (i) You must not dispose of, deal with or diminish the value of any of your Australian assets or your Worldwide Assets up to the unencumbered value of the Relevant Amount; and
  - (ii) You may dispose of, deal with or diminish the value of any of your Worldwide Assets, so long as the unencumbered value of all of your Australian assets and Worldwide Assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and





(iii) the following assets in particular:

(A) your shares in each of the following companies:

- a. 23 Margaret Street Pty Limited ACN 623 715 373;
- b. 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
- c. 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
- d. 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
- e. 14 James Street Pty Limited ACN 638 449 206;
- f. Canner Investments Pty Limited ACN 624 176 049;
- g. Tesoriero Investment Group Pty Limited ACN 161 088 115;
- h. 123 High Street Taradale Pty Limited ACN 639 872 512;
- i. 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
- j. 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
- k. 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;
- l. 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
- m. 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
- n. 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
- o. 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
- p. Forum Group Financial Services Pty Limited ACN 623 033 705;
- q. 26 Edmonstone Road Pty Limited ACN 622 944 129;
- r. 5 Bulkara Street Pty Limited ACN 630 982 160;
- s. 6 Bulkara Street Pty Limited ACN 639 734 473;
- t. Pankarn Pty Ltd ACN 104 616 051;
- u. 275 High Street Golden Square Pty Ltd ACN 639 870 545;
- v. 22 High Street Rushworth Pty Ltd ACN 641 392 903;
- w. 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626;
- x. Vintes Qld Pty. Ltd. ACN 624 585 922;
- y. 65 Nelson Street Enterprises Pty. Ltd. ACN 612 614 632;
- z. 193 Carlisle Street Enterprises Pty. Ltd. ACN 612 615 237;
- aa. Vintes No 4 Pty Ltd ACN 639 726 524;
- bb. BV Holdings VT Pty Ltd ACN 639 891 624;
- cc. BV Holdings TD Pty Ltd ACN 639 895 257;



- dd. BV Holdings GS Pty Ltd ACN 640 218 864;
- ee. Vintes Qld No 3 Pty Ltd ACN 640 879 152;
- ff. BV Holdings DB Pty Ltd ACN 641 393 151;
- gg. BV Holdings RW Pty Ltd ACN 641 393 197;
- hh. BV Holdings MB Pty Ltd ACN 641 393 240;
- ii. BV Holdings LB Pty Ltd ACN 641 393 268;
- jj. BV Holdings MC Pty Ltd ACN 641 393 277;
- kk. BV Holdings MW Pty Ltd ACN 641 393 286;
- ll. BV Holdings DN Pty Ltd ACN 639 895 239;
- mm. 308 Carlisle Street Holdings Pty. Ltd. ACN 613 047 439;
- nn. 286 Carlisle Street Pty Ltd ACN 610 042 343;
- oo. Thrivi Group Pty Ltd ACN 625 491 858;
- pp. Mangusta (Vic) Pty. Ltd. ACN 631 520 682;
- qq. San Pel One Pty LTD ACN 651 919 265; and
- rr. San Pel Two Pty Ltd ACN 651 927 356;

(B) the following vehicles and vessels:

- a. Vessel "XOXO" Cayman Islands Official Number 734587;
- b. 2018 Porsche Cayenne with VIN WPiZZZ9YZKDA90623
- c. 2014 Alfa Romeo;
- d. 2020 Mini Cooper S with VIN WMWXX920802M95982;
- e. 2008 Ducati 1098R with registration DUCR;
- f. 2020 BMW S1000 with registration EOZ12;
- g. 1957 Chevrolet Bel Air; and
- h. 2019 BRP Can-Am Ryker 600 registration RYKER.

- (b) the value of your assets is the value of the interest you have individually in your assets.

## PROVISION OF INFORMATION

(8) Subject to paragraph 9, you must:

- (a) at or before **5pm** on **14 July 2021** (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages,



- charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
- (b) by **5pm on 14 July 2021**, swear and serve on the applicant an affidavit setting out the above information
  - (c) by **5pm on 3 September 2021** (or within such further time as the Court may allow) to the best of your ability, swear and serve on the applicants an affidavit setting out all your assets outside of Australia (**Worldwide Assets**), giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the Worldwide Assets.
- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
  - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
  - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

### **EXCEPTIONS TO THIS ORDER**

- (10) This order does not prohibit:
- (a) you paying up to \$5,000 a week on your ordinary living expenses;



- (b) paying \$30,000 per month (up to the sum of \$350,000 unless varied by subsequent order) on your reasonable legal expenses;
- (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
- (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.

(10A) This order does not prohibit:

- (a) you from directing Australia and New Zealand Banking Group Limited in respect of the bank account in the name of 65 Nelson St Enterprises Pty Ltd (ACN 612 614 632) as trustee of the 65 Nelson Street Enterprises Trust (ABN 74 545 512 288) (**65 Nelson St Co**) to make payments in respect of bona fide expenses:
  - (i) for weekly wage payments for employees employed by and working in the business operated by 65 Nelson St Co;
  - (ii) lease payments for premises occupied by the business operated by 65 Nelson St Co;
  - (iii) operating expenses incurred by the business operated by 65 Nelson St Co;
- (b) you from directing any financial institution that holds bank accounts for any of the following entities:
  - (i) 23 Margaret Street Pty Limited ACN 623 715 373;
  - (ii) 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
  - (iii) 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
  - (iv) 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
  - (v) 14 James Street Pty Limited ACN 638 449 206;
  - (vi) Forum Group Financial Services Pty Ltd ACN 623 033 705;
  - (vii) Canner Investments Pty Limited ACN 624 176 049;
  - (viii) 123 High Street Taradale Pty Limited ACN 639 872 512;
  - (ix) 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
  - (x) 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
  - (xi) 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;



- (xii) 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
- (xiii) 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
- (xiv) 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
- (xv) 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
- (xvi) 26 Edmonstone Road Pty Limited ACN 622 944 129;
- (xvii) 5 Bulkara Street Pty Limited ACN 630 982 160; and
- (xviii) 6 Bulkara Street Pty Limited ACN 639 734 473,

to make payments in respect of bona fide expenses of the following types in relation to properties owned by the entity:

- (xix) repayments of registered mortgages that were in existence before 2 July 2021;
- (xx) land tax;
- (xxi) insurance premiums;
- (xxii) council rates;
- (xxiii) water.

(11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.

(12) (a) This order will cease to have effect if you:

- (i) pay the sum of AUD\$253,766,555.76 and NZD\$44,097,969 into Court; or
- (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
- (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.

(b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.

(c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

## **COSTS**

(13) The costs of this application are reserved to the Court hearing the application on the Return Date.



## **PERSONS OTHER THAN YOU AND THE APPLICANT**

### **(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

### **(15) Bank withdrawals by you**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

### **(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
  - (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

### **(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.



## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon you copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than you and the respondents which have been incurred as a result of this order, including the costs of finding out whether that person holds any of your assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding except for the purposes of any police, regulatory authority or prudential disclosure.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against you or your assets.



## SCHEDULE B

### AFFIDAVITS RELIED ON

#### Name of deponent

- (1) Geoffrey Keith Anderson
- (2) Nicholas Anthony O'Brien
- (3) Caitlin Maria Murray

#### Date affidavit made

28 June 2021; 8 July 2021  
27 June 2021; 1 July 2021  
28 June 2021; 2 July 2021;  
7 July 2021; 8 July 2021; 12  
July 2021; 14 July 2021; 15  
July 2021; 25 August 2021

### NAME AND ADDRESS OF APPLICANTS' LAWYERS

The Applicants' lawyers are:

MinterEllison  
Governor Macquarie Tower  
Level 40, 1 Farrer Place  
Sydney NSW 2000

Attention: Caitlin Murray  
[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com) ; T +61 2 9921 8514 ; M +61 422 977 971 ; +61 2 9921  
8123 ref: CMM:1353397





## Schedule

No: NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141  
Second Applicant Westpac New Zealand Limited (company registration number company number 1763882)

### Respondents

First Respondent: Forum Finance Pty Limited (in liquidation) ACN 153 301 172  
Second Respondent: Basile Papadimitriou  
Third Respondent: Vincenzo Frank Tesoriero  
Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705  
Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997  
Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840  
Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364  
Eighth Respondent: 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662  
Ninth Respondent: 14 James Street Pty Ltd (in liquidation) ACN 638 449 206  
Tenth Respondent: 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129  
Eleventh Respondent: 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160  
Twelfth Respondent: 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473  
Thirteenth Respondent: 23 Margaret Street Pty Ltd ACN 623 715 373  
Fourteenth Respondent: 1160 Glen Huntly Road Pty Ltd ACN 639 447 984



Fifteenth Respondent: 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093  
Sixteenth Respondent: Canner Investments Pty Ltd ACN 624 176 049  
Seventeenth Respondent: 123 High Street Taradale Pty Ltd ACN 639 872 512  
Eighteenth Respondent: 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392  
921  
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Twenty-Fourth Respondent: 9 Main Street Derrinallum Pty Ltd ACN 639 872 736  
Twenty-Fifth Respondent: 286 Carlisle Street Pty Limited ACN 610 042 343  
Twenty-Sixth Respondent: 275 High Street Golden Square Pty Ltd ACN 639 870 545  
Twenty-Seventh Respondent: Mazcon Investments Hellas IKE  
Twenty-Eighth Respondent: Palante Pty Ltd ACN 135 344 151  
Twenty-Ninth Respondent: Anastasios Giamouridis

## Mackenzie Preston

---

**From:** Ramsha Sulaman  
**Sent:** Tuesday, 24 August 2021 7:49 PM  
**To:** Kang, Justin  
**Cc:** Leen, Delano; Canny, Elizabeth; Christopher Nehme; Pierre Safi; Roy Hanna  
**Subject:** RE: RE outstanding interest payments [IWOV-Documents.FID10220696]  
**Attachments:** RTGS Form - 275 HIGH STREET GOLDEN SQUARE PTY LTD - Payment to Fortis.pdf; RTGS Forms - 4 Cowslip Street Violet Town Pty Ltd - Payment to Fortis.pdf; Signed RTGS Forms - Payment to Judo Bank.pdf

Dear Justin,

We refer to your below email.

### Upcoming Payments

Please find attached signed RTGS forms for payments indicated in the table below.

We confirm that each amount in the below table represents a loan/mortgage repayment due and owing to Judo Bank by the specific entity from whose account that payment is sought to be made for the month of August and September.

Account No.	Account Name	Payment amount requested
Ending 6249	9 MAIN STREET DERRINALLUM PTY LTD ATF 9 MAIN STREET DERRINALLUM UNIT TRUST	\$ 2,350.67 – Due 1 September \$2,653.89 – Due 30 August <b>Total - \$5,004.56</b>
Ending 0047	275 HIGH STREET GOLDEN SQUARE PTY LTD ATF 275 HIGHSTREET GOLDEN SQUARE UNIT TRU	\$7,289.51 – Due 30 August \$6,450.23 – Due 1 September <b>Total - \$13,739.74</b>
Ending 4112	123 HIGH STREET TARADALE PTY LTD ATF 123 HIGH STREET TARADALE UNIT TRUST	\$1,193.67 – Due 30 August \$1,053.10 – Due 2 September <b>Total - \$2,246.77</b>
Ending 8540	4 COWSLIP STREET VIOLET TOWN PTY LTD ATF 4 COWSLIPSTREET VIOLET TOWN UNIT TRUST	\$7,405.40 – Due 2 September \$6,544.25 – Due 1 September <b>Total - \$13,949.65</b>
Ending 9310	89 BETKA ROAD MALLACOOTA PTY LTD ATF 89 BETKA ROAD MALLACOOTA UNIT TRUST	\$2,127.11 – Due 13 August <b>(this payment is now overdue)</b> \$2,422.11 – Due 30 August <b>Total - \$4,549.22</b>
	<b>Total due to Judo</b>	<b>\$39,489.94</b>

We await your urgent confirmation that the total payment of \$39,489.94 as directed above will be made to Judo immediately, and no later than 2 business days from the date of this email.

### Legal Expenses

In relation to our legal fees, we do not agree with your assertion that our fees can only be paid from accounts in Mr Tesoriero's personal name. We refer you to Order 6(a) which states that the freezing orders are in relation to assets. Assets are defined in Order 7 and include the accounts listed in the above table. Order (10)(b) is an exception to the freezing order in relation to the assets, and explicitly makes provisions for our fees to be paid from the assets which, once again, include the above listed accounts. We attach two RTGS forms for a total payment of \$66,000.00 in respect of our fees which we are arranging for our client to execute. Once executed we will email same to you to make arrangements for the payment of our fees.

Kind Regards,

Ramsha Sulaman | **Solicitor – Property Law**

## FORTIS | LAW

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T +61 2 9233 2722 | F +61 2 9233 2755  
[ramsha@fortislaw.com.au](mailto:ramsha@fortislaw.com.au) | [www.fortislaw.com.au](http://www.fortislaw.com.au)

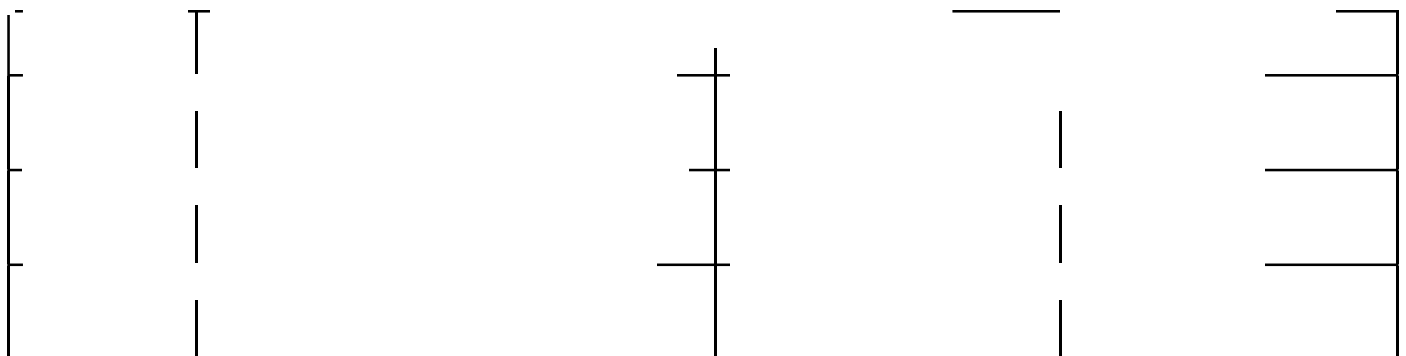


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CYBER FRAUD WARNING: Please be aware there is





# RTGS Request Form/ Local AUD Teletransfer Request Form

Please complete this form by typing all payment information (hand written forms are not allowed). \*Mandatory fields.

Note: This form is to be completed by the Customer/Authorised Signatory.

Fax No  Attention

Please make the following payment as per the details below

Date  /  /

### Payment Details

Please ensure all details are correct. NAB cannot check that the Beneficiary's name matches the BSB and account number. An incorrect BSB or account number will result in your money being paid to the wrong account and may result in the loss of funds.

Amount\*  \$  AUD only Payment date\*  /  /

Beneficiary's Bank\*  Swift Code (if applicable)

BSB (6 digits)\*  Beneficiary account number\*

Beneficiary's Name\*

Beneficiary's Address (optional)   
 State  Postcode

Payment reference/message (optional)

### Sender's Details

I/we authorise the Bank to debit the payment amount to account (NAB Transaction Accounts Only).

Account name\*  BSB (6 digits)\*  Account number\*

Customer name (if different to account name)  Customer contact name  Customer telephone number  (  )

### Fee Account (if different from above)

I/we authorise the Bank to debit the fee amount to account (NAB Transaction Accounts Only).

Account name\*  BSB (6 digits)\*  Account number\*

\* Mandatory Fields

### Signatures (in accordance with the debit account signing authority)

By signing this request you confirm that you have read, understood and accepted the terms and conditions on page 2.

Name  Authorised signature  Name  Authorised signature  Date  /  /

### NAB Use Only

#### Original RTGS Request/Local AUD Teletransfer Request Form Received

Complete this section when the original RTGS/Local AUD Teletransfer request form is received, signed by the authorised persons to the account.

Customer number of Applicant (Who is sending the money? Eg Company, Trust etc)

Instructions are signed in accordance with the Account Authority Card  Sufficient funds held in the account – refer GRE008

Completed and signed by the authorised signatory

Bank Officer Name  Position/Title  Bank Officer Signature  Date  /  /

#### Instruction Received via Email/Fax – Refer to Segment Specific Information Below:

**Business Bank** Bankers must complete verification & approval requirements as per GFA300 – GFA314 & GRE006 – GRE012

#### Institutional

If forwarding to another area for processing & the customer has not signed this form, tick to confirm that a signed written request has been received:

Yes  N/A

**Private Wealth** Insert Inward Fax Verification stamp on form & complete verification details as per GFA300 – GFA314 & GRE006 – GRE012

**Retail** Refer to GFA 100 for further instructions if request has been received via fax, email or Australia Post mail.

### Input Use Only

RTGS No.	<input type="text"/>	eBOBS input by	<input type="text"/>	RTGS input by	<input type="text"/>
Fees collected	<input type="text"/>	Fee Seq No.	<input type="text"/>	Authorised by	<input type="text"/>

### Terms and Conditions

- The Applicant ('you') acknowledge and agree that:
  - You are solely responsible for ensuring that your instructions on this Application are correct;
  - NAB ('we') is under no obligation to verify the correctness of your instructions. Without limitation to the foregoing, we are entitled to pay to the credit account identified by you as the beneficiary's without enquiry and are under no obligation to use any other information you give us (including the name and address of the beneficiary) to confirm the beneficiary's ownership of that account, and
  - Once executed by NAB, the payments made under this Request Form are irrevocable.
- Please note that the beneficiary name does not form part of your payment instructions, and it will not be checked by NAB to verify that it matches the beneficiary's BSB and account number. NAB will process the payment using the BSB and account number you provide. Please ensure that the BSB and beneficiary account number are correct, because an incorrect BSB and account number will result in your money being paid to the wrong account and the loss of funds.
- We will not be liable for and exclude all liability for loss or damage (including any indirect or consequential loss or damage) arising out of or in relation to:
  - delays, errors, or omission in transmission or payment beyond our control; or
  - acts of default or omission of any kind by you or any third party outside our control.
- If we are negligent or in a breach of duty to you, we will supply the services described in these terms and conditions again.
- Subject to applicable law, you indemnify and continue to hold us indemnified against any liability, loss, damage or expense in respect of your provision of incorrect instructions.
- Fees apply for this service. The applicable fees can be found via our website at [nab.com.au](http://nab.com.au)

### Banking Code of Practice

National Australia Bank has adopted the Banking Code of Practice and relevant provisions of the Code apply to the service, if you are an individual or a small business referred to in the Code. You can obtain from NAB upon request a copy of the Banking Code of Practice and general descriptive information concerning our banking services, including (a) account opening procedures, (b) our obligations regarding the confidentiality of your information, (c) complaint handling procedures, (d) bank cheques, (e) the advisability of you informing us promptly when you are in financial difficulty and (f) the advisability of you reading the terms and conditions applying to each banking service NAB provides to you.

### Privacy Declaration

You (being the Applicant) declare that where you have provided personal information about an individual (such as a beneficiary, an employer, relative, solicitor or contact person), you have made or will immediately make the individual aware of that fact and:

- that their personal information has been collected by the National Australia Bank Group organisation to which this form is addressed (Group Organisation) for the purpose of providing you with the Service the subject of this Application (including assessing your application) and managing and administering the service and protecting against fraud;
- that the National Australia Bank Group is managed, operates businesses and processes customer information internationally and across corporate entities, and accordingly, information about or relating to individuals may be provided to other National Australia Bank Group organisations, transmitted within the National Australia Bank Group between countries, and where required by law, regulation or convention, provided to governmental and regulatory authorities, both in the country where the relationship with the Group Organisation is primarily situated, and in other countries where the National Australia Bank Group may operate and the individual irrevocably consents to that occurring;
- that their personal information may be disclosed to other organisations involved in the provision, management or administration of the Services, as required by law or with their consent;
- that you may not be able to obtain the Services the subject of this Application if that individual's personal information is not provided; and
- that the individual can gain access to their personal information by contacting the Group Organisation and Group Organisation's contact details.

### Disputes

NAB has available on request information about the procedures for lodging a complaint. For more details about our internal dispute resolution procedures please ask for our complaints resolution brochure.

If you subsequently feel that the issue has not been resolved to your satisfaction, you may contact our external dispute resolution scheme. External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Our external dispute resolution provider is the Australian Financial Complaints Authority (AFCA) and can be contacted at:

Australian Financial Complaints Authority (AFCA)

Phone: 1800 931 678 (free call)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [afca.org.au](http://afca.org.au)

In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne, VIC 3001



# RTGS Request Form/ Local AUD Teletransfer Request Form

Please complete this form by typing all payment information (hand written forms are not allowed). \*Mandatory fields.

Note: This form is to be completed by the Customer/Authorised Signatory.

Fax No  Attention

Please make the following payment as per the details below Date

### Payment Details

Please ensure all details are correct. NAB cannot check that the Beneficiary's name matches the BSB and account number. An incorrect BSB or account number will result in your money being paid to the wrong account and may result in the loss of funds.

Amount\*  \$ AUD only Payment date\*

Beneficiary's Bank\*  Swift Code (if applicable)

BSB (6 digits)\*  Beneficiary account number\*

Beneficiary's Name\*

Beneficiary's Address (optional)   
State  Postcode

Payment reference/message (optional)

### Sender's Details

I/we authorise the Bank to debit the payment amount to account (NAB Transaction Accounts Only).

Account name\*  BSB (6 digits)\*  Account number\*

Customer name (if different to account name)  Customer contact name  Customer telephone number

### Fee Account (if different from above)

I/we authorise the Bank to debit the fee amount to account (NAB Transaction Accounts Only).

Account name\*  BSB (6 digits)\*  Account number\*

\* Mandatory Fields

### Signatures (in accordance with the debit account signing authority)

By signing this request you confirm that you have read, understood and accepted the terms and conditions on page 2.

Name  Authorised signature  Name  Authorised signature  Date

### NAB Use Only

#### Original RTGS Request/Local AUD Teletransfer Request Form Received

Complete this section when the original RTGS/Local AUD Teletransfer request form is received, signed by the authorised persons to the account.

Customer number of Applicant (Who is sending the money? Eg Company, Trust etc)

Instructions are signed in accordance with the Account Authority Card  Sufficient funds held in the account – refer GRE008

Completed and signed by the authorised signatory

Bank Officer Name  Position/Title  Bank Officer Signature  Date

#### Instruction Received via Email/Fax – Refer to Segment Specific Information Below:

**Business Bank** Bankers must complete verification & approval requirements as per GFA300 – GFA314 & GRE006 – GRE012

#### Institutional

If forwarding to another area for processing & the customer has not signed this form, tick to confirm that a signed written request has been received:

Yes  N/A

**Private Wealth** Insert Inward Fax Verification stamp on form & complete verification details as per GFA300 – GFA314 & GRE006 – GRE012

**Retail** Refer to GFA 100 for further instructions if request has been received via fax, email or Australia Post mail.

### Input Use Only

RTGS No.	<input type="text"/>	eBOBS input by	<input type="text"/>	RTGS input by	<input type="text"/>
Fees collected	<input type="text"/>	Fee Seq No.	<input type="text"/>	Authorised by	<input type="text"/>

### Terms and Conditions

- The Applicant ('you') acknowledge and agree that:
  - You are solely responsible for ensuring that your instructions on this Application are correct;
  - NAB ('we') is under no obligation to verify the correctness of your instructions. Without limitation to the foregoing, we are entitled to pay to the credit account identified by you as the beneficiary's without enquiry and are under no obligation to use any other information you give us (including the name and address of the beneficiary) to confirm the beneficiary's ownership of that account, and
  - Once executed by NAB, the payments made under this Request Form are irrevocable.
- Please note that the beneficiary name does not form part of your payment instructions, and it will not be checked by NAB to verify that it matches the beneficiary's BSB and account number. NAB will process the payment using the BSB and account number you provide. Please ensure that the BSB and beneficiary account number are correct, because an incorrect BSB and account number will result in your money being paid to the wrong account and the loss of funds.
- We will not be liable for and exclude all liability for loss or damage (including any indirect or consequential loss or damage) arising out of or in relation to:
  - delays, errors, or omission in transmission or payment beyond our control; or
  - acts of default or omission of any kind by you or any third party outside our control.
- If we are negligent or in a breach of duty to you, we will supply the services described in these terms and conditions again.
- Subject to applicable law, you indemnify and continue to hold us indemnified against any liability, loss, damage or expense in respect of your provision of incorrect instructions.
- Fees apply for this service. The applicable fees can be found via our website at [nab.com.au](http://nab.com.au)

### Banking Code of Practice

National Australia Bank has adopted the Banking Code of Practice and relevant provisions of the Code apply to the service, if you are an individual or a small business referred to in the Code. You can obtain from NAB upon request a copy of the Banking Code of Practice and general descriptive information concerning our banking services, including (a) account opening procedures, (b) our obligations regarding the confidentiality of your information, (c) complaint handling procedures, (d) bank cheques, (e) the advisability of you informing us promptly when you are in financial difficulty and (f) the advisability of you reading the terms and conditions applying to each banking service NAB provides to you.

### Privacy Declaration

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- that their personal information has been collected by the National Australia Bank Group organisation to which this form is addressed (Group Organisation) for the purpose of providing you with the Service the subject of this Application (including assessing your application) and managing and administering the service and protecting against fraud;
- that the National Australia Bank Group is managed, operates businesses and processes customer information internationally and across corporate entities, and accordingly, information about or relating to individuals may be provided to other National Australia Bank Group organisations, transmitted within the National Australia Bank Group between countries, and where required by law, regulation or convention, provided to governmental and regulatory authorities, both in the country where the relationship with the Group Organisation is primarily situated, and in other countries where the National Australia Bank Group may operate and the individual irrevocably consents to that occurring;
- that their personal information may be disclosed to other organisations involved in the provision, management or administration of the Services, as required by law or with their consent;
- that you may not be able to obtain the Services the subject of this Application if that individual's personal information is not provided; and
- that the individual can gain access to their personal information by contacting the Group Organisation and Group Organisation's contact details.

### Disputes

NAB has available on request information about the procedures for lodging a complaint. For more details about our internal dispute resolution procedures please ask for our complaints resolution brochure.

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Australian Financial Complaints Authority (AFCA)

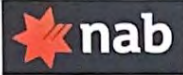
Phone: 1800 931 678 (free call)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [afca.org.au](http://afca.org.au)

In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne, VIC 3001





# RTGS Request Form/ Local AUD Teletransfer Request Form

Please complete this form by typing all payment information (hand written forms are not allowed). \*Mandatory fields.

Note: This form is to be completed by the Customer/Authorised Signatory.

Fax No \_\_\_\_\_ Attention \_\_\_\_\_ Date    /    /   

Please make the following payment as per the details below

### Payment Details

Please ensure all details are correct. NAB cannot check that the Beneficiary's name matches the BSB and account number. An incorrect BSB or account number will result in your money being paid to the wrong account and may result in the loss of funds.

Amount\* \$ 5,004.56 AUD only Payment date\* 23 / 08 / 2021

Beneficiary's Bank\* Judo Bank Swift Code (if applicable) \_\_\_\_\_

BSB (6 digits)\* 0 1 2 0 0 3 Beneficiary account number\* 838106124

Beneficiary's Name\* Judo Bank

Beneficiary's Address (optional) \_\_\_\_\_  
State \_\_\_\_\_ Postcode \_\_\_\_\_

Payment reference/message (optional) \_\_\_\_\_

### Sender's Details

I/we authorise the Bank to debit the payment amount to account (NAB Transaction Accounts Only).

Account name\* 9 MAIN STREET DERRINALLUM PTY LTD BSB (6 digits)\* 0 8 2 0 8 0 Account number\* 9 2 6 4 9 6 2 4 9

Customer name (if different to account name) \_\_\_\_\_ Customer contact name VINCENZO FRANK TESORIERO Customer telephone number ( )

### Fee Account (if different from above)

I/we authorise the Bank to debit the fee amount to account (NAB Transaction Accounts Only).

Account name\* \_\_\_\_\_ BSB (6 digits)\* \_\_\_\_\_ Account number\* \_\_\_\_\_

\* Mandatory Fields

### Signatures (in accordance with the debit account signing authority)

By signing this request you confirm that you have read, understood and accepted the terms and conditions on page 2.

Name V.F. TESORIERO Authorised signature Name \_\_\_\_\_ Authorised signature Date 23 / 08 / 2021

### NAB Use Only

#### Original RTGS Request/Local AUD Teletransfer Request Form Received

Complete this section when the original RTGS/Local AUD Teletransfer request form is received, signed by the authorised persons to the account.

Customer number of Applicant (Who is sending the money? Eg Company, Trust etc) \_\_\_\_\_

Instructions are signed in accordance with the Account Authority Card  Sufficient funds held in the account – refer GRE008  
 Completed and signed by the authorised signatory

Bank Officer Name \_\_\_\_\_ Position/Title \_\_\_\_\_ Bank Officer Signature Date \_\_\_\_\_

#### Instruction Received via Email/Fax – Refer to Segment Specific Information Below:

Business Bank Bankers must complete verification & approval requirements as per GFA300 – GFA314 & GRE006 – GRE012

#### Institutional

If forwarding to another area for processing & the customer has not signed this form, tick to confirm that a signed written request has been received:

Yes  N/A

Private Wealth Insert Inward Fax Verification stamp on form & complete verification details as per GFA300 – GFA314 & GRE006 – GRE012

Retail Refer to GFA 100 for further instructions if request has been received via fax, email or Australia Post mail.



### Input Use Only

RTGS No.	<input type="text"/>	eBOBS input by	<input type="text"/>	RTGS input by	<input type="text"/>
Fees collected	<input type="text"/>	Fee Seq No.	<input type="text"/>	Authorised by	<input type="text"/>

### Terms and Conditions

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  - delays, errors, or omission in transmission or payment beyond our control; or
  - acts of default or omission of any kind by you or any third party outside our control.
- If we are negligent or in a breach of duty to you, we will supply the services described in these terms and conditions again.
- Subject to applicable law, you indemnify and continue to hold us indemnified against any liability, loss, damage or expense in respect of your provision of incorrect instructions.
- Fees apply for this service. The applicable fees can be found via our website at [nab.com.au](http://nab.com.au)

### Banking Code of Practice

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### Privacy Declaration

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- that their personal information has been collected by the National Australia Bank Group organisation to which this form is addressed (Group Organisation) for the purpose of providing you with the Service the subject of this Application (including assessing your application) and managing and administering the service and protecting against fraud;
- that the National Australia Bank Group is managed, operates businesses and processes customer information internationally and across corporate entities, and accordingly, information about or relating to individuals may be provided to other National Australia Bank Group organisations, transmitted within the National Australia Bank Group between countries, and where required by law, regulation or convention, provided to governmental and regulatory authorities, both in the country where the relationship with the Group Organisation is primarily situated, and in other countries where the National Australia Bank Group may operate and the individual irrevocably consents to that occurring;
- that their personal information may be disclosed to other organisations involved in the provision, management or administration of the Services, as required by law or with their consent;
- that you may not be able to obtain the Services the subject of this Application if that individual's personal information is not provided; and
- that the individual can gain access to their personal information by contacting the Group Organisation and Group Organisation's contact details.

### Disputes

NAB has available on request information about the procedures for lodging a complaint. For more details about our internal dispute resolution procedures please ask for our complaints resolution brochure.

If you subsequently feel that the issue has not been resolved to your satisfaction, you may contact our external dispute resolution scheme. External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Our external dispute resolution provider is the Australian Financial Complaints Authority (AFCA) and can be contacted at:

Australian Financial Complaints Authority (AFCA)

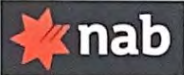
Phone: 1800 931 678 (free call)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [afca.org.au](http://afca.org.au)

In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne, VIC 3001





# RTGS Request Form/ Local AUD Teletransfer Request Form

Please complete this form by typing all payment information (hand written forms are not allowed). \*Mandatory fields.

Note: This form is to be completed by the Customer/Authorised Signatory.

Fax No \_\_\_\_\_ Attention \_\_\_\_\_

Please make the following payment as per the details below Date    /    /   

### Payment Details

Please ensure all details are correct. NAB cannot check that the Beneficiary's name matches the BSB and account number. An incorrect BSB or account number will result in your money being paid to the wrong account and may result in the loss of funds.

Amount\* \$ 4,549.22 AUD only Payment date\* 23 / 08 / 2021

Beneficiary's Bank\* Judo Bank Swift Code (if applicable) \_\_\_\_\_

BSB (6 digits)\* 0 1 2 0 0 3 Beneficiary account number\* 838106124

Beneficiary's Name\* Judo Bank

Beneficiary's Address (optional) \_\_\_\_\_  
State \_\_\_\_\_ Postcode \_\_\_\_\_

Payment reference/message (optional) \_\_\_\_\_

### Sender's Details

I/we authorise the Bank to debit the payment amount to account (NAB Transaction Accounts Only).

Account name\* 89 BETKA ROAD MALLACOOTA PTY LTD BSB (6 digits)\* 0 8 2 0 8 0 Account number\* 7 7 7 1 7 9 3 1 0

Customer name (if different to account name) \_\_\_\_\_ Customer contact name VINCENZO FRANK TESORIERO Customer telephone number ( )

### Fee Account (if different from above)

I/we authorise the Bank to debit the fee amount to account (NAB Transaction Accounts Only).

Account name\* \_\_\_\_\_ BSB (6 digits)\* \_\_\_\_\_ Account number\* \_\_\_\_\_

\* Mandatory Fields

### Signatures (in accordance with the debit account signing authority)

By signing this request you confirm that you have read, understood and accepted the terms and conditions on page 2.

Name V.F. TESORIERO Authorised signature [Signature] Name \_\_\_\_\_ Authorised signature [Signature] Date 23 / 08 / 2021

### NAB Use Only

#### Original RTGS Request/Local AUD Teletransfer Request Form Received

Complete this section when the original RTGS/Local AUD Teletransfer request form is received, signed by the authorised persons to the account.

Customer number of Applicant (Who is sending the money? Eg Company, Trust etc) \_\_\_\_\_

Instructions are signed in accordance with the Account Authority Card  Sufficient funds held in the account – refer GRE008

Completed and signed by the authorised signatory

Bank Officer Name \_\_\_\_\_ Position/Title \_\_\_\_\_ Bank Officer Signature [Signature] Date \_\_\_\_\_

#### Instruction Received via Email/Fax – Refer to Segment Specific Information Below:

**Business Bank** Bankers must complete verification & approval requirements as per GFA300 – GFA314 & GRE006 – GRE012

#### Institutional

If forwarding to another area for processing & the customer has not signed this form, tick to confirm that a signed written request has been received:

Yes  N/A

**Private Wealth** Insert inward Fax Verification stamp on form & complete verification details as per GFA300 – GFA314 & GRE006 – GRE012

**Retail** Refer to GFA 100 for further instructions if request has been received via fax, email or Australia Post mail.



#### Input Use Only

RTGS No.	_____	eBOBS input by	_____	RTGS input by	_____
Fees collected	_____	Fee Seq No.	_____	Authorised by	_____

#### Terms and Conditions

- The Applicant ('you') acknowledge and agree that:
  - You are solely responsible for ensuring that your instructions on this Application are correct;
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  - delays, errors, or omission in transmission or payment beyond our control; or
  - acts of default or omission of any kind by you or any third party outside our control.
- If we are negligent or in a breach of duty to you, we will supply the services described in these terms and conditions again.
- Subject to applicable law, you indemnify and continue to hold us indemnified against any liability, loss, damage or expense in respect of your provision of incorrect instructions.
- Fees apply for this service. The applicable fees can be found via our website at [nab.com.au](http://nab.com.au)

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- that their personal information may be disclosed to other organisations involved in the provision, management or administration of the Services, as required by law or with their consent;
- that you may not be able to obtain the Services the subject of this Application if that individual's personal information is not provided; and
- that the individual can gain access to their personal information by contacting the Group Organisation and Group Organisation's contact details.

#### Disputes

NAB has available on request information about the procedures for lodging a complaint. For more details about our internal dispute resolution procedures please ask for our complaints resolution brochure.

If you subsequently feel that the issue has not been resolved to your satisfaction, you may contact our external dispute resolution scheme. External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Our external dispute resolution provider is the Australian Financial Complaints Authority (AFCA) and can be contacted at:

Australian Financial Complaints Authority (AFCA)

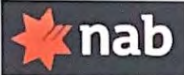
Phone: 1800 931 678 (free call)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [afca.org.au](http://afca.org.au)

In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne, VIC 3001





# RTGS Request Form/ Local AUD Teletransfer Request Form

Please complete this form by typing all payment information (hand written forms are not allowed). \*Mandatory fields.

Note: This form is to be completed by the Customer/Authorised Signatory.

Fax No \_\_\_\_\_ Attention \_\_\_\_\_

Please make the following payment as per the details below Date    /    /   

### Payment Details

Please ensure all details are correct. NAB cannot check that the Beneficiary's name matches the BSB and account number. An incorrect BSB or account number will result in your money being paid to the wrong account and may result in the loss of funds.

Amount\* \$ 2,246.77 AUD only Payment date\* 23 / 08 / 2021

Beneficiary's Bank\* Judo Bank Swift Code (if applicable) \_\_\_\_\_

BSB (6 digits)\* 0 1 2 0 0 3 Beneficiary account number\* 838106124

Beneficiary's Name\* Judo Bank

Beneficiary's Address (optional) \_\_\_\_\_  
State \_\_\_\_\_ Postcode \_\_\_\_\_

Payment reference/message (optional) \_\_\_\_\_

### Sender's Details

I/we authorise the Bank to debit the payment amount to account (NAB Transaction Accounts Only).

Account name\* 123 HIGH STREET TARADALE PTY LTD BSB (6 digits)\* 0 8 2 0 8 0 Account number\* 9 7 5 5 4 4 1 1 2

Customer name (if different to account name) \_\_\_\_\_ Customer contact name VINCENZO FRANK TESORIERO Customer telephone number ( )

### Fee Account (if different from above)

I/we authorise the Bank to debit the fee amount to account (NAB Transaction Accounts Only).

Account name\* \_\_\_\_\_ BSB (6 digits)\* \_\_\_\_\_ Account number\* \_\_\_\_\_

\* Mandatory Fields

### Signatures (in accordance with the debit account signing authority)

By signing this request you confirm that you have read, understood and accepted the terms and conditions on page 2.

Name V.F. TESORIERO Authorised signature [Signature] Name \_\_\_\_\_ Authorised signature [Signature] Date 23 / 08 / 2021

### NAB Use Only

#### Original RTGS Request/Local AUD Teletransfer Request Form Received

Complete this section when the original RTGS/Local AUD Teletransfer request form is received, signed by the authorised persons to the account.

Customer number of Applicant (Who is sending the money? Eg Company, Trust etc) \_\_\_\_\_

Instructions are signed in accordance with the Account Authority Card  Sufficient funds held in the account – refer GRE008

Completed and signed by the authorised signatory

Bank Officer Name \_\_\_\_\_ Position/Title \_\_\_\_\_ Bank Officer Signature [Signature] Date    /    /   

#### Instruction Received via Email/Fax – Refer to Segment Specific Information Below:

**Business Bank** Bankers must complete verification & approval requirements as per GFA300 – GFA314 & GRE006 – GRE012

#### Institutional

If forwarding to another area for processing & the customer has not signed this form, tick to confirm that a signed written request has been received:

Yes  N/A

**Private Wealth** Insert Inward Fax Verification stamp on form & complete verification details as per GFA300 – GFA314 & GRE006 – GRE012

**Retail** Refer to GFA 100 for further instructions if request has been received via fax, email or Australia Post mail.



### Input Use Only

RTGS No.	_____	eBOBS input by	_____	RTGS input by	_____
Fees collected	_____	Fee Seq No.	_____	Authorised by	_____

### Terms and Conditions

- The Applicant ('you') acknowledge and agree that:
  - You are solely responsible for ensuring that your instructions on this Application are correct;
  - NAB ('we') is under no obligation to verify the correctness of your instructions. Without limitation to the foregoing, we are entitled to pay to the credit account identified by you as the beneficiary's without enquiry and are under no obligation to use any other information you give us (including the name and address of the beneficiary) to confirm the beneficiary's ownership of that account, and
  - Once executed by NAB, the payments made under this Request Form are irrevocable.
- Please note that the beneficiary name does not form part of your payment instructions, and it will not be checked by NAB to verify that it matches the beneficiary's BSB and account number. NAB will process the payment using the BSB and account number you provide. Please ensure that the BSB and beneficiary account number are correct, because an incorrect BSB and account number will result in your money being paid to the wrong account and the loss of funds.
- We will not be liable for and exclude all liability for loss or damage (including any indirect or consequential loss or damage) arising out of or in relation to:
  - delays, errors, or omission in transmission or payment beyond our control; or
  - acts of default or omission of any kind by you or any third party outside our control.
- If we are negligent or in a breach of duty to you, we will supply the services described in these terms and conditions again.
- Subject to applicable law, you indemnify and continue to hold us indemnified against any liability, loss, damage or expense in respect of your provision of incorrect instructions.
- Fees apply for this service. The applicable fees can be found via our website at [nab.com.au](http://nab.com.au)

### Banking Code of Practice

National Australia Bank has adopted the Banking Code of Practice and relevant provisions of the Code apply to the service, if you are an individual or a small business referred to in the Code. You can obtain from NAB upon request a copy of the Banking Code of Practice and general descriptive information concerning our banking services, including (a) account opening procedures, (b) our obligations regarding the confidentiality of your information, (c) complaint handling procedures, (d) bank cheques, (e) the advisability of you informing us promptly when you are in financial difficulty and (f) the advisability of you reading the terms and conditions applying to each banking service NAB provides to you.

### Privacy Declaration

You (being the Applicant) declare that where you have provided personal information about an individual (such as a beneficiary, an employer, relative, solicitor or contact person), you have made or will immediately make the individual aware of that fact and:

- that their personal information has been collected by the National Australia Bank Group organisation to which this form is addressed (Group Organisation) for the purpose of providing you with the Service the subject of this Application (including assessing your application) and managing and administering the service and protecting against fraud;
- that the National Australia Bank Group is managed, operates businesses and processes customer information internationally and across corporate entities, and accordingly, information about or relating to individuals may be provided to other National Australia Bank Group organisations, transmitted within the National Australia Bank Group between countries, and where required by law, regulation or convention, provided to governmental and regulatory authorities, both in the country where the relationship with the Group Organisation is primarily situated, and in other countries where the National Australia Bank Group may operate and the individual irrevocably consents to that occurring;
- that their personal information may be disclosed to other organisations involved in the provision, management or administration of the Services, as required by law or with their consent;
- that you may not be able to obtain the Services the subject of this Application if that individual's personal information is not provided; and
- that the individual can gain access to their personal information by contacting the Group Organisation and Group Organisation's contact details.

### Disputes

NAB has available on request information about the procedures for lodging a complaint. For more details about our internal dispute resolution procedures please ask for our complaints resolution brochure.

If you subsequently feel that the issue has not been resolved to your satisfaction, you may contact our external dispute resolution scheme. External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Our external dispute resolution provider is the Australian Financial Complaints Authority (AFCA) and can be contacted at:

Australian Financial Complaints Authority (AFCA)

Phone: 1800 931 678 (free call)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [afca.org.au](http://afca.org.au)

In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne, VIC 3001





# RTGS Request Form/ Local AUD Teletransfer Request Form

Please complete this form by typing all payment information (hand written forms are not allowed). \*Mandatory fields.

Note: This form is to be completed by the Customer/Authorised Signatory.

Fax No \_\_\_\_\_ Attention \_\_\_\_\_

Please make the following payment as per the details below Date    /    /   

### Payment Details

Please ensure all details are correct. NAB cannot check that the Beneficiary's name matches the BSB and account number. An incorrect BSB or account number will result in your money being paid to the wrong account and may result in the loss of funds.

Amount\* \$ 13,949.65 AUD only Payment date\* 23 / 08 / 2021

Beneficiary's Bank\* Judo Bank Swift Code (if applicable) \_\_\_\_\_

BSB (6 digits)\* 0 1 2 0 0 3 Beneficiary account number\* 838106124

Beneficiary's Name\* Judo Bank

Beneficiary's Address (optional) \_\_\_\_\_  
State \_\_\_\_\_ Postcode \_\_\_\_\_

Payment reference/message (optional) Tesoriero Group - Petrol Stations

### Sender's Details

I/we authorise the Bank to debit the payment amount to account (NAB Transaction Accounts Only).

Account name\* 4 Cowslip Street Violet Town Pty Ltd BSB (6 digits)\* 0 8 2 0 8 0 Account number\* 4 2 1 9 5 8 5 4 0

Customer name (if different to account name) \_\_\_\_\_ Customer contact name VINCENZO FRANK TESORIERO Customer telephone number ( )

### Fee Account (if different from above)

I/we authorise the Bank to debit the fee amount to account (NAB Transaction Accounts Only).

Account name\* \_\_\_\_\_ BSB (6 digits)\* \_\_\_\_\_ Account number\* \_\_\_\_\_

\* Mandatory Fields

### Signatures (in accordance with the debit account signing authority)

By signing this request you confirm that you have read, understood and accepted the terms and conditions on page 2.

Name Authorised signature Name Authorised signature Date  
V.F. TESORIERO X [Signature] [Signature] 23 / 08 / 2021

### NAB Use Only

#### Original RTGS Request/Local AUD Teletransfer Request Form Received

Complete this section when the original RTGS/Local AUD Teletransfer request form is received, signed by the authorised persons to the account.

Customer number of Applicant (Who is sending the money? Eg Company, Trust etc) \_\_\_\_\_

Instructions are signed in accordance with the Account Authority Card  Sufficient funds held in the account – refer GRE008  
 Completed and signed by the authorised signatory

Bank Officer Name \_\_\_\_\_ Position/Title \_\_\_\_\_ Bank Officer Signature X Date    /    /   

#### Instruction Received via Email/Fax – Refer to Segment Specific Information Below:

**Business Bank** Bankers must complete verification & approval requirements as per GFA300 – GFA314 & GRE006 – GRE012

#### Institutional

If forwarding to another area for processing & the customer has not signed this form, tick to confirm that a signed written request has been received:

Yes  N/A

**Private Wealth** Insert Inward Fax Verification stamp on form & complete verification details as per GFA300 – GFA314 & GRE006 – GRE012

**Retail** Refer to GFA 100 for further instructions if request has been received via fax, email or Australia Post mail.



#### Input Use Only

RTGS No.	_____	eBOBS Input by	_____	RTGS input by	_____
Fees collected	_____	Fee Seq No.	_____	Authorised by	_____

#### Terms and Conditions

- The Applicant ('you') acknowledge and agree that:
  - You are solely responsible for ensuring that your instructions on this Application are correct;
  - NAB ('we') is under no obligation to verify the correctness of your instructions. Without limitation to the foregoing, we are entitled to pay to the credit account identified by you as the beneficiary's without enquiry and are under no obligation to use any other information you give us (including the name and address of the beneficiary) to confirm the beneficiary's ownership of that account, and
  - Once executed by NAB, the payments made under this Request Form are irrevocable.
- Please note that the beneficiary name does not form part of your payment instructions, and it will not be checked by NAB to verify that it matches the beneficiary's BSB and account number. NAB will process the payment using the BSB and account number you provide. Please ensure that the BSB and beneficiary account number are correct, because an incorrect BSB and account number will result in your money being paid to the wrong account and the loss of funds.
- We will not be liable for and exclude all liability for loss or damage (including any indirect or consequential loss or damage) arising out of or in relation to:
  - delays, errors, or omission in transmission or payment beyond our control; or
  - acts of default or omission of any kind by you or any third party outside our control.
- If we are negligent or in a breach of duty to you, we will supply the services described in these terms and conditions again.
- Subject to applicable law, you indemnify and continue to hold us indemnified against any liability, loss, damage or expense in respect of your provision of incorrect instructions.
- Fees apply for this service. The applicable fees can be found via our website at [nab.com.au](http://nab.com.au)

#### Banking Code of Practice

National Australia Bank has adopted the Banking Code of Practice and relevant provisions of the Code apply to the service, if you are an individual or a small business referred to in the Code. You can obtain from NAB upon request a copy of the Banking Code of Practice and general descriptive information concerning our banking services, including (a) account opening procedures, (b) our obligations regarding the confidentiality of your information, (c) complaint handling procedures, (d) bank cheques, (e) the advisability of you informing us promptly when you are in financial difficulty and (f) the advisability of you reading the terms and conditions applying to each banking service NAB provides to you.

#### Privacy Declaration

You (being the Applicant) declare that where you have provided personal information about an individual (such as a beneficiary, an employer, relative, solicitor or contact person), you have made or will immediately make the individual aware of that fact and:

- that their personal information has been collected by the National Australia Bank Group organisation to which this form is addressed (Group Organisation) for the purpose of providing you with the Service the subject of this Application (including assessing your application) and managing and administering the service and protecting against fraud;
- that the National Australia Bank Group is managed, operates businesses and processes customer information internationally and across corporate entities, and accordingly, information about or relating to individuals may be provided to other National Australia Bank Group organisations, transmitted within the National Australia Bank Group between countries, and where required by law, regulation or convention, provided to governmental and regulatory authorities, both in the country where the relationship with the Group Organisation is primarily situated, and in other countries where the National Australia Bank Group may operate and the individual irrevocably consents to that occurring;
- that their personal information may be disclosed to other organisations involved in the provision, management or administration of the Services, as required by law or with their consent;
- that you may not be able to obtain the Services the subject of this Application if that individual's personal information is not provided; and
- that the individual can gain access to their personal information by contacting the Group Organisation and Group Organisation's contact details.

#### Disputes

NAB has available on request information about the procedures for lodging a complaint. For more details about our internal dispute resolution procedures please ask for our complaints resolution brochure.

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Phone: 1800 931 678 (free call)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [afca.org.au](http://afca.org.au)

In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne, VIC 3001





# RTGS Request Form/ Local AUD Teletransfer Request Form

Please complete this form by typing all payment information (hand written forms are not allowed). \*Mandatory fields.

Note: This form is to be completed by the Customer/Authorised Signatory.

Fax No \_\_\_\_\_ Attention \_\_\_\_\_

Please make the following payment as per the details below Date 23 / 08 / 2021

### Payment Details

Please ensure all details are correct. NAB cannot check that the Beneficiary's name matches the BSB and account number. An incorrect BSB or account number will result in your money being paid to the wrong account and may result in the loss of funds.

Amount\* \$ 13,730.74 AUD only Payment date\* 23 / 08 / 2021

Beneficiary's Bank\* Juko Bank Swift Code (if applicable) \_\_\_\_\_

BSB (6 digits)\* 0 1 2 0 0 3 Beneficiary account number\* 838106124

Beneficiary's Name\* Juko Bank

Beneficiary's Address (optional) \_\_\_\_\_  
State \_\_\_\_\_ Postcode \_\_\_\_\_

Payment reference/message (optional) \_\_\_\_\_

### Sender's Details

I/we authorise the Bank to debit the payment amount to account (NAB Transaction Accounts Only).

Account name\* 275 HIGH STREET GOLDEN SQUARE PTY LTD BSB (6 digits)\* 0 8 2 0 8 0 Account number\* 4 4 8 0 1 0 0 4 7

Customer name (if different to account name) \_\_\_\_\_ Customer contact name VINCENZO FRANK TESCHIERO Customer telephone number ( )

### Fee Account (if different from above)

I/we authorise the Bank to debit the fee amount to account (NAB Transaction Accounts Only).

Account name\* \_\_\_\_\_ BSB (6 digits)\* \_\_\_\_\_ Account number\* \_\_\_\_\_

\* Mandatory Fields

### Signatures (in accordance with the debit account signing authority)

By signing this request you confirm that you have read, understood and accepted the terms and conditions on page 2.

Name	Authorised signature	Name	Authorised signature	Date
<u>V F TESCHIERO</u>				<u>23 / 08 / 2021</u>

### NAB Use Only

#### Original RTGS Request/Local AUD Teletransfer Request Form Received

Complete this section when the original RTGS/Local AUD Teletransfer request form is received, signed by the authorised person to the account.

Customer number of Applicant (Who is sending the money?) Eg Company, Trust etc) \_\_\_\_\_

- Instructions are signed in accordance with the Account Authority Card
- Sufficient funds held in the account - refer G19008
- Completed and signed by the authorised signatory

Bank Officer Name \_\_\_\_\_ Position/Title \_\_\_\_\_ Bank Officer Signature Date \_\_\_\_\_

#### Instruction Received via Email/Fax - Refer to Account Specific Information Below:

Business Bank Business must complete verification & approval requirements as per G19001 - G19004 & G19006 - G19007

#### Institutional

If forwarding to another area for processing & the customer has not signed this form, tick to confirm that a signed written request has been received

Yes  N/A

Private Wealth must complete verification steps on form & complete verification steps as per G19001 - G19004 & G19006 - G19007

Retail Refer to G19001 for further instructions if request has been received via fax, email or Australia Post mail



### Input Use Only

RTGS No.	eBOBS input by	RTGS input by
Fees collected	Fee Seq No.	Authorised by

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  - Once executed by NAB, the payments made under this Request Form are irrevocable.
- Please note that the beneficiary name does not form part of your payment instructions, and it will not be checked by NAB to verify that it matches the beneficiary's BSB and account number. NAB will process the payment using the BSB and account number you provide. Please ensure that the BSB and beneficiary account number are correct, because an incorrect BSB and account number will result in your money being paid to the wrong account and the loss of funds.
- We will not be liable for and exclude all liability for loss or damage (including any indirect or consequential loss or damage) arising out of or in relation to:
  - delays, errors, or omission in transmission or payment beyond our control; or
  - acts of default or omission of any kind by you or any third party outside our control.
- If we are negligent or in a breach of duty to you, we will supply the services described in these terms and conditions again.
- Subject to applicable law, you indemnify and continue to hold us indemnified against any liability, loss, damage or expense in respect of your provision of incorrect instructions.
- Fees apply for this service. The applicable fees can be found via our website at [nab.com.au](http://nab.com.au)

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- that the National Australia Bank Group is managed, operates businesses and processes customer information internationally and across corporate entities, and accordingly, information about or relating to individuals may be provided to other National Australia Bank Group organisations, transmitted within the National Australia Bank Group between countries, and where required by law, regulation or convention, provided to governmental and regulatory authorities, both in the country where the relationship with the Group Organisation is primarily situated, and in other countries where the National Australia Bank Group may operate and the individual irrevocably consents to that occurring;
- that their personal information may be disclosed to other organisations involved in the provision, management or administration of the Services, as required by law or with their consent;
- that you may not be able to obtain the Services the subject of this Application if that individual's personal information is not provided; and
- that the individual can gain access to their personal information by contacting the Group Organisation and Group Organisation's contact details.

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### Australian Financial Complaints Authority (AFCA)

Phone: 1800 931 678 (free call)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [afca.org.au](http://afca.org.au)

In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne, VIC 3001

## Mackenzie Preston

---

**From:** Kang, Justin <justin.kang@dentons.com>  
**Sent:** Monday, 13 September 2021 12:25 PM  
**To:** Ramsha Sulaman  
**Cc:** Leen, Delano; Canny, Elizabeth; Christopher Nehme; Pierre Safi; Roy Hanna  
**Subject:** RE: outstanding interest payments [IWOV-Documents.FID10220696]  
**Attachments:** RTGS Form - 275 HIGH STREET GOLDEN SQUARE PTY LTD - Payment to Fortis.pdf;  
RTGS Forms - 4 Cowslip Street Violet Town Pty Ltd - Payment to Fortis.pdf;  
94095440\_1\_2021 08 27 Freezing order - V Tesoriero.PDF

Dear Ramsha

We refer to your email of 24 August 2021 below, specifically, the requests which you have foreshadowed will be made to NAB as per **attached** RTGS Forms for payment of \$66,000 for your client's legal expenses.

The attached RTGS Forms (signed versions of which are yet to be provided) seek the following payments:

- \$39,000 from 275 High Street Golden Square Pty Ltd's account ending 0047; and
- \$27,000 from 4 Cowslip Street Violet Town Pty Ltd's account ending 8540.

Our client as you know is bound to follow the terms of the **attached** freezing orders.

We note what you say as to why you consider the freezing orders allow the above payments to be made for your client's legal expenses, notwithstanding the above accounts are not in Mr Tesoriero's name.

In the circumstances, we propose writing to Minter Ellison as the solicitors for Westpac, the applicant under the freezing orders, in the terms set out below.

If Minter Ellison reply to us that they agree that the freezing orders do not prevent the above payments being made, then our client will allow those payments subject to receiving the attached RTGS Forms duly signed and there being sufficient credit funds in the accounts.

Alternatively if Minter Ellison express a different view and your client presses for the above payment to be made, then it is open for your client to approach the Court to seek a variation or clarification of the freezing orders to allow those payments.

If you have any comments on this proposed course, please let us know by **COB Tuesday 14 September 2021**. Otherwise we shall write to Minter Ellison in the terms below and cc you.

---

### **Proposed email/letter to Minter Ellison**

*Dear Colleagues*

*As you know, we act for National Australia Bank Limited (NAB).*

*We note you act for Westpac Banking Corporation (Westpac) which is the applicant under the **attached** freezing orders against Vincenzo Tesoriero.*

*We have received correspondence from Fortis Law on behalf of Mr Tesoriero foreshadowing that their client will be requesting NAB pay amounts totalling \$66,000 towards Mr Tesoriero's legal expenses from accounts held in the names of:*

- *275 High Street Golden Square Pty Ltd ATF 275 High Street Golden Square Unit Trust;*
- *4 Cowslip Street Violet Town Pty Ltd ATF 4 Cowslip Violet Town Unit Trust.*

*Fortis Law have expressed to us the view that such payment is not prohibited under the attached freezing orders, despite the above accounts not being in Mr Tesoriero's name, having regard to:*

- (1) *paragraph 6 of the freezing orders and specifically the reference to Mr Tesoriero's "assets";*
- (2) *paragraph 7 of the freezing orders as to what Mr Tesoriero's assets include for the purposes of the freezing orders; and*
- (3) *paragraph 10(b) of the freezing orders.*

*As we have discussed with Fortis Law, we are writing to you to request your response as to whether Westpac agrees that payment from the accounts of the above companies towards Mr Tesoriero's legal expenses would not be prohibited under the freezing orders.*

*Our client proposes to allow such payment to be made if you advise us that your client does so agree.*

*We have copied Fortis Law with this email.*

---

Regards

 大成 DENTONS

Justin Kang

Partner

What's Next? The answer is Talent. With more than 20,000 people, 12,000 lawyers and 200 locations, Dentons has the talent for what you need, where you need it.

D +61 2 9931 4771 | F +61 2 9931 4888

[justin.kang@dentons.com](mailto:justin.kang@dentons.com)

[LinkedIn](#) | [Website](#)

Dentons Australia Limited

Eora Country, 77 Castlereagh Street Sydney, NSW 2000 Australia

Sirote > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > Eric Silwamba, Jalasi and Linyama > Durham Jones & Pinegar > LEAD Advogados > Rattagan Macchiavello Arocena > Jiménez de Aréchaga, Viana & Brause > Lee International > Kensington Swan > Bingham Greenebaum > Cohen & Grigsby > Sayarh & Menjra > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](http://dentons.com/legacyfirms)

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this email from your systems. Dentons records and stores emails sent to us or our affiliates in keeping with our internal policies and procedures. Please see [dentons.com](http://dentons.com) for Legal Notices.



# RTGS Request Form/ Local AUD Teletransfer Request Form

Please complete this form by typing all payment information (hand written forms are not allowed). \*Mandatory fields.

Note: This form is to be completed by the Customer/Authorised Signatory.

Fax No  Attention

Please make the following payment as per the details below Date

### Payment Details

Please ensure all details are correct. NAB cannot check that the Beneficiary's name matches the BSB and account number. An incorrect BSB or account number will result in your money being paid to the wrong account and may result in the loss of funds.

Amount\*  AUD only Payment date\*

Beneficiary's Bank\*  Swift Code (if applicable)

BSB (6 digits)\*  Beneficiary account number\*

Beneficiary's Name\*

Beneficiary's Address (optional)   
 State  Postcode

Payment reference/message (optional)

### Sender's Details

I/we authorise the Bank to debit the payment amount to account (NAB Transaction Accounts Only).

Account name\*  BSB (6 digits)\*  Account number\*

Customer name (if different to account name)  Customer contact name  Customer telephone number

### Fee Account (if different from above)

I/we authorise the Bank to debit the fee amount to account (NAB Transaction Accounts Only).

Account name\*  BSB (6 digits)\*  Account number\*

\* Mandatory Fields

### Signatures (in accordance with the debit account signing authority)

By signing this request you confirm that you have read, understood and accepted the terms and conditions on page 2.

Name	Authorised signature	Name	Authorised signature	Date
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

### NAB Use Only

#### Original RTGS Request/Local AUD Teletransfer Request Form Received

Complete this section when the original RTGS/Local AUD Teletransfer request form is received, signed by the authorised persons to the account.

Customer number of Applicant (Who is sending the money? Eg Company, Trust etc)

Instructions are signed in accordance with the Account Authority Card  Sufficient funds held in the account – refer GRE008

Completed and signed by the authorised signatory

Bank Officer Name	Position/Title	Bank Officer Signature	Date
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

#### Instruction Received via Email/Fax – Refer to Segment Specific Information Below:

**Business Bank** Bankers must complete verification & approval requirements as per GFA300 – GFA314 & GRE006 – GRE012

#### Institutional

If forwarding to another area for processing & the customer has not signed this form, tick to confirm that a signed written request has been received:

Yes  N/A

**Private Wealth** Insert Inward Fax Verification stamp on form & complete verification details as per GFA300 – GFA314 & GRE006 – GRE012

**Retail** Refer to GFA 100 for further instructions if request has been received via fax, email or Australia Post mail.



### Input Use Only

RTGS No.	<input type="text"/>	eBOBS input by	<input type="text"/>	RTGS input by	<input type="text"/>
Fees collected	<input type="text"/>	Fee Seq No.	<input type="text"/>	Authorised by	<input type="text"/>

### Terms and Conditions

- The Applicant ('you') acknowledge and agree that:
  - You are solely responsible for ensuring that your instructions on this Application are correct;
  - NAB ('we') is under no obligation to verify the correctness of your instructions. Without limitation to the foregoing, we are entitled to pay to the credit account identified by you as the beneficiary's without enquiry and are under no obligation to use any other information you give us (including the name and address of the beneficiary) to confirm the beneficiary's ownership of that account, and
  - Once executed by NAB, the payments made under this Request Form are irrevocable.
- Please note that the beneficiary name does not form part of your payment instructions, and it will not be checked by NAB to verify that it matches the beneficiary's BSB and account number. NAB will process the payment using the BSB and account number you provide. Please ensure that the BSB and beneficiary account number are correct, because an incorrect BSB and account number will result in your money being paid to the wrong account and the loss of funds.
- We will not be liable for and exclude all liability for loss or damage (including any indirect or consequential loss or damage) arising out of or in relation to:
  - delays, errors, or omission in transmission or payment beyond our control; or
  - acts of default or omission of any kind by you or any third party outside our control.
- If we are negligent or in a breach of duty to you, we will supply the services described in these terms and conditions again.
- Subject to applicable law, you indemnify and continue to hold us indemnified against any liability, loss, damage or expense in respect of your provision of incorrect instructions.
- Fees apply for this service. The applicable fees can be found via our website at [nab.com.au](http://nab.com.au)

### Banking Code of Practice

National Australia Bank has adopted the Banking Code of Practice and relevant provisions of the Code apply to the service, if you are an individual or a small business referred to in the Code. You can obtain from NAB upon request a copy of the Banking Code of Practice and general descriptive information concerning our banking services, including (a) account opening procedures, (b) our obligations regarding the confidentiality of your information, (c) complaint handling procedures, (d) bank cheques, (e) the advisability of you informing us promptly when you are in financial difficulty and (f) the advisability of you reading the terms and conditions applying to each banking service NAB provides to you.

### Privacy Declaration

You (being the Applicant) declare that where you have provided personal information about an individual (such as a beneficiary, an employer, relative, solicitor or contact person), you have made or will immediately make the individual aware of that fact and:

- that their personal information has been collected by the National Australia Bank Group organisation to which this form is addressed (Group Organisation) for the purpose of providing you with the Service the subject of this Application (including assessing your application) and managing and administering the service and protecting against fraud;
- that the National Australia Bank Group is managed, operates businesses and processes customer information internationally and across corporate entities, and accordingly, information about or relating to individuals may be provided to other National Australia Bank Group organisations, transmitted within the National Australia Bank Group between countries, and where required by law, regulation or convention, provided to governmental and regulatory authorities, both in the country where the relationship with the Group Organisation is primarily situated, and in other countries where the National Australia Bank Group may operate and the individual irrevocably consents to that occurring;
- that their personal information may be disclosed to other organisations involved in the provision, management or administration of the Services, as required by law or with their consent;
- that you may not be able to obtain the Services the subject of this Application if that individual's personal information is not provided; and
- that the individual can gain access to their personal information by contacting the Group Organisation and Group Organisation's contact details.

### Disputes

NAB has available on request information about the procedures for lodging a complaint. For more details about our internal dispute resolution procedures please ask for our complaints resolution brochure.

If you subsequently feel that the issue has not been resolved to your satisfaction, you may contact our external dispute resolution scheme. External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. Our external dispute resolution provider is the Australian Financial Complaints Authority (AFCA) and can be contacted at:

Australian Financial Complaints Authority (AFCA)

Phone: 1800 931 678 (free call)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [afca.org.au](http://afca.org.au)

In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne, VIC 3001



# RTGS Request Form/ Local AUD Teletransfer Request Form

Please complete this form by typing all payment information (hand written forms are not allowed). \*Mandatory fields.

Note: This form is to be completed by the Customer/Authorised Signatory.

Fax No  Attention

Please make the following payment as per the details below Date

### Payment Details

Please ensure all details are correct. NAB cannot check that the Beneficiary's name matches the BSB and account number. An incorrect BSB or account number will result in your money being paid to the wrong account and may result in the loss of funds.

Amount\*  \$ AUD only Payment date\*

Beneficiary's Bank\*  Swift Code (if applicable)

BSB (6 digits)\*  Beneficiary account number\*

Beneficiary's Name\*

Beneficiary's Address (optional)   
 State  Postcode

Payment reference/message (optional)

### Sender's Details

I/we authorise the Bank to debit the payment amount to account (NAB Transaction Accounts Only).

Account name\*  BSB (6 digits)\*  Account number\*

Customer name (if different to account name)  Customer contact name  Customer telephone number

### Fee Account (if different from above)

I/we authorise the Bank to debit the fee amount to account (NAB Transaction Accounts Only).

Account name\*  BSB (6 digits)\*  Account number\*

\* Mandatory Fields

### Signatures (in accordance with the debit account signing authority)

By signing this request you confirm that you have read, understood and accepted the terms and conditions on page 2.

Name  Authorised signature  Name  Authorised signature  Date

### NAB Use Only

#### Original RTGS Request/Local AUD Teletransfer Request Form Received

Complete this section when the original RTGS/Local AUD Teletransfer request form is received, signed by the authorised persons to the account.

Customer number of Applicant (Who is sending the money? Eg Company, Trust etc)

Instructions are signed in accordance with the Account Authority Card  Sufficient funds held in the account – refer GRE008

Completed and signed by the authorised signatory

Bank Officer Name  Position/Title  Bank Officer Signature  Date

#### Instruction Received via Email/Fax – Refer to Segment Specific Information Below:

**Business Bank** Bankers must complete verification & approval requirements as per GFA300 – GFA314 & GRE006 – GRE012

#### Institutional

If forwarding to another area for processing & the customer has not signed this form, tick to confirm that a signed written request has been received:

Yes  N/A

**Private Wealth** Insert Inward Fax Verification stamp on form & complete verification details as per GFA300 – GFA314 & GRE006 – GRE012

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### Input Use Only

RTGS No.	<input type="text"/>	eBOBS input by	<input type="text"/>	RTGS input by	<input type="text"/>
Fees collected	<input type="text"/>	Fee Seq No.	<input type="text"/>	Authorised by	<input type="text"/>

### Terms and Conditions

- The Applicant ('you') acknowledge and agree that:
  - You are solely responsible for ensuring that your instructions on this Application are correct;
  - NAB ('we') is under no obligation to verify the correctness of your instructions. Without limitation to the foregoing, we are entitled to pay to the credit account identified by you as the beneficiary's without enquiry and are under no obligation to use any other information you give us (including the name and address of the beneficiary) to confirm the beneficiary's ownership of that account, and
  - Once executed by NAB, the payments made under this Request Form are irrevocable.
- Please note that the beneficiary name does not form part of your payment instructions, and it will not be checked by NAB to verify that it matches the beneficiary's BSB and account number. NAB will process the payment using the BSB and account number you provide. Please ensure that the BSB and beneficiary account number are correct, because an incorrect BSB and account number will result in your money being paid to the wrong account and the loss of funds.
- We will not be liable for and exclude all liability for loss or damage (including any indirect or consequential loss or damage) arising out of or in relation to:
  - delays, errors, or omission in transmission or payment beyond our control; or
  - acts of default or omission of any kind by you or any third party outside our control.
- If we are negligent or in a breach of duty to you, we will supply the services described in these terms and conditions again.
- Subject to applicable law, you indemnify and continue to hold us indemnified against any liability, loss, damage or expense in respect of your provision of incorrect instructions.
- Fees apply for this service. The applicable fees can be found via our website at [nab.com.au](http://nab.com.au)

### Banking Code of Practice

National Australia Bank has adopted the Banking Code of Practice and relevant provisions of the Code apply to the service, if you are an individual or a small business referred to in the Code. You can obtain from NAB upon request a copy of the Banking Code of Practice and general descriptive information concerning our banking services, including (a) account opening procedures, (b) our obligations regarding the confidentiality of your information, (c) complaint handling procedures, (d) bank cheques, (e) the advisability of you informing us promptly when you are in financial difficulty and (f) the advisability of you reading the terms and conditions applying to each banking service NAB provides to you.

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You (being the Applicant) declare that where you have provided personal information about an individual (such as a beneficiary, an employer, relative, solicitor or contact person), you have made or will immediately make the individual aware of that fact and:

- that their personal information has been collected by the National Australia Bank Group organisation to which this form is addressed (Group Organisation) for the purpose of providing you with the Service the subject of this Application (including assessing your application) and managing and administering the service and protecting against fraud;
- that the National Australia Bank Group is managed, operates businesses and processes customer information internationally and across corporate entities, and accordingly, information about or relating to individuals may be provided to other National Australia Bank Group organisations, transmitted within the National Australia Bank Group between countries, and where required by law, regulation or convention, provided to governmental and regulatory authorities, both in the country where the relationship with the Group Organisation is primarily situated, and in other countries where the National Australia Bank Group may operate and the individual irrevocably consents to that occurring;
- that their personal information may be disclosed to other organisations involved in the provision, management or administration of the Services, as required by law or with their consent;
- that you may not be able to obtain the Services the subject of this Application if that individual's personal information is not provided; and
- that the individual can gain access to their personal information by contacting the Group Organisation and Group Organisation's contact details.

### Disputes

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Australian Financial Complaints Authority (AFCA)

Phone: 1800 931 678 (free call)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [afca.org.au](http://afca.org.au)

In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne, VIC 3001





Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD616/2021

**WESTPAC BANKING CORPORATION ABN 33 007 457 141** and another named in the schedule  
Applicant

**FORUM FINANCE PTY LIMITED** and others named in the schedule  
Respondent

## ORDER

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 27 August 2021

**WHERE MADE:** Sydney

### THE COURT ORDERS THAT:

#### Freezing Order

1. Without admissions, and on the same basis as to onus identified by senior counsel for the applicants on 9 July 2021, the freezing order made against the third respondent, Vincenzo Frank Tesoriero, by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 2 July 2021 (as varied on 9 July 2021) be varied in the form of **Annexure A** and be extended and apply until further order.

#### Rozelle Property

2. Upon the undertaking of the third respondent, Vincenzo Frank Tesoriero to the Court, on behalf of himself and the thirteenth respondent, 23 Margaret Street Pty Ltd ACN 623 715 373 (**23 Margaret Street**) that, until hearing of the applicants' interlocutory process filed 25 August 2021, they will not take any further steps to market or sell the property comprised in Folio Identifier 106/1021924, known as 23 Margaret Street, Rozelle NSW 2039 (**Rozelle Property**), or otherwise dispose of an interest in or encumber the Rozelle Property, the Court orders that prayers for relief 6 to 13 of the



interlocutory application filed 25 August 2021 be adjourned to 2.15pm on 3 September 2021 for a case management hearing before Lee J.

**THE COURT NOTES THAT:**

3. The third and thirteenth respondents shall permit the applicants' nominated valuer access to inspect the Rozelle Property on 24 hours' notice.

Date that entry is stamped: 27 August 2021

*Sia Lagos*  
Registrar



**ANNEXURE A – FREEZING ORDER**

**PENAL NOTICE – FREEZING ORDER**

**TO: VINCENZO FRANK TESORIERO**

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO VINCENZO FRANK TESORIERO**

This is a ‘*freezing order*’ made against you on 2 July 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order. This freezing order was varied on 9 July 2021 and on 27 August 2021 by Justice Lee with notice to you.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) [Deleted]
- (2) Subject to the next paragraph, in accordance with the order 1 of the orders made by Justice Lee on 27 August 2021, this order has effect until further order of the Court.
- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
  - (a) ‘*applicant*’, if there is more than one applicant, includes all the applicants;
  - (b) ‘*you*’, where there is more than one of you, includes all of you and includes you if you are a corporation;



- (c) ‘*third party*’ means a person other than you and the applicant;
  - (d) ‘*unencumbered value*’ means value free of mortgages, charges, liens or other encumbrances.
  - (e) ‘*Relevant Amount*’ means the amount of AUD\$253,766,555.76 and NZD\$44,097,969.
- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia (‘Australian assets’) up to the unencumbered value of AUD\$253,766,555.76 and NZD\$44,097,969 (the *Relevant Amount*).
- (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (c) If the unencumbered value of your Australian assets is less than the Relevant Amount, and you have assets outside Australia (**Worldwide Assets**):
- (i) You must not dispose of, deal with or diminish the value of any of your Australian assets or your Worldwide Assets up to the unencumbered value of the Relevant Amount; and
  - (ii) You may dispose of, deal with or diminish the value of any of your Worldwide Assets, so long as the unencumbered value of all of your Australian assets and Worldwide Assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and



(iii) the following assets in particular:

(A) your shares in each of the following companies:

- a. 23 Margaret Street Pty Limited ACN 623 715 373;
- b. 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
- c. 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
- d. 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
- e. 14 James Street Pty Limited ACN 638 449 206;
- f. Canner Investments Pty Limited ACN 624 176 049;
- g. Tesoriero Investment Group Pty Limited ACN 161 088 115;
- h. 123 High Street Taradale Pty Limited ACN 639 872 512;
- i. 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
- j. 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
- k. 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;
- l. 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
- m. 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
- n. 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
- o. 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
- p. Forum Group Financial Services Pty Limited ACN 623 033 705;
- q. 26 Edmonstone Road Pty Limited ACN 622 944 129;
- r. 5 Bulkara Street Pty Limited ACN 630 982 160;
- s. 6 Bulkara Street Pty Limited ACN 639 734 473;
- t. Pankarn Pty Ltd ACN 104 616 051;
- u. 275 High Street Golden Square Pty Ltd ACN 639 870 545;
- v. 22 High Street Rushworth Pty Ltd ACN 641 392 903;
- w. 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626;
- x. Vintes Qld Pty. Ltd. ACN 624 585 922;
- y. 65 Nelson Street Enterprises Pty. Ltd. ACN 612 614 632;
- z. 193 Carlisle Street Enterprises Pty. Ltd. ACN 612 615 237;
- aa. Vintes No 4 Pty Ltd ACN 639 726 524;
- bb. BV Holdings VT Pty Ltd ACN 639 891 624;
- cc. BV Holdings TD Pty Ltd ACN 639 895 257;



- dd. BV Holdings GS Pty Ltd ACN 640 218 864;
- ee. Vintes Qld No 3 Pty Ltd ACN 640 879 152;
- ff. BV Holdings DB Pty Ltd ACN 641 393 151;
- gg. BV Holdings RW Pty Ltd ACN 641 393 197;
- hh. BV Holdings MB Pty Ltd ACN 641 393 240;
- ii. BV Holdings LB Pty Ltd ACN 641 393 268;
- jj. BV Holdings MC Pty Ltd ACN 641 393 277;
- kk. BV Holdings MW Pty Ltd ACN 641 393 286;
- ll. BV Holdings DN Pty Ltd ACN 639 895 239;
- mm. 308 Carlisle Street Holdings Pty. Ltd. ACN 613 047 439;
- nn. 286 Carlisle Street Pty Ltd ACN 610 042 343;
- oo. Thrivi Group Pty Ltd ACN 625 491 858;
- pp. Mangusta (Vic) Pty. Ltd. ACN 631 520 682;
- qq. San Pel One Pty LTD ACN 651 919 265; and
- rr. San Pel Two Pty Ltd ACN 651 927 356;

(B) the following vehicles and vessels:

- a. Vessel "XOXO" Cayman Islands Official Number 734587;
- b. 2018 Porsche Cayenne with VIN WPiZZZ9YZKDA90623
- c. 2014 Alfa Romeo;
- d. 2020 Mini Cooper S with VIN WMWXX920802M95982;
- e. 2008 Ducati 1098R with registration DUCR;
- f. 2020 BMW S1000 with registration EOZ12;
- g. 1957 Chevrolet Bel Air; and
- h. 2019 BRP Can-Am Ryker 600 registration RYKER.

- (b) the value of your assets is the value of the interest you have individually in your assets.

## PROVISION OF INFORMATION

(8) Subject to paragraph 9, you must:

- (a) at or before **5pm on 14 July 2021** (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages,



- charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
- (b) by **5pm on 14 July 2021**, swear and serve on the applicant an affidavit setting out the above information
  - (c) by **5pm on 3 September 2021** (or within such further time as the Court may allow) to the best of your ability, swear and serve on the applicants an affidavit setting out all your assets outside of Australia (**Worldwide Assets**), giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the Worldwide Assets.
- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
  - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
  - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

## **EXCEPTIONS TO THIS ORDER**

- (10) This order does not prohibit:
- (a) you paying up to \$5,000 a week on your ordinary living expenses;



- (b) paying \$30,000 per month (up to the sum of \$350,000 unless varied by subsequent order) on your reasonable legal expenses;
- (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
- (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.

(10A) This order does not prohibit:

- (a) you from directing Australia and New Zealand Banking Group Limited in respect of the bank account in the name of 65 Nelson St Enterprises Pty Ltd (ACN 612 614 632) as trustee of the 65 Nelson Street Enterprises Trust (ABN 74 545 512 288) (**65 Nelson St Co**) to make payments in respect of bona fide expenses:
  - (i) for weekly wage payments for employees employed by and working in the business operated by 65 Nelson St Co;
  - (ii) lease payments for premises occupied by the business operated by 65 Nelson St Co;
  - (iii) operating expenses incurred by the business operated by 65 Nelson St Co;
- (b) you from directing any financial institution that holds bank accounts for any of the following entities:
  - (i) 23 Margaret Street Pty Limited ACN 623 715 373;
  - (ii) 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
  - (iii) 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
  - (iv) 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
  - (v) 14 James Street Pty Limited ACN 638 449 206;
  - (vi) Forum Group Financial Services Pty Ltd ACN 623 033 705;
  - (vii) Canner Investments Pty Limited ACN 624 176 049;
  - (viii) 123 High Street Taradale Pty Limited ACN 639 872 512;
  - (ix) 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
  - (x) 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
  - (xi) 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;





- (xii) 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
- (xiii) 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
- (xiv) 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
- (xv) 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
- (xvi) 26 Edmonstone Road Pty Limited ACN 622 944 129;
- (xvii) 5 Bulkara Street Pty Limited ACN 630 982 160; and
- (xviii) 6 Bulkara Street Pty Limited ACN 639 734 473,

to make payments in respect of bona fide expenses of the following types in relation to properties owned by the entity:

- (xix) repayments of registered mortgages that were in existence before 2 July 2021;
- (xx) land tax;
- (xxi) insurance premiums;
- (xxii) council rates;
- (xxiii) water.

(11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.

(12) (a) This order will cease to have effect if you:

- (i) pay the sum of AUD\$253,766,555.76 and NZD\$44,097,969 into Court; or
- (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
- (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.

(b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.

(c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

## **COSTS**

(13) The costs of this application are reserved to the Court hearing the application on the Return Date.



## **PERSONS OTHER THAN YOU AND THE APPLICANT**

### **(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

### **(15) Bank withdrawals by you**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

### **(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
  - (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

### **(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.



## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon you copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than you and the respondents which have been incurred as a result of this order, including the costs of finding out whether that person holds any of your assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding except for the purposes of any police, regulatory authority or prudential disclosure.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against you or your assets.



## SCHEDULE B

### AFFIDAVITS RELIED ON

#### Name of deponent

- (1) Geoffrey Keith Anderson
- (2) Nicholas Anthony O'Brien
- (3) Caitlin Maria Murray

#### Date affidavit made

28 June 2021; 8 July 2021  
27 June 2021; 1 July 2021  
28 June 2021; 2 July 2021;  
7 July 2021; 8 July 2021; 12  
July 2021; 14 July 2021; 15  
July 2021; 25 August 2021

### NAME AND ADDRESS OF APPLICANTS' LAWYERS

The Applicants' lawyers are:

MinterEllison  
Governor Macquarie Tower  
Level 40, 1 Farrer Place  
Sydney NSW 2000

Attention: Caitlin Murray  
[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com) ; T +61 2 9921 8514 ; M +61 422 977 971 ; +61 2 9921  
8123 ref: CMM:1353397



## Schedule

No: NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141  
Second Applicant Westpac New Zealand Limited (company registration  
number company number 1763882)

### Respondents

First Respondent: Forum Finance Pty Limited (in liquidation) ACN 153 301  
172  
Second Respondent: Basile Papadimitriou  
Third Respondent: Vincenzo Frank Tesoriero  
Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional  
liquidators appointed) ACN 623 033 705  
Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation)  
ACN 153 336 997  
Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed)  
ACN 168 709 840  
Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators  
appointed) ACN 607 484 364  
Eighth Respondent: 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662  
Ninth Respondent: 14 James Street Pty Ltd (in liquidation) ACN 638 449 206  
Tenth Respondent: 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944  
129  
Eleventh Respondent: 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160  
Twelfth Respondent: 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473  
Thirteenth Respondent: 23 Margaret Street Pty Ltd ACN 623 715 373  
Fourteenth Respondent: 1160 Glen Huntly Road Pty Ltd ACN 639 447 984



Fifteenth Respondent: 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093  
Sixteenth Respondent: Canner Investments Pty Ltd ACN 624 176 049  
Seventeenth Respondent: 123 High Street Taradale Pty Ltd ACN 639 872 512  
Eighteenth Respondent: 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392  
921  
Nineteenth Respondent: 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887  
Twentieth Respondent: 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352  
Twenty-First Respondent: 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912  
Twenty-Second Respondent: 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179  
Twenty-Third Respondent: 9 Gregory Street Ouyen Pty Ltd ACN 641 392 707  
Twenty-Fourth Respondent: 9 Main Street Derrinallum Pty Ltd ACN 639 872 736  
Twenty-Fifth Respondent: 286 Carlisle Street Pty Limited ACN 610 042 343  
Twenty-Sixth Respondent: 275 High Street Golden Square Pty Ltd ACN 639 870 545  
Twenty-Seventh Respondent: Mazcon Investments Hellas IKE  
Twenty-Eighth Respondent: Palante Pty Ltd ACN 135 344 151  
Twenty-Ninth Respondent: Anastasios Giamouridis

**From:** Kang, Justin  
**Sent:** Thursday, 16 September 2021 12:13:57 PM  
**To:** Caitlin Murray;Anthony Sommer;Kate Cockburn;Andrew Clarke;michael.hughes@minterellison.com  
**Cc:** Leen, Delano;Canny, Elizabeth;Ramsha Sulaman;Christopher Nehme;Pierre Safi;Roy Hanna  
**Subject:** Vincenzo Tesoriero - proposed payment for legal expenses [IWOV- Documents.FID10220696]  
**Attachments:** 94095440\_1\_2021 08 27 Freezing order - V Tesoriero.PDF

Dear Colleagues

As you know, we act for National Australia Bank Limited (**NAB**).

We note you act for Westpac Banking Corporation (**Westpac**) which is the applicant under the **attached** freezing orders against Vincenzo Tesoriero.

We have received correspondence from Fortis Law on behalf of Mr Tesoriero foreshadowing that their client will be requesting NAB pay amounts totalling \$66,000 towards Mr Tesoriero's legal expenses for the month of July and August from accounts held in the names of:

- 275 High Street Golden Square Pty Ltd ATF 275 High Street Golden Square Unit Trust;
- 4 Cowslip Street Violet Town Pty Ltd ATF 4 Cowslip Violet Town Unit Trust;
- 9 Main Street Derrinallum Pty Ltd ATF 9 Main Street Derrinallum Unit Trust;
- 123 High Street Taradale Pty Ltd ATF 123 High Street Taradale Unit Trust;
- 89 Betka Road Mallacoota Pty Ltd ATF 89 Betka Road Mallacoota Unit Trust.

Fortis Law have expressed to us the view that such payment is not prohibited under the attached freezing orders, despite the above accounts not being in Mr Tesoriero's name, having regard to:

- (1) paragraph 6 of the freezing orders and specifically the reference to Mr Tesoriero's "assets";
- (2) paragraph 7 of the freezing orders as to what Mr Tesoriero's assets include for the purposes of the freezing orders; and
- (3) paragraph 10(b) of the freezing orders.

As we have discussed with Fortis Law, we are writing to you to request your response as to whether Westpac agrees that payment from the accounts of the above companies towards Mr Tesoriero's legal expenses would not be prohibited under the freezing orders.

Our client proposes to allow such payment to be made if you advise us that your client does so agree.

We have copied Fortis Law with this email.

Regards



Justin Kang

Partner

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20 September 2021

**BY EMAIL:** [justin.kang@dentons.com](mailto:justin.kang@dentons.com)

Justin Kang  
Partner  
Dentons  
77 Castlereagh Street  
Sydney NSW 2000

Dear Mr Kang

**Westpac Banking Corporation & Anor v Forum Finance Pty Limited & Ors - Federal Court of Australia Proceeding NSD616/2021 (Proceedings)**

We refer to:

- (a) your email of 16 September 2021 (**Your Email**); and
- (b) the worldwide freezing order against Vincenzo Frank Tesoriero (**Mr Tesoriero**) made on 2 July 2021 (as varied on 9 July 2021 and 27 August 2021) in the Proceedings, a copy of which was attached to Your Email (**Freezing Orders**).

As you are aware, paragraph 6 of the Freezing Orders prevents Mr Tesoriero from disposing of, dealing with or diminishing the value of his Australian assets up to the Relevant Amount (as defined in the Freezing Orders). Further, paragraph 7(a)(iii)(A)(h),(k),(m),(o) and (u) of the Freezing Orders provides that for the purposes of the Freezing Orders, Mr Tesoriero's shares in the following companies listed in Your Email:

- (a) 123 High Street Taradale Pty Ltd ACN 639 872 512;
- (b) 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352;
- (c) 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179;
- (d) 9 Main Street Derrinallum Pty Ltd ACN 639 872 736; and
- (e) 275 High Street Golden Square Pty Ltd ACN 639 870 545,

(together, the **Relevant Companies**),

form part of his identified Australian assets. As your client would be aware, Mr Tesoriero is the director and shareholder of the Relevant Companies.

We note that the Freezing Orders are a prohibition with an exception, not a permission. Paragraph 10(b) of the Freezing Orders provides that the Freezing Orders do not prohibit Mr Tesoriero paying \$30,000 per month (up to the sum of \$350,000 unless varied by subsequent order) on his reasonable legal expenses.

Our clients do not accept that the Freezing Orders permit payment of the amount of \$66,000 towards Mr Tesoriero's legal expenses for the months of July and August from accounts held with your client in the names of the Relevant Companies (**Proposed Payments**).

Further, the amount of the Proposed Payments being \$66,000 exceeds the monthly amount of \$30,000 specified in paragraph 10(b).

Our clients do not consider that it would be appropriate that the Proposed Payments be made by the Relevant Companies on account of Mr Tesoriero's legal fees, which is what is being proposed, based upon Your Email.

In light of our clients' proprietary claims against Mr Tesoriero and the Relevant Companies as set out in our clients' amended statement of claim dated 10 August 2021 filed in the Proceedings, our clients' position is that the property of Mr Tesoriero and the Relevant Companies including the funds held in accounts with your client are held on trust for our clients in accordance with the principles set out in *Black v S Freedman & Co* (1910) 12 CLR 105 at 110.

Please could you confirm that your client will not allow the Proposed Payments to be made out the accounts of the Relevant Companies held with your client until we provide an update with respect to any variation orders made with respect to the Freezing Orders. Particularly, we are concerned that no assets of Mr Tesoriero and the Relevant Companies are transferred out of your client's control without our clients' consent or pursuant to an order of the Federal Court of Australia.

We note that Fortis Law, the solicitors acting for Mr Tesoriero and the Relevant Companies, are copied to this correspondence. We have not otherwise received any communication from Fortis Law regarding the Proposed Payments the subject of Your Email.

All of our clients' rights are expressly reserved.

Yours faithfully  
**MinterEllison**



Contact: Anthony Sommer T: +61 2 9921 4182  
anthony.sommer@minterellison.com  
Partner: Caitlin Murray T: +61 2 9921 4279  
OUR REF: 1353397

**COPY TO:**

Christopher Nehme  
Partner  
Fortis Law  
Level 11, 75 Elizabeth Street  
Sydney NSW 2000  
[cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)

---

**From:** Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>

**Sent:** Tuesday, 21 September 2021 2:16 PM

**To:** Christopher Nehme <cnehme@fortislaw.com.au>; 'Anthony Sommer' <Anthony.Sommer@minterellison.com>; Sarah Colegrove <scolegrove@fortislaw.com.au>

**Cc:** Nena Thalib <Nena.Thalib@minterellison.com>; Damien Jones <Damien.Jones@minterellison.com>; Caitlin Murray <Caitlin.Murray@minterellison.com>; Pierre Safi <pjsafi@fortislaw.com.au>; Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>; Candy Nelson <Candy.Nelson@madgwicks.com.au>

**Subject:** RE: Tesoriero, Papadimitriou and Forum Finance Pty Ltd ats Westpac Banking Corporation Pty Ltd Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Colleagues,

We refer to Mr NHEME's email below and confirm its content.

We are in the process of filing our Notice of Appearance and shall serve a copy upon you once filed. We are also making arrangement for the transfer of our client's file from Mr Nehme's office, which we understand shall be undertaken once the issue of unpaid legal fees has been resolved. We note that our client was entitled to a monthly allowance for legal fees under the exclusions stated in the Penal Notice. We are informed by Mr Nehme that our client has not been able to utilise the exclusions due to all his funds and liquid assets being frozen. Accordingly, in order to facilitate an expeditious transfer of the file and to avoid any delays in the progress of this matter, we ask that an agreement be reached with respect to the funds held in trust by Mr Nehme.

We wish to stress that our client is prevented from actively engaging in the proceeding without the Fortis Law file and therefore it's in the interest of all parties the address this issue as soon as possible. Accordingly, we trust that the parties can work together to address this issue without the need to approach the Court.

We also ask that the parties allow our firm some time, once the above issue has been resolved, to familiarise ourselves with the file and get up to speed with the proceeding.

We otherwise look forward to your response and thank you in advance.

Regards

**Sazz Nasimi**

Partner

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## Mackenzie Preston

---

**From:** Anthony Sommer <Anthony.Sommer@minterellison.com>  
**Sent:** Tuesday, 28 September 2021 8:26 AM  
**To:** Sazz Nasimi  
**Cc:** Melissa Passarelli; Candy Nelson; Caitlin Murray; Michael Hughes; Kang, Justin; Leen, Delano; Canny, Elizabeth  
**Subject:** Westpac Banking Corporation & Anor v Forum Finance Pty Limited & Ors - Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]  
**Attachments:** RE: Vincenzo Tesoriero - proposed payment for legal expenses [IWOV- Documents.FID10220696] [ME-ME.FID6264995]

[WARNING: EXTERNAL SENDER]

Dear Mr Nasimi

We note that your email of 21 September 2021 to us and your clients' former solicitors Fortis Law stated "[your] client was entitled to a monthly allowance for legal fees under the exclusions stated in the Penal Notice. [You] are informed by Mr Nehme that [your] client has not been able to utilise the exclusions due to all his funds and liquid assets being frozen."

We refer you to our attached letter of 20 September 2021 to Dentons on behalf of National Australia Bank Limited (NAB), a copy of which was sent to Fortis Law (Our Letter), and the email of 16 September 2021 from Dentons to which Our Letter responds. Capitalised terms used below have the same meaning given in Our Letter.

We note that we have not received a response to Our Letter, nor have we received any correspondence from you or Fortis Law on behalf of your client in relation to Our Letter. Our clients remain concerned about the Proposed Payments, for the reasons identified in Our Letter. However, we think it appropriate to make the following clear.

Our clients accept that their consent is not required to the Proposed Payments within the exception for legal costs in paragraph 10(b) of the Freezing Orders, although they reserve their right to seek to vary the Freezing Orders in the future. We are unsure why our clients' consent was sought.

Our clients do not propose, at least presently and without more information, to consent to the Proposed Payments for three reasons. First, to the extent our clients have a proprietary right to or over the money held by the Relevant Companies, our clients do not consent to any dealing or payment inconsistent with their rights. That is, any payment is made at the risk of the payor, and the payee where on notice of our clients' claim takes subject to that claim. Our clients will not waive those rights. We add that our clients presently do not know whether any moneys held by the Relevant Companies are not the subject of our clients' claims in part as your client has not sought to identify and explain any legitimate source of funds. Second, our clients are concerned that the Proposed Payments by the Relevant Companies are not for a proper corporate purpose and do not propose to consent to the Relevant Companies paying away money for Mr Tesoriero's benefit but not the Relevant Companies' own benefit. Our clients will not give their imprimatur to payments of that character but accept that their consent is not required. Third, the permitted sum under paragraph 10(b) of the Freezing Orders is \$30,000 a month, not \$33,000 a month.

We note that Dentons are copied to this email.

Regards

\_\_\_\_\_

Anthony Sommer  
Senior Associate  
T +61 2 9921 4182 M +61 431 058 780  
anthony.sommer@minterellison.com<mailto:anthony.sommer@minterellison.com>  
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-----  
Sensitive: Legal

Justin Kang  
Partner  
Dentons  
Eora Country  
77 Castlereagh Street  
SYDNEY NSW 2000

Date: 7 October 2021

File No: 047678  
Author: Sazz Nasimi  
Partner: Sazz Nasimi

By email: [justin.kang@dentons.com](mailto:justin.kang@dentons.com)

Dear Mr Kang

**Vincenzo Frank Tesoriero & Ors ats Westpac Banking Corporation & Anor  
Federal Court of New South Wales No. NSD616 of 2021**

We refer to the above matter and confirm we act for Mr Tesoriero and his related entities referred to collectively as “our client”.

We have now had a chance to examine our client’s files that had been maintained by our predecessors. In so doing we have read and understood the correspondence concerning the funds held in the various bank accounts with the National Australia Bank. As you are aware our client is currently the subject of freezing and penal orders dated 9 July 2021 (**‘Freezing Orders’**). Pursuant to the terms of the Freezing Orders our client is entitled to a sum of \$30,000 per month for legal expenses and a further \$20,000 per month for living expenses. These carve outs form part of the orders, albeit in the form of exceptions and beyond these exceptions no other conditions have been attached to these carve outs. In addition to the above, we would also like to draw your attention to order 15 of the Penal Notice which reads as follows:

**15. Bank Withdrawals By You**

*No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.*

Accordingly, in circumstances where the Penal Notice is plainly written we struggle to see how it can be argued that the foreshadowed withdrawal is not permitted by this order.

We note that on the last occasion that our client requested the funds held in its NAB accounts, your client sought the consent of Westpac. We wish to stress that the consent of Westpac is not required and this position has been accepted by Westpac itself in their correspondence of 28 September 2021. Further, we expressly prohibit your client from discussing or bringing our client’s request to the attention of Westpac or its representatives. Any discussion with third parties pertaining to our client’s accounts is a breach of his privacy. If you are unsure as to what your client’s obligations are with respect to releasing funds to our client then we suggest that the proper course for you is to make an application to the Court and seek direction or clarification.



**MADGWICKS**  
ABN 82 199 611 971

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W: [madgwicks.com.au](http://madgwicks.com.au)



To date, our client has been unable to utilise its funds in a manner permissible under the Penal Notice since July 2021. We have calculated the funds that our client is entitled to, as follows:

	<b>Legal Expenses</b>	<b>Living Expenses</b>	
July	\$30,000	\$20,000	
August	\$30,000	\$20,000	
September	\$30,000	\$20,000	
October	\$30,000	\$20,000	
<b>Total</b>	<b>\$120,000</b>	<b>\$80,000</b>	
		<b>Total Funds</b>	<b>\$200,000</b>

Accordingly, we ask that your client take immediate steps to provide to our client the sum of \$200,000 from its NAB Accounts in the following manner:

For legal expenditure:

Withdrawal from 082-080 448010047 in the sum of \$60,000.

Withdrawal from 082-080 421958540 in the sum of \$60,000.

For personal expenditure:

Withdrawal from 082-080 975544112 in the sum of \$14,000.

Withdrawal from 082-080 178684593 in the sum of \$13,000.

Withdrawal from 082-080 926496249 in the sum of \$12,000.

Withdrawal from 082-080 204569119 in the sum of \$3,000.

Withdrawal from 082-080 777179310 in the sum of \$33,000.

Withdrawal from 082-080 328159963 in the sum of \$3,000.

Withdrawal from 082-080 205665778 in the sum of \$2,000.

We require these funds to be transferred *immediately* into our trust account with the following account particulars:

**Madgwicks Trust Account**  
**Westpac Banking Corporation**  
**114 William Street Melbourne**  
**BSB: 033 003 Account No: 256 563**  
**Ref: 047678**

In the event that your client does not comply with our client's reasonable and lawful request we have instructions to make an immediate and urgent application to the Court seeking orders to compel your client to do same. Should such an application become necessary, we reserve our client's rights with respect to costs.

Should you have any queries in relation to this letter please contact Sazz Nasimi.

Yours faithfully  
**MADGWICKS**



Sazz Nasimi  
**Partner**

T: 03 9242 4741

E: [Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)



Melissa Passarelli  
**Associate**

T: 03 9242 4780

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**From:** Kang, Justin <[justin.kang@dentons.com](mailto:justin.kang@dentons.com)>

**Sent:** Tuesday, 12 October 2021 11:25 AM

**To:** Melissa Passarelli <[Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)>

**Cc:** Sazz Nasimi <[Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)>; Leen, Delano <[delano.leen@dentons.com](mailto:delano.leen@dentons.com)>; Canny, Elizabeth <[elizabeth.canny@dentons.com](mailto:elizabeth.canny@dentons.com)>

**Subject:** RE: Vincenzo Frank Tesoriero & Ors ats Westpac Banking Corporation & Anor - NSD616 of 2021 [MADG-CURRENT\_MATTERS.18091.047678] [DENTONS-Documents.FID10220696]

Dear Ms Passarelli

We confirm that we act for National Australia Bank Limited (**NAB**) and note you act for Mr Vincenzo Tesoriero.

We refer to your **attached** letter of 7 October 2021.

Your letter states that you require our client to transfer immediately a total of \$200,000 from accounts in the names of various companies into your firm's trust account in respect of Mr Tesoriero's legal and living expenses. We note you have not requested a transfer from, nor are there sufficient funds in, any account held by Mr Tesoriero personally.

For reference, the table below lists the accounts, the account balances and the amounts which your attached letters seeks to have transferred from those accounts to your firm's trust account.

Account No.	Account Name	Current Balance	Withdrawal sought
Ending 6249	9 MAIN STREET DERRINALLUM PTY LTD ATF 9 MAIN STREET DERRINALLUM UNIT TRUST	\$ 12,178.43 (CR)	\$12,000
Ending 0047	275 HIGH STREET GOLDEN SQUARE PTY LTD ATF 275 HIGHSTREET GOLDEN SQUARE UNIT TRU	\$ 72,335.05 (CR)	\$60,000
Ending 4112	123 HIGH STREET TARADALE PTY LTD ATF 123 HIGH STREET TARADALE UNIT TRUST	\$ 14,078.20 (CR)	\$14,000
Ending 8540	4 COWSLIP STREET VIOLET TOWN PTY LTD ATF 4 COWSLIPSTREET VIOLET TOWN UNIT TRUST	\$65,368.91 (CR)	\$60,000
Ending 9310	89 BETKA ROAD MALLACOOTA PTY LTD ATF 89 BETKA ROAD MALLACOOTA UNIT TRU	\$ 33,637.44 (CR)	\$33,000
Ending 4593	23 MARGARET STREET PTY LTD ATF 23 MARGARET STREET TRUST	\$ 13,654.00 (CR)	\$13,000
Ending 9119	CANNER INVESTMENTS PTY LTD	\$ 3,183.61 (CR)	\$3,000
Ending 9963	64-66 BERKELEY ST HAWTHORN PTY LTD ATF 64-66 BERKELEY ST HAWTHORN UNIT TRUST	\$ 3,650.76 (CR)	\$3,000
Ending 5778	1160GLEN HUNTLY ROAD PTY LTD AS TRUSTEE FOR 1160 GLEN HUNTLY ROAD UNIT TRUST	\$ 3,476.72 (CR)	\$2,000
<b>TOTAL</b>		<b>\$221,563.12 (CR)</b>	<b>\$200,000</b>

In response to your letter:

1. NAB is bound to follow the terms of the **attached** freezing orders (**Freezing Orders**) made on the application of Westpac Banking Corporation (**Westpac**) against your client. On the face of things, it is not clear to NAB

that payments for Mr Tesoriero's personal legal and / or living expenses made from accounts held by third parties fall within the Exceptions to the Freezing Orders.

2. With the consent of your clients' previous solicitors, Fortis Law, we wrote by email to Westpac's solicitors Minter Ellison with regard to Mr Tesoriero's then foreshadowed application to withdraw \$66,000 from the first 5 above listed accounts for payment of your client's legal expenses.
3. As you know Minter Ellison have responded that Westpac does not consent to such payment being made from those accounts and does not accept that those payments are permitted by the Freezing Orders – in which regard we refer to:
  - a. Minter Ellison's **attached** email to your firm (copied to us) of 28 September 2021; and
  - b. Minter Ellison's letter of 20 September 2021 to us (copied to Fortis Law) in reply to our above email, attached and referred to in Minter Ellison's above email.
4. In light of Minter Ellison's attached email correspondence and letter, we envisage Westpac (if asked) would adopt the same position with respect to the payments sought in your attached letter.
5. While your attached letter states that you "expressly prohibit" our client from discussing or bringing to Westpac's attention the request for payment of \$200,000 now made in your attached letter:
  - a. Westpac are already aware of your client's earlier above request for payment to be allowed for legal expenses – again, about which we wrote to Minter Ellison with your client's consent through his previous solicitors, Fortis Law;
  - b. you will appreciate that any Court application as to whether the payments now sought are prohibited under the Freezing Orders, would need to be served on or notified to Westpac as an interested party in any event.
6. Respectfully, it is not for our client to attempt to resolve or arbitrate an issue which is clearly one of contention between your client and Westpac as to the scope and effect of the Freezing Orders.
7. If your client contends that the payments requested in your attached letter should be made, then it is incumbent on your client to apply to the Court for appropriate orders and provide NAB with a sealed copy of any varied orders.
8. Pending any Court determination of the issue, our client will not be making the payments sought in your attached letter having regard to the terms of the Freezing Orders and attached correspondence with Westpac's solicitors Minter Ellison.

Regards



Justin Kang

Partner

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DATED

16 December

2019

**PLACELEA PTY LTD (ACN 006 289 621)**  
and  
**OWNERS CORPORATION PS716735J**

to

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## **CONTRACT OF SALE OF REAL ESTATE**

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**PROPERTY:**

**8-12 NATALIA AVENUE OAKLEIGH SOUTH VICTORIA 3167**

and

**THAT PART OF THE COMMON PROPERTY THAT IS TO BE TRANSFERRED TO THE PURCHASER AT SETTLEMENT ARISING FROM THE SUBDIVISION AND RE-ALIGNMENT BETWEEN THE COMMON PROPERTY & LOT 1**



228 Smith Street  
Collingwood Vic 3066

Tel: 03 9945 7999  
Fax: 03 9419 3175  
Email: [steve@gandmlawyers.com.au](mailto:steve@gandmlawyers.com.au)  
Ref: SK:FDP:190144

# Contract of Sale of Real Estate\*

Part 1 of the form of contract published by the Law Institute of Victoria Limited and The Real Estate Institute of Victoria Ltd

Property address **8-12 Natalia Avenue Oakleigh South Victoria 3167 and part of Common Property on 716735J**

The vendor agrees to sell and the purchaser agrees to buy the property, being the land and the goods, for the price and on the terms set out in this contract.

The terms of this contract are contained in the -

- particulars of sale; and
- special conditions, if any; and
- general conditions

in that order of priority.

## SIGNING OF THIS CONTRACT

**WARNING: THIS IS A LEGALLY BINDING AGREEMENT. YOU SHOULD READ THIS CONTRACT BEFORE SIGNING IT.**

Purchasers should ensure that, prior to signing this contract, they have received -

- a copy of the section 32 statement required to be given by a vendor under section 32 of the *Sale of Land Act 1962* in accordance with Division 2 of Part II of that Act; and
- a copy of the full terms of this contract.

The authority of a person signing -

- under power of attorney; or
- as director of a corporation; or
- as agent authorised in writing by one of the parties -

must be noted beneath the signature.

Any person whose signature is secured by an estate agent acknowledges being given by the agent at the time of signing a copy of the terms of this contract.

SIGNED BY THE PURCHASER:



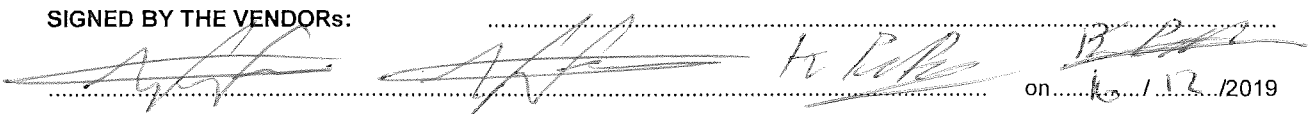
VINCE TESORIERO &/OR NOMINEES on 16/12/2019

Print name(s) of person(s) signing:

State nature of authority, if applicable:

This offer will lapse unless accepted within [ ] clear business days (3 clear business days if none specified)

SIGNED BY THE VENDORS:



Print name(s) of person(s) signing:

CON PAPASOTIRIOU and DINA PAPASOTIRIOU FOR AND ON BEHALF OF PLACELEA PTY LTD

and

CON PAPASOTIRIOU and DINA PAPASOTIRIOU FOR AND ON BEHALF OF OWNERS CORPORATION PS716735J

State nature of authority, if applicable: Directors

The DAY OF SALE is the date by which both parties have signed this contract.

### IMPORTANT NOTICE TO PURCHASERS

Cooling-off period (Section 31 of the *Sale of Land Act 1962*)

You may end this contract within 3 clear business days of the day that you sign the contract if none of the exceptions listed below applies to you.

You must either give the vendor or the vendor's agent written notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent to end this contract within this time in accordance with this cooling-off provision.

You are entitled to a refund of all the money you paid EXCEPT for \$100 or 0.2% of the purchase price (whichever is more) if you end the contract in this way.

EXCEPTIONS: The 3-day cooling-off period does not apply if:

- you bought the property at or within 3 clear business days before or after a publicly advertised auction;
- the property is used primarily for industrial or commercial purposes; or
- the property is more than 20 hectares in size and is used primarily for farming; or
- you and the vendor have previously signed a contract for the sale of the same land in substantially the same terms; or
- you are an estate agent or a corporate body.

\*This contract is approved by the Law Institute of Victoria Limited, a professional association within the meaning of the *Legal Profession Act 2004*, under section 53A of the *Estate Agents Act 1980*.

## NOTICE TO PURCHASERS OF PROPERTY OFF-THE-PLAN

Off-the-plan sales (Section 9AA(1A) of the *Sale of Land Act 1962*)

the contract of sale and the day on which you become the registered proprietor of the lot.

You may negotiate with the vendor about the amount of the deposit moneys payable under the contract of sale, up to 10 per cent of the purchase price.

The value of the lot may change between the day on which you sign the contract of sale of that lot and the day on which you become the registered proprietor.

A substantial period of time may elapse between the day on which you sign

### Particulars of Sale

#### Vendor's estate agent

Name: Buxton Oakleigh (Commercial & Industrial Division)  
Address: 21-23 Atherton Rd, Oakleigh VIC 3166

Email: john.servinis@buxton.com.au

Tel: 03 9564 2288 mob: 0418 575 165 Ref: John Servinis

#### Vendors

##### PLACELEA PTY LTD ACN 006 289 621

12 Natalia Avenue, Oakleigh South, VIC 3167

and

##### OWNERS CORPORATION PS716735J

82 Carlisle Crescent Oakleigh VIC 3166

(as at to that part of the common property that is to be transferred to the purchaser at settlement arising from the subdivision and re-alignment between the Common Property & Lot 1)

#### Vendors' legal practitioner or conveyancer

##### G & M LAWYERS

Level 1, 228 Smith Street, COLLINGWOOD VIC 3066  
PO Box 1175, COLLINGWOOD VIC 3066

Email: steve@gandmlawyers.com.au

Tel: (03) 9945 7999 Mob: Fax: 03 9419 3175 Ref: SK:FDP:190144

#### Purchaser

Name: VINCENT & FRANK TESORIERO & OR NOMINEES

Address: LVL 5, 141 WALKER ST, NORTH SYDNEY NSW 2060

ABN/ACN:

Email: VTESORIERO@FORMERGROUP.COM.AU

#### Purchaser's legal practitioner or conveyancer

Email: PRAKASH.PATEL@LATEP.COM.AU

Tel: Mob: 0411 873 159 Fax:

LATEP LEGAL

SUITE 11, 03 WALKER ST

11 343 LITTLE COLLINS ST

ATT PRAKASH PATEL

MELBOURNE 3000

Ref:

#### Land (general conditions 3 and 9)

The land is described in the table below –

Certificate of Title reference	being lot	on plan
Volume 11936 Folio 432	1	716735J
	(part) Common Property	716735J

The land includes all improvements and fixtures.

**Property address**

**The address of the land is:** 8-12 Natalia Avenue Oakleigh South Victoria 3167 including that parcel of the Common Property representing approximately 425 m2 of the Common Property (the "Subdivided Parcel") that will allow and permit the Purchaser to construct those improvements and supporting infrastructure on the Property designated in the Planning Permit No 49429 dated 23 January 2019 issued by the City of Monash for a Two Lot Boundary Re-Alignment - (between Common Property & Lot 1), so that in total the Purchaser shall acquire approximately 10,400 m2 of land, consisting of 9975 m2 of Lot 1 on Plan of Subdivision 716735J and approximately 425m2 of land arising from Subdivision the existing Common Property on Plan of Subdivision 716735J and Re-Alignment between the Common Property & Lot 1, **as per the attached plan referred to also in the Permit Number 49429 dated 23 January 2019**

**Payment** (general condition 11)

Price \$ 5,860,000

Deposit \$1,172,000

(being an amount equal to **twenty (20 %)** per cent of the purchase price ; the amount equivalent to 10 % of the purchase price must be paid concurrently with delivery by the purchaser to the vendor of this contract executed by the purchaser and the balance 90 days after the day of sale. Notwithstanding anything to the contrary the Purchaser agrees to release the deposit to the Vendor despite the contract containing a condition (if any) enuring for the benefit of the purchaser'. For the avoidance of doubt it is an essential term of the contract that the purchaser not object to the release of the deposit despite the contract containing a condition (if any) enuring for the benefit of the purchaser or provision contained in the *Sale of Land Act (VIC) 1962*

Balance \$ 4,688,000 payable at settlement

**GST** (general condition 13)

The price includes GST (if any) unless the words '**plus GST**' appear in this box

Plus GST

If this sale is a sale of land on which a 'farming business' is carried on which the parties consider meets requirements of section 38-480 of the GST Act or of a 'going concern' then add the words '**farming business**' or '**going concern**' in this box

If the margin scheme will be used to calculate GST then add the words '**margin scheme**' in this box

**Settlement** (general condition 10)

is due on the latter of 230 (equivalent to 7.5 months) from the day of sale

or

14 days after the Vendor has notified the Purchaser in writing of:

- a) **Registration of the Plan of Subdivision of the Common Property (Two Lot Boundary Re-Alignment - between Common Property & Lot 1) referred to in Special Condition 14**

**Lease** (general condition 1.1)

At settlement the purchaser is entitled to vacant possession of the property unless the words '**subject to lease**' appear in this box in which case refer to general condition 1.1.

C.P C.P  
K.P K.P

*[Handwritten signature]*

If 'subject to lease' then particulars of the lease are :

Please see Lease attached to Vendor's Statement.

**Terms contract** (general condition 23)

If this contract is intended to be a terms contract within the meaning of the *Sale of Land Act* 1962 then add the words '**terms contract**' in this box and refer to general condition 23 and add any further provisions by way of special conditions.

**Loan** (general condition 14)

The following details apply if this contract is subject to a loan being approved.

Lender:

Loan amount

Approval date:

This contract does not include any special conditions unless the words '**special conditions**' appear in this box

**Special conditions**

C.P  
C.T  
K.P  
R.P.

## Special Conditions

Instructions: It is recommended that when adding special conditions:

- each special condition is numbered;
- the parties initial each page containing special conditions;
- a line is drawn through any blank space remaining on this page; and
- attach additional pages if there is not enough space and number pages accordingly (eg. 4a, 4b, 4c, etc.)

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### 1A Acceptance of title

General condition 12.4 is added:

Where the purchaser is deemed by section 27(7) of the *Sale of Land Act 1962* to have given the deposit release authorisation referred to in section 27(1), the purchaser is also deemed to have accepted title in the absence of any prior express objection to title.

### 1B Foreign resident capital gains withholding

1B.1 Words defined or used in Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* have the same meaning this special condition unless the context requires otherwise.

1B.2 Every vendor under this contract is a foreign resident for the purposes of this special condition unless the vendor gives the purchaser a special clearance certificate issued by the Commissioner under section 14-200 (1) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The specified period in the clearance certificate must include the actual date of settlement and must be given by the vendor to the purchaser not later than five (5) Business Days prior to settlement and unless so given to the Purchaser within the specified period prior to settlement the Purchaser will at settlement be entitled to withhold an amount equal ten (10) percent of the purchase price.

1B.3 This special condition only applies if the purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* ("the amount") because one or more of the vendors is a foreign resident, the property is or will have a market value of \$2 million or more just after the transaction, and the transaction is not excluded under section 14-215(1) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.

1B.4 The amount is to be deducted from the vendor's entitlement to the contract consideration. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.

1B.5 The purchaser must:

- engage a legal practitioner or conveyancer ("representative") to conduct all legal aspects of settlement, including the performance of the purchaser's obligations in this special condition; and
- ensure that the representative does so.

1B.6 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests and instructions that the representative must:

- pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this special condition if the sale of the property settles;
  - promptly provide the vendor with proof of payment; and
  - otherwise comply, or ensure compliance with, this special condition;
- despite
- any contrary instructions, other than from both the purchaser and the vendor; and
  - any other provision in this contract to the contrary.

1B.7 The representative is taken to have complied with the obligations in special condition 1B.6 if:

- the settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd or any other electronic conveyancing system agreed by the parties; and
- the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.

1B.8 Any clearance certificate or document evidencing variation of the amount in accordance with section 14-253(2) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* must be given to the purchaser at least 5 business days before the due date for settlement.

1B.9 The vendor must provide the purchaser with such information as the purchaser requires to comply with the purchaser's obligation to pay the amount in accordance with section 14-200 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The information must be provided within 5 business days of request by the purchaser. The vendor warrants that the information the vendor provides is true and correct.

1B.10 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.



## 2. Electronic Conveyancing



Settlement and lodgement will be conducted electronically in accordance with the Electronic Conveyancing National Law and special condition 2 applies, if the box is marked "EC"

- 2.1 This special condition has priority over any other provision to the extent of any inconsistency. This special condition applies if the contract of sale specifies, or the parties subsequently agree in writing, that settlement and lodgement of the instruments necessary to record the purchaser as registered proprietor of the land will be conducted electronically in accordance with the Electronic Conveyancing National Law.
- 2.2 A party must immediately give written notice if that party reasonably believes that settlement and lodgement can no longer be conducted electronically.
- 2.3 Each party must:
  - (a) be, or engage a representative who is, a subscriber for the purposes of the Electronic Conveyancing National Law,
  - (b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the Electronic Conveyancing National Law, and
  - (c) conduct the transaction in accordance with the Electronic Conveyancing National Law.
- 2.4 The vendor must open the Electronic Workspace ("workspace") as soon as reasonably practicable. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.
- 2.5 The vendor must nominate a time of the day for locking of the workspace at least 7 days before the due date for settlement.
- 2.6 Settlement occurs when the workspace records that:
  - (a) the exchange of funds or value between financial institutions in accordance with the instructions of the parties has occurred; or
  - (b) if there is no exchange of funds or value, the documents necessary to enable the purchaser to become registered proprietor of the land have been accepted for electronic lodgement.
- 2.7 The parties must do everything reasonably necessary to effect settlement:
  - (a) electronically on the next business day; or
  - (b) at the option of either party, otherwise than electronically as soon as possible – if, after the locking of the workspace at the nominated settlement time, settlement in accordance with special condition 2.6 has not occurred by 4.00 pm, or 6.00 pm if the nominated time for settlement is after 4.00 pm.
- 2.8 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any mistaken payment and to recover the mistaken payment.
- 2.9 The vendor must before settlement:
  - (a) deliver any keys, security devices and codes ("keys") to the estate agent named in the contract,
  - (b) direct the estate agent to give the keys to the purchaser or the purchaser's nominee on notification of settlement by the vendor, the vendor's subscriber or the Electronic Network Operator,
  - (c) deliver all other physical documents and items (other than the goods sold by the contract) to which the purchaser is entitled at settlement, and any keys if not delivered to the estate agent, to the vendor's subscriber or, if there is no vendor's subscriber, confirm in writing to the purchaser that the vendor holds those documents, items and keys at the vendor's address set out in the contract, and
  - (d) direct the vendor's subscriber to give (or, if there is no vendor's subscriber, give) all those documents and items, and any such keys, to the purchaser or the purchaser's nominee on notification of settlement by the Electronic Network Operator.
- 2.10 The vendor must, at least 7 days before the due date for settlement, provide the original of any document required to be prepared by the vendor in accordance with general condition 6.

## 3. Conduct of Auction

The property is offered for sale by public auction, subject to the vendor's reserve price. The Rules for the conduct of the auction shall be as set out in Schedules to the Sale of Land Regulations 2005 or any rules prescribed by regulation which modify or replace those Rules. The Purchaser warrants that a copy of the Rules were made available for public inspection a reasonable time before the auction.

#### 4. Section 51 statement

The purchaser acknowledges that, prior to payment of any part of the deposit and prior to the signing of any contract, agreement or document legally binding or intended legally to bind it in respect of this sale:

- 4.1 The vendor's agent, if any, has not made any promise to the purchaser with respect to the obtaining by the purchaser of a loan of money to defray some or all of the costs of purchase by the purchaser of the property; or
- 4.2 If the vendor's agent, if any, has made any promise to the purchaser it has received from the vendor's agent a statement in writing under Section 51 of the Estate Agents Act 1958.

#### 5. Payment of deposit - fundamental term

- 5.1. The purchaser must, and it is a fundamental term of this contract, pay the deposit payable under this contract, when specified in it, and:
  - 5.1.1. If the property is sold at auction and payment of it is made by personal cheque it be honoured on its first representation for payment;
  - 5.1.2. If the property is not sold at auction, by bank cheque;
  - 5.1.3. If otherwise the vendor accepts payment of it by personal cheque it be honoured on its first presentation for payment.
- 5.2. If the purchaser fails to strictly comply with the obligations under the immediately preceding paragraph of this special condition the vendor may, in addition to its rights to rescind this contract pursuant to General Condition 27, at any time, and in its absolute discretion, terminate this contract immediately by giving written notice to the purchaser to that effect.
- 5.3. If this contract is terminated by the vendor pursuant to the immediately preceding sub-clause of this special condition, the purchaser acknowledges that:
  - 5.3.1. The termination will be without prejudice to the vendor's rights against the purchaser under this contract and otherwise at law; and
  - 5.3.2. The vendor will be entitled to re-sell the property to any other party; and
  - 5.3.3. The purchaser waives any right which it may have, other than by reason of this special condition, had against the vendor arising out of such termination.
- 5.4. Time is of the essence in respect of the obligations of the purchaser under the immediately preceding paragraphs of this special condition and, subject to the provision of this special condition, General Condition 27 does not apply in respect of the purchaser's obligation to pay the deposit.

#### 6. Deposit

- 6.1. After the deposit has been received by the vendor's solicitors as stakeholders it may, at the Vendor's absolute discretion, be held in an interest bearing trust account established under the Legal Profession Practice Act 1958.
- 6.2. Any interest accruing on the deposit must be paid to the party ultimately entitled to receive the deposit;
- 6.3. Subject to the provisions contained in the *Sale of Land Act* the purchaser agrees to release the Deposit to the Vendor upon notice in writing of registration of the proposed plan of subdivision PS716735J

#### 7. Corporate purchaser guarantee

If the purchaser is or includes a corporation (other than a corporation listed on the Australian Stock Exchange Limited, a recognised life assurance company or a statutory authority of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia) then the purchaser must contemporaneously with the execution of this contract procure the proper completion and execution of the guarantee annexed to this contract by each of the directors and any ultimate holding company (as defined in the Corporations Act 2001) of that corporation.

#### 8. Transfer delivery time

If the transfer of land document is not delivered to the vendor's solicitors within the time specified in General Condition 6 the vendor, at its option, will not be obliged to settle under this contract until ten (10) days from the date on which the transfer of land document is delivered to the vendor's solicitors and the purchaser shall be deemed to have made default in payment of the residue of the purchase money and shall, at the option of the vendor, pay interest from the date for settlement until the date which is ten (10) days from the date on which the transfer of land document is delivered to the vendor's solicitors.

#### 9. Settlement time

Settlement must take place no later than 3.00 p.m. on the settlement date failing which settlement will be deemed to take place on the next business day and the purchaser will be deemed to have made a default in payment of the residue of the price unless settlement does not take place in accordance with this special condition as a result of a default by the vendor.

## 10. Condition of Property

- 10.1 The Purchaser agrees that at settlement it will accept the condition of the Property "as is" with no obligation and/or requirement upon the Vendor to remove any goods, chattels and/or materials and rubbish that may be left on the property.
- 10.2 The Vendor does not warrant the suitability of the premises for any purposes including any purposes contemplated by the purchaser.
- 10.3 The Purchaser must make its own enquiries as to the suitability of the Property for any development proposed to be undertaken on the Property.
- 10.4 The Vendor has not made and shall not be construed as having made any representation or warranty that the Property is free of contaminants. Prior to entering into this Contract the Purchaser has made its own enquiries and investigations as to the environmental state of the Property and the Purchaser has relied and relies entirely on the result of its investigations and on its own judgment in entering into this Contract.

## 11. Purchaser's Representations

11.1. The Purchaser represents and warrants to the Vendor that:

- 11.1.1 The Purchaser was not induced to enter into this Contract and has not relied upon any statements, representations or warranties by or on behalf of the Vendor about the fitness or suitability for any purpose of the Premises or about any financial return or income to be derived from the Premises:
- 11.1.2 The Purchaser has obtained independent legal advice on and is satisfied about the Purchaser's obligations and rights under this Contract;
- 11.1.3 The Purchaser is satisfied about the nature of the Premises and the purposes for which the Premises may lawfully be used.

## 12. Settlement place

Settlement must take place at the offices of the vendor's solicitors or at such other place in Melbourne as the vendor's solicitors may direct.

## 13. Exclusion of representations or warranties

The purchaser acknowledges that:

- 13.1. This contract is the sole repository of the agreement between the parties;
- 13.2. There are no terms, conditions, representations or warranties relating to the sale of the property which have been relied upon by the purchaser entering into this contract other than those included in this contract;
- 13.3. The purchaser has not relied on any information or description of the property or any description of any improvements, chattels, fixtures or fittings on the land contained in any brochure, investment report or advertisement relating to it;
- 13.4. The vendor has not made any representation or warranty that the property is suitable for any purposes which the purchaser may have indicated as its intention to pursue or that any permit of any nature has been obtained or is available from any relevant authority and that in entering into this contract, the purchaser has made its own enquiries and relies entirely on its own judgement.

## 14. Subdivision of the Common Property and Consolidation

- 14.1 It is a condition precedent to settlement of the sale of the Property that the Vendor use its best endeavours in obtaining planning approval for the subdivision of the Common Property of the Land Parcel referred to as Common Property in Certificate of Title Volume 11936/436 (the "Common Property"), necessary to give efficacy to the Planning Permit No 49429 dated 23 January 2019 issued by the City of Monash (the "Planning Permit") in which a parcel of the Common Property representing approximately 425 square meters of the Common Property (the "Subdivided Parcel") is to be transferred to the Purchaser allowing for the construction of improvements and infrastructure on the Property designated in the Planning Permit to give effect to the two Lot Boundary Re-Alignment - (between Common Property & Lot 1)
- 14.2 The Vendor will use its best endeavours to register as soon as is practicable a plan of subdivision of the Common Property with the Land Titles Office Victoria.
- 14.3 It is acknowledged by the parties that the Common Property is not owned by the Vendor absolutely in its own right but is under the control of the Owners Corporation responsible for the management of the Common Property.

- 14.4 The Vendor warrants that it has the power to direct the Owners Corporation of the Common Property to subdivide the Common Property and sell and transfer that **Subdivided Parcel** of land to the Purchaser.
- 14.4 At settlement the Vendor shall transfer all legal and equitable right title and interest in the **Subdivided Parcel** to the Purchaser free of any encumbrances.
- 14.5 The Purchaser shall not be liable for the costs preparation and registration of the plan of subdivision of the Common Property.
- 14.6 Special conditions 14.1 to 14.5 shall be in construed for the benefit of the purchaser.
- 14.7 Subject to section 9AC of the Sale of Land Act the Vendor may make such alteration to the Plan of Subdivision of the Common Property and Consolidation as may required or necessary or as is required to accord with good surveying practice and all laws and deliver services to each Lot on PS716735J including the Common Property.

**15 Demolition and further deposit**

- 15.1 As at 90 days from the day of sale the Vendor and upon the Vendor's solicitor receiving as a stakeholder, in trust, the balance of the deposit owing being equivalent to 10 % of the purchase price the Vendor shall grant to the Purchaser a limited licence ("Licence") to enter the property and demolish any improvements on the property as permitted by law or planning permit until the date of settlement ("Licence Period") .
- 15.2 The Purchaser must take out appropriate insurance including workover insurances, to the satisfaction of the Vendor, during the period that it has non-exclusive access to the property under the terms granted to it from the Vendor under the terms of this limited licence agreement and shall indemnify the Vendor against all claims, costs, losses and damages that may arise from act or omission of the Purchaser and or its employees, agents or consultants in carrying those demolition works on the property.
- 15.3 The Purchaser must upon request of the Vendor, provide evidence to Vendor of insurance it has taken in respect of those works it proposes to undertake on the Property during the Licence Period.
- 15.4 The Vendor may, in its absolute discretion, suspend and/or revoke the licence granted to the purchaser pursuant to the terms of this Contract under Special Condition 15, in the event that the purchaser and or its employees, agents or consultants act and/or conducts themselves in a manner that is contrary to the terms of the agreement and/or the intent of the parties in creating this licence.

**16 Variation to general conditions**

- General Conditions 24.4 – 24.6 each inclusive do not apply to this contract.
- General condition 28.5 has been amended from 10 % to 20 % of the purchase price

# General Conditions

Part 2 being Form 2 prescribed by the *Estate Agents (Contracts) Regulations 2008*

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## Title

### 1. ENCUMBRANCES

- 1.1 The purchaser buys the property subject to:
- (a) any encumbrance shown in the section 32 statement other than mortgages or caveats; and
  - (b) any reservations in the crown grant; and
  - (c) any lease referred to in the particulars of sale.
- 1.2 The purchaser indemnifies the vendor against all obligations under any lease that are to be performed by the landlord after settlement.
- 1.3 In this general condition 'section 32 statement' means a statement required to be given by a vendor under section 32 of the Sale of Land Act 1962 in accordance with Division 2 of Part II of that Act.

### 2. VENDOR WARRANTIES

- 2.1 The vendor warrants that these general conditions 1 to 28 are identical to the general conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the Estate Agents (Contracts) Regulations 2008 for the purposes of section 53A of the Estate Agents Act 1980.
- 2.2 The warranties in general conditions 2.3 and 2.4 replace the purchaser's right to make requisitions and inquiries.
- 2.3 The vendor warrants that the vendor:
- (a) has, or by the due date for settlement will have, the right to sell the land; and
  - (b) is under no legal disability; and
  - (c) is in possession of the land, either personally or through a tenant; and
  - (d) has not previously sold or granted any option to purchase, agreed to lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
  - (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
  - (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.
- 2.4 The vendor further warrants that the vendor has no knowledge of any of the following:
- (a) public rights of way over the land;
  - (b) easements over the land;
  - (c) lease or other possessory agreement affecting the land;
  - (d) notice or order affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
  - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 2.5 The warranties in general conditions 2.3 and 2.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement required to be given by the vendor under section 32 of the Sale of Land Act 1962 in accordance with Division 2 of Part II of that Act.
- 2.6 If sections 137B and 137C of the Building Act 1993 apply to this contract, the vendor warrants that:
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
  - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
  - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the *Building Act* 1993 and regulations made under the *Building Act* 1993.
- 2.7 Words and phrases used in general condition 2.6 which are defined in the Building Act 1993 have the same meaning in general condition 2.6.

### 3. IDENTITY OF THE LAND

- 3.1 An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.
- 3.2 The purchaser may not:
- (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
  - (b) require the vendor to amend title or pay any cost of amending title.

#### 4. SERVICES

- 4.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.
- 4.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

#### 5. CONSENTS

The vendor must obtain any necessary consent or licence required for the sale. The contract will be at an end and all money paid must be refunded if any necessary consent or licence is not obtained by settlement.

#### 6. TRANSFER

The transfer of land document must be prepared by the purchaser and delivered to the vendor at least 10 days before settlement. The delivery of the transfer of land document is not acceptance of title. The vendor must prepare any document required for assessment of duty on this transaction relating to matters that are or should be within the knowledge of the vendor and, if requested by the purchaser, must provide a copy of that document at least 3 days before settlement.

#### 7. RELEASE OF SECURITY INTEREST

- 7.1 This general condition applies if any part of the property is subject to a security interest to which the Personal Property Securities Act 2009 (Cth) applies.
- 7.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 7.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.
- 7.3 If the purchaser is given the details of the vendor's date of birth under condition 7.2, the purchaser must
- (a) only use the vendor's date of birth for the purposes specified in condition 7.2; and
  - (b) keep the date of birth of the vendor secure and confidential.
- 7.4 The vendor must ensure that at or before settlement, the purchaser receives –
- (a) a release from the secured party releasing the property from the security interest; or
  - (b) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009* (Cth) setting out that the amount or obligation that is secured is nil at settlement; or
  - (c) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009* (Cth) indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 7.5 Subject to general condition 7.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property –
- (a) that –
    - (i) the purchaser intends to use predominately for personal, domestic or household purposes; and
    - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the *Personal Property Securities Act 2009* (Cth), not more than that prescribed amount; or
  - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.
- 7.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 7.5 if –
- (a) the personal property is of a kind that may be described by a serial number in the Personal Property Securities Register; or
  - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 7.7 A release for the purposes of general condition 7.4(a) must be in writing.
- 7.8 A release for the purposes of general condition 7.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 7.9 If the purchaser receives a release under general condition 7.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 7.10 In addition to ensuring a release is received under general condition 7.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 7.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Property Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.

- 7.12 The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 7.11
- 7.13 If settlement is delayed under general condition 7.12, the purchaser must pay the vendor -
- (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
  - (b) any reasonable costs incurred by the vendor as a result of the delay - as though the purchaser was in default.
- 7.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 7.14 applies despite general condition 7.1.
- 7.15 Words and phrases which are defined in the Personal Property Securities Act 2009 (Cth) have the same meaning in general condition 7 unless the context requires otherwise.

#### 8. BUILDING WARRANTY INSURANCE

The vendor warrants that the vendor will provide at settlement details of any current builder warranty insurance in the vendor's possession relating to the property if requested in writing to do so at least 21 days before settlement.

#### 9. GENERAL LAW LAND

- 9.1 This general condition only applies if any part of the land is not under the operation of the Transfer of Land Act 1958.
- 9.2 The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.
- 9.3 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.
- 9.4 The purchaser is taken to have accepted the vendor's title if:
- (a) 21 days have elapsed since the day of sale; and
  - (b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.
- 9.5 The contract will be at an end if:
- (a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and
  - (b) the objection or requirement is not withdrawn in that time.
- 9.6 If the contract ends in accordance with general condition 9.5, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.
- 9.7 General condition 10.1 should be read, in respect of that part of the land which is not under the operation of the Transfer of Land Act 1958, as if the reference to 'registered proprietor' is a reference to 'owner'.

### Money

#### 10. SETTLEMENT

- 10.1 At settlement:
- (a) the purchaser must pay the balance; and
  - (b) the vendor must:
    - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
    - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.
- 10.2 The vendor's obligations under this general condition continue after settlement.
- 10.3 Settlement must be conducted between the hours of 10.00 a.m. and 4.00 p.m. unless the parties agree otherwise.

#### 11. PAYMENT

- 11.1 The purchaser must pay the deposit:
- (a) to the vendor's licensed estate agent; or
  - (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
  - (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.
- 11.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:
- (a) must not exceed 10% of the price; and
  - (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.

- 11.3 The purchaser must pay all money other than the deposit:
- (a) to the vendor, or the vendor's legal practitioner or conveyancer; or
  - (b) in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.
- 11.4 At settlement, payments may be made or tendered:
- (a) in cash; or
  - (b) by cheque drawn on an authorised deposit-taking institution; or
  - (c) if the parties agree, by electronically transferring the payment in the form of cleared funds.
- 11.5 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate in relation to which an authority under subsection 9(3) of the Banking Act 1959 (Cth) is in force.
- 11.6 At settlement, the purchaser must pay the fees on up to three cheques drawn on an authorised deposit-taking institution. If the vendor requests that any additional cheques be drawn on an authorised deposit-taking institution, the vendor must reimburse the purchaser for the fees incurred.

## 12. STAKEHOLDING

- 12.1 The deposit must be released to the vendor if:
- (a) the vendor provides particulars, to the satisfaction of the purchaser, that either -
    - (i) there are no debts secured against the property; or
    - (ii) if there are any debts, the total amount of those debts does not exceed 80% of the sale price; and
  - (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and
  - (c) all conditions of section 27 of the *Sale of Land Act* 1962 have been satisfied.
- 12.2 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.
- 12.3 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.

## 13. GST

- 13.1 The purchaser does not have to pay the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price unless the particulars of sale specify that the price is 'plus GST'. However the purchaser must pay to the vendor any GST payable by the vendor:
- (a) solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or
  - (b) if the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on and the supply (or a part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
  - (c) if the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.
- 13.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if the particulars of sale specify that the price is 'plus GST'.
- 13.3 If the purchaser is liable to pay GST, the purchaser is not required to make payment until provided with a tax invoice, unless the margin scheme applies.
- 13.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:
- (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
  - (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.
- 13.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':
- (a) the parties agree that this contract is for the supply of a going concern; and
  - (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
  - (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.
- 13.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.
- 13.7 This general condition will not merge on either settlement or registration.
- 13.8 In this general condition:
- (a) 'GST Act' means *A New Tax System (Goods and Services Tax) Act* 1999 (Cth); and
  - (b) 'GST' includes penalties and interest.



#### 14. LOAN

- 14.1 If the particulars of sale specify that this contract is subject to a loan being approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.
- 14.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:
- (a) immediately applied for the loan; and
  - (b) did everything reasonably required to obtain approval of the loan; and
  - (c) serves written notice ending the contract on the vendor within 2 clear business days after the approval date or any later date allowed by the vendor; and
  - (d) is not in default under any other condition of this contract when the notice is given.
- 14.3 All money must be immediately refunded to the purchaser if the contract is ended.

#### 15. ADJUSTMENTS

- 15.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustment paid and received as appropriate.
- 15.2 The periodic outgoings and rent and other income must be apportioned on the following basis:
- (a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
  - (b) the land is treated as the only land of which the vendor is owner (as defined in the *Land Tax Act 2005*); and
  - (c) the vendor is taken to own the land as a resident Australian beneficial owner; and
  - (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.

### Transactional

#### 16. TIME

- 16.1 Time is of the essence of this contract.
- 16.2 Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday or bank holiday.

#### 17. SERVICE

- 17.1 Any document sent by –
- (a) post is taken to have been served on the next business day after posting, unless proved otherwise;
  - (b) email is taken to have been served at the time of receipt within the meaning of section 13A of the *Electronic Transactions (Victoria) Act 2000*.
- 17.2 Any demand, notice, or document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party. It is sufficiently served if served on the party or on the legal practitioner or conveyancer:
- (a) personally; or
  - (b) by pre-paid post; or
  - (c) in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner; or
  - (d) by email.
- 17.3 This general condition applies to the service of any demand, notice or document by or on any party, whether the expression 'give' or 'serve' or any other expression is used.

#### 18. NOMINEE

The purchaser may nominate a substitute or additional transferee, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

#### 19. LIABILITY OF SIGNATORY

Any signatory for a proprietary limited company purchaser is personally liable for the due performance of the purchaser's obligations as if the signatory were the purchaser in the case of a default by a proprietary limited company purchaser.

#### 20. GUARANTEE

The vendor may require one or more directors of the purchaser to guarantee the purchaser's performance of this contract if the purchaser is a proprietary limited company.

#### 21. NOTICES

The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale that does not relate to periodic outgoings. The purchaser may enter the property to comply with that responsibility where action is required before settlement.

## 22. INSPECTION

The purchaser and/or another person authorised by the purchaser may inspect the property at any reasonable time during the 7 days preceding and including the settlement day.

## 23. TERMS CONTRACT

23.1 If this is a 'terms contract' as defined in the Sale of Land Act 1962:

- (a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the *Sale of Land Act* 1962; and
- (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.

23.2 While any money remains owing each of the following applies:

- (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
- (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
- (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
- (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
- (e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;
- (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;
- (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
- (h) the purchaser must observe all obligations that affect owners or occupiers of land;
- (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

## 24. LOSS OR DAMAGE BEFORE SETTLEMENT

- 24.1 The vendor carries the risk of loss or damage to the property until settlement.
- 24.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.
- 24.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 24.2, but may claim compensation from the vendor after settlement.
- 24.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 24.2 at settlement.
- 24.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.
- 24.6 The stakeholder must pay the amounts referred to in general condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

## 25. BREACH

A party who breaches this contract must pay to the other party on demand:

- (a) compensation for any reasonably foreseeable loss to the other party resulting from the breach; and
- (b) any interest due under this contract as a result of the breach.

## Default

## 26. INTEREST

Interest at a rate of 2% per annum plus the rate for the time being fixed by section 2 of the *Penalty Interest Rates Act* 1983 is payable on any money owing under the contract during the period of default, without affecting any other rights of the offended party.

## 27. DEFAULT NOTICE

- 27.1 A party is not entitled to exercise any rights arising from the other party's default, other than the right to receive interest and the right to sue for money owing, until the other party is given and fails to comply with a written default notice.
- 27.2 The default notice must:
  - (a) specify the particulars of the default; and
  - (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of

the notice being given-

- (i) the default is remedied; and
- (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

## 28. DEFAULT NOT REMEDIED

- 28.1 All unpaid money under the contract becomes immediately payable to the vendor if the default has been made by the purchaser and is not remedied and the costs and interest are not paid.
- 28.2 The contract immediately ends if:
- (a) the default notice also states that unless the default is remedied and the reasonable costs and interest are paid, the contract will be ended in accordance with this general condition; and
  - (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.
- 28.3 If the contract ends by a default notice given by the purchaser:
- (a) the purchaser must be repaid any money paid under the contract and be paid any interest and reasonable costs payable under the contract; and
  - (b) all those amounts are a charge on the land until payment; and
  - (c) the purchaser may also recover any loss otherwise recoverable.
- 28.4 If the contract ends by a default notice given by the vendor:
- (a) the deposit up to 20% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
  - (b) the vendor is entitled to possession of the property; and
  - (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
    - (i) retain the property and sue for damages for breach of contract; or
    - (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
  - (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
  - (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.
- 28.5 The ending of the contract does not affect the rights of the offended party as a consequence of the default.

## GUARANTEE & INDEMNITY

THIS GUARANTEE AND INDEMNITY is given on the date set out in Item 1 of the schedule to it ("the schedule") by the guarantors named in Item 2 of the schedule to the vendor named in Item 3 of the schedule.

### 1. DEFINITIONS

In this guarantee and indemnity unless the context or subject matter or circumstances indicate otherwise:

- 1.1 "guarantors" means and includes the guarantors their legal personal representatives, permitted transferees, assignees, and successors in title;
- 1.2 "contract" means the contract of sale to which this guarantee and indemnity is annexed;
- 1.3 "obligations of the purchaser" means the obligations of the purchaser under the contract;
- 1.4 "purchaser" means the purchaser named in the contract and includes the purchaser its legal personal representatives, permitted transferees, assignees, and successors in title;
- 1.5 "vendor" means the vendor named in the contract and includes the vendor its legal personal representatives, permitted transferees, assignees, and successors in title;

### 2. INTERPRETATION

In the interpretation of this guarantee and indemnity unless the context otherwise requires:

- 2.1 Words (including defined expressions) importing the singular shall be deemed to include the plural and vice versa;
- 2.2 Words (including defined expressions) importing any gender shall be deemed to include all other genders;
- 2.3 Words (including defined expressions) denoting persons include corporations and vice versa;
- 2.4 Headings are included for convenience only and shall not affect the interpretation of this guarantee and indemnity;
- 2.5 References to a statute, statutory provision or subordinate instrument or any provision thereof shall include any code, statute, statutory provision or subordinate instrument, whether of the same or any other parliament or legislative authority having jurisdiction, which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and subordinate legislation or subordinate instrument made thereunder;
- 2.6 Reference to clauses are references to clauses of this guarantee and indemnity;
- 2.7 References to a schedule are references to a schedule of this Guarantee and Indemnity;
- 2.8 A covenant on the part of two or more persons shall bind them and each of them jointly and severally.

### 3. GUARANTEE AND INDEMNITY

- 3.1 In consideration of the vendor entering into the contract at the request of the guarantors, the guarantors irrevocably and unconditionally:
  - 3.1.1 Guarantee to the vendor the due and punctual observance and performance of the obligations of the purchaser;
  - 3.1.2 As a separate and independent principal obligation, indemnify and hold the vendor harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the vendor and all actions, proceedings, claims or demands made against the vendor as a result of default by the purchaser in the performance of the obligations of the purchaser or from any such obligations being unenforceable.
- 3.2 The liability of each of the guarantors under this guarantee and indemnity shall not be released or discharged, in whole or in part, by:

- 3.2.1 Any time, concession, waiver or other indulgence being given by the vendor to the purchaser or any surety for or in relation to the observance of performance of the obligations of the purchaser;
  - 3.2.2 Any variation being made to the terms of the contract or its subsequent termination, otherwise than by the purchaser by due exercise of its rights under the contract;
  - 3.2.3 Any other security or contractual obligations to secure the performance of the obligations of the purchaser being or not being taken, held, renewed, varied or enforced by the vendor or that security being void, defective, informal or unenforceable;
  - 3.2.4 All or any of the obligations of the purchaser being discharged otherwise than by their due performance;
  - 3.2.5 The liquidation, bankruptcy or insolvency of the purchaser or any of the guarantors;
  - 3.2.6 The sale or other disposal of some or all of the shares in the purchaser which are owned by any of the guarantors;
  - 3.2.7 By anything done or omitted to be done by the vendor or by anything else which, under the law relating to sureties, might, but for this clause operate to wholly or partially release or discharge any of the guarantors from their liability;
  - 3.2.8 The failure by any guarantor to execute this guarantee and indemnity.
- 3.3 This guarantee and indemnity is a continuing guarantee and indemnity and shall remain in force until the whole of the obligations of the purchaser have been duly performed and satisfied in full.
- 3.4 The vendor may enforce this guarantee and indemnity without first making any demand or taking any action or proceedings to enforce its rights or remedies against the purchaser.

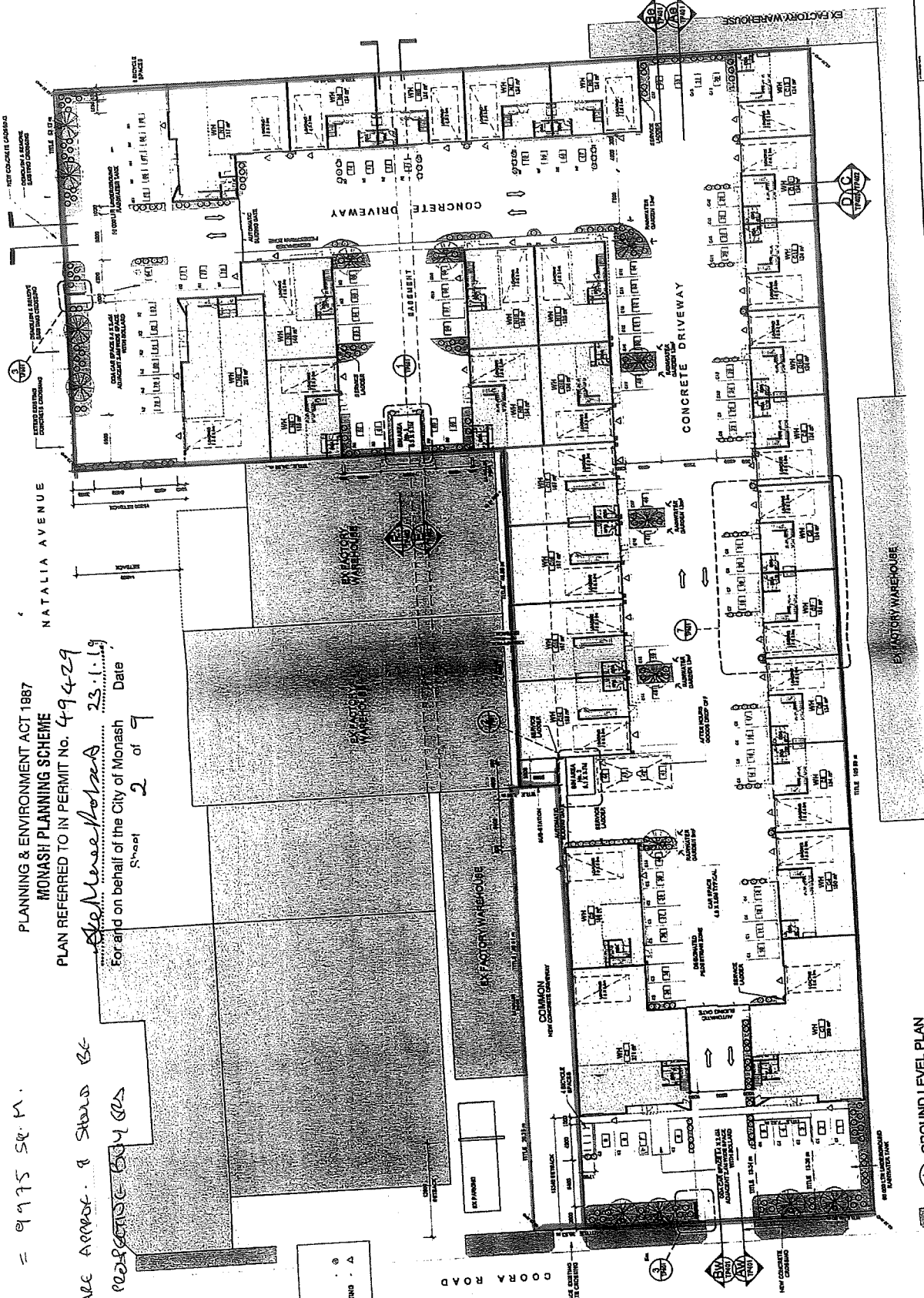


TOTAL AREA = 10400 SQ M.  
 COMMON SPACE = 425 SQ M.  
 LOT 1 = 9775 SQ M.

THE AREAS ARE APPROX. & SHOULD BE CHECKED BY PROFESSIONAL BODY ORS

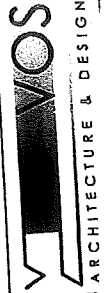
PLANNING & ENVIRONMENT ACT 1987  
 MONASH PLANNING SCHEME

PLAN REFERRED TO IN PERMIT NO. 49429  
 Date 23.1.19  
 For and on behalf of the City of Monash  
 Sheet 2 of 9



1 GROUND LEVEL PLAN  
 SCALE 1:200

PRIME COMMERCIAL AND INDUSTRIAL DEVELOPMENTS PTY LTD  
 WAREHOUSE DEVELOPMENT



GROUND LEVEL PLAN

John Vee, Director  
 1055 Botolph Claydon Street  
 www.vmosarchitecture.com.au  
 Architect Reg No. 16337  
 BULLIOCH, VIC 3103  
 TP201




# Vendor Statement

The vendor makes this statement in respect of the land in accordance with section 32 of the *Sale of Land Act 1962*.

This statement must be signed by the vendor and given to the purchaser before the purchaser signs the contract. The vendor may sign by electronic signature.

The purchaser acknowledges being given this statement signed by the vendor with the attached documents before the purchaser signed any contract.

<b>Land</b>	8-12 Natalia Avenue, Oakleigh 3166 including part of Common Property on PS716735J	
<b>Vendor's name</b>	Placelea Pty Ltd ACN 006 289 621	<b>Date</b> 15/06/19.
<b>Vendor's signature</b>	Steve Katsimadakos Solicitor for and on behalf of the Vendor pursuant to POA dated 15 June 2019, see attached	
<b>Purchaser's name</b>	VINCE TESORIERO	<b>Date</b> 16/12/20
<b>Purchaser's signature</b>		
<b>Purchaser's name</b>		<b>Date</b> / /
<b>Purchaser's signature</b>		

**1. FINANCIAL MATTERS**

**1.1 Particulars of any Rates, Taxes, Charges or Other Similar Outgoings (and any interest on them)**

(a) Are contained in the attached certificate/s.

**1.2 Particulars of any Charge** (whether registered or not) imposed by or under any Act to secure an amount due under that Act, including the amount owing under the charge

	To	
--	----	--

Other particulars (including dates and times of payments):
--

**1.3 Terms Contract**

This section 1.3 only applies if this vendor statement is in respect of a terms contract where the purchaser is obliged to make 2 or more payments (other than a deposit or final payment) to the vendor after the execution of the contract and before the purchaser is entitled to a conveyance or transfer of the land.

Not Applicable.

**1.4 Sale Subject to Mortgage**

This section 1.4 only applies if this vendor statement is in respect of a contract which provides that any mortgage (whether registered or unregistered), is NOT to be discharged before the purchaser becomes entitled to possession or receipts of rents and profits.

Not Applicable.

**2. INSURANCE**

**2.1 Damage and Destruction**

This section 2.1 only applies if this vendor statement is in respect of a contract which does NOT provide for the land to remain at the risk of the vendor until the purchaser becomes entitled to possession or receipt of rents and profits.

Not Applicable.

**2.2 Owner Builder**

This section 2.2 only applies where there is a residence on the land that was constructed by an owner-builder within the preceding 6 years and section 137B of the Building Act 1993 applies to the residence.

Not Applicable.

**3. LAND USE**

**3.1 Easements, Covenants or Other Similar Restrictions**

(a) A description of any easement, covenant or other similar restriction affecting the land (whether registered or unregistered): -

Is in the attached copies of title documents.

(b) Particulars of any existing failure to comply with that easement, covenant or other similar restriction are:

To the best of the vendors knowledge there is no existing failure to comply with the terms of any easement, covenant or other similar restriction.
--

**3.2 Road Access**

There is NO access to the property by road if the square box is marked with an 'X'

**3.3 Designated Bushfire Prone Area**

The land is in a designated bushfire prone area within the meaning of regulations made under the *Building Act* 1993 if the square box is marked with an 'X'

3.4 **Planning Scheme**

Attached is a certificate with the required specified information.

4. **NOTICES**

4.1 **Notice, Order, Declaration, Report or Recommendation**

Particulars of any notice, order, declaration, report or recommendation of a public authority or government department or approved proposal directly and currently affecting the land, being a notice, order, declaration, report, recommendation or approved proposal of which the vendor might reasonably be expected to have knowledge:

Not Applicable.

4.2 **Agricultural Chemicals**

There are NO notices, property management plans, reports or orders in respect of the land issued by a government department or public authority in relation to livestock disease or contamination by agricultural chemicals affecting the ongoing use of the land for agricultural purposes. However, if this is not the case, the details of any such notices, property management plans, reports or orders, are as follows:

Not applicable

4.3 **Compulsory Acquisition**

The particulars of any notices of intention to acquire that have been served under section 6 of the *Land Acquisition and Compensation Act 1986* are as follows:

Not applicable

5. **BUILDING PERMITS**

Particulars of any building permit issued under the *Building Act 1993* in the preceding 7 years (required only where there is a residence on the land):

Are contained in the attached certificate.

6. **OWNERS CORPORATION**

This section 6 only applies if the land is affected by an owners corporation within the meaning of the *Owners Corporations Act 2006*.

Not Applicable.

7. **GROWTH AREAS INFRASTRUCTURE CONTRIBUTION (“GAIC”)**

Not applicable.

8. **SERVICES**

The services which are marked with an 'X' in the accompanying square box are NOT connected to the land:

Electricity supply <input type="checkbox"/>	Gas supply <input type="checkbox"/>	Water supply <input type="checkbox"/>	Sewerage <input type="checkbox"/>	Telephone services <input checked="" type="checkbox"/>
---	-------------------------------------	---------------------------------------	-----------------------------------	--

9. **TITLE**

Attached are copies of the following documents:

9.1 (a) **Registered Title**

A Register Search Statement and the document, or part of a document, referred to as the 'diagram location' in that statement which identifies the land and its location.

## 10. SUBDIVISION

### 10.1 Unregistered Subdivision

This section 10.1 only applies if the land is subject to a subdivision which is not registered.

- (a) Attached is a copy of the latest version of the plan if the plan of subdivision has not yet been certified.

### 10.2 Staged Subdivision

This section 10.2 only applies if the land is part of a staged subdivision within the meaning of section 37 of the *Subdivision Act 1988*.

Not Applicable.

### 10.3 Further Plan of Subdivision – to be provided in relation to the Common Property

## 11. This section 10.3 only applies if the land is subject to a subdivision in respect of which a further plan within the meaning of the *Subdivision Act 1988* is proposed. **DISCLOSURE OF ENERGY INFORMATION**

*(Disclosure of this information is not required under section 32 of the Sale of Land Act 1962 but may be included in this vendor statement for convenience.)*

Details of any energy efficiency information required to be disclosed regarding a disclosure affected building or disclosure area affected area of a building as defined by the *Building Energy Efficiency Disclosure Act 2010* (Cth)

- (a) to be a building or part of a building used or capable of being used as an office for administrative, clerical, professional or similar based activities including any support facilities; and
- (b) which has a net lettable area of at least 2000m<sup>2</sup>; (but does not include a building under a strata title system or if an occupancy permit was issued less than 2 years before the relevant date);

Not Applicable.

## 12. DUE DILIGENCE CHECKLIST

*(The Sale of Land Act 1962 provides that the vendor or the vendor's licensed estate agent must make a prescribed due diligence checklist available to purchasers before offering land for sale that is vacant residential land or land on which there is a residence. The due diligence checklist is NOT required to be provided with, or attached to, this vendor statement but the checklist may be attached as a matter of convenience.)*

Is attached.

## 13. ATTACHMENTS

*(Any certificates, documents and other attachments may be annexed to this section 13)*

*(Additional information may be added to this section 13 where there is insufficient space in any of the earlier sections)*

*(Attached is an "Additional Vendor Statement" if section 1.3 (Terms Contract) or section 1.4 (Sale Subject to Mortgage) applies)*

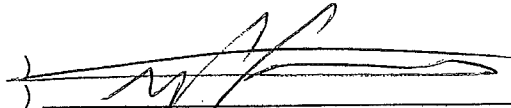
--


## GENERAL POWER OF ATTORNEY

THIS GENERAL POWER OF ATTORNEY is made on the 15<sup>th</sup> day of June 2019 by **CON PAPASOTIROU** of 6 Redpath Close, Oakleigh South, Victoria 3167 in the state of Victoria Under Section 107(1) of the Instruments Act 1958.

1. I APPOINT my Solicitor **STEVE KATSIMADAKOS** Principal and Partner of G&M Lawyers of Level 1, 228 Smith Street, Collingwood in the state of Victoria to my attorney.
2. Pursuant to the authority of the constitution of the company and/or a resolution of the directors of the company I AUTHORISE my attorney to do on my behalf and exercise my rights and responsibilities in my stead in my capacity as a Director of **PLACELEA PTY LTD (ACN: 006 289 621)** during my absence from 16 June 2019 to 30 September 2019 **SOLELY FOR THE PURPOSE** of matters pertaining to the sale and subdivision of anything and directly and indirectly incidental thereto of the property at 8-12 Natalia Avenue Oakleigh South (including any common property) in the State of Victoria.
3. My attorney can only lawfully act upon my instructions provided that those instructions have been first provided to him to act in writing whether it be electronic transmission or facsimile.

**SIGNED SEALED AND DELIVERED**  
by **CON PAPASOTIROU**

  
\_\_\_\_\_  
Signature of **CON PAPASOTIROU**

  
\_\_\_\_\_  
Specimen signature of **STEVE KATSIMADAKOS**

## Due diligence checklist

### What you need to know before buying a residential property

Before you buy a home, you should be aware of a range of issues that may affect that property and impose restrictions or obligations on you, if you buy it. This checklist aims to help you identify whether any of these issues will affect you.

The questions are a starting point only and you may need to seek professional advice to answer some of them. You can find links to organisations and web pages that can help you learn more, by visiting the [Due diligence checklist page on the Consumer Affairs Victoria website](#) ([consumer.vic.gov.au/duediligencechecklist](http://consumer.vic.gov.au/duediligencechecklist)).

### Urban living

#### Moving to the inner city?

High density areas are attractive for their entertainment and service areas, but these activities create increased traffic as well as noise and odours from businesses and people. Familiarising yourself with the character of the area will give you a balanced understanding of what to expect.

#### Is the property subject to an owners corporation?

If the property is part of a subdivision with common property such as driveways or grounds, it may be subject to an owners corporation. You may be required to pay fees and follow rules that restrict what you can do on your property, such as a ban on pet ownership.

### Growth areas

#### Are you moving to a growth area?

You should investigate whether you will be required to pay a growth areas infrastructure contribution.

### Flood and fire risk

#### Does this property experience flooding or bushfire?

Properties are sometimes subject to the risk of fire and flooding due to their location. You should properly investigate these risks and consider their implications for land management, buildings and insurance premiums.

### Rural properties

#### Moving to the country?

If you are looking at property in a rural zone, consider:

- Is the surrounding land use compatible with your lifestyle expectations? Farming can create noise or odour that may be at odds with your expectations of a rural lifestyle.
- Are you considering removing native vegetation? There are regulations which affect your ability to remove native vegetation on private property.
- Do you understand your obligations to manage weeds and pest animals?

#### Can you build new dwellings?

Does the property adjoin crown land, have a water frontage, contain a disused government road, or are there any crown licences associated with the land?

#### Is there any earth resource activity such as mining in the area?

You may wish to find out more about exploration, mining and quarrying activity on or near the property and consider the issue of petroleum, geothermal and greenhouse gas sequestration permits, leases and licences, extractive industry authorisations and mineral licences.

### Soil and groundwater contamination

#### Has previous land use affected the soil or groundwater?

You should consider whether past activities, including the use of adjacent land, may have caused contamination at the site and whether this may prevent you from doing certain things to or on the land in the future.

(04/10/2016)

## **Land boundaries**

### **Do you know the exact boundary of the property?**

You should compare the measurements shown on the title document with actual fences and buildings on the property, to make sure the boundaries match. If you have concerns about this, you can speak to your lawyer or conveyancer, or commission a site survey to establish property boundaries.

## **Planning controls**

### **Can you change how the property is used, or the buildings on it?**

All land is subject to a planning scheme, run by the local council. How the property is zoned and any overlays that may apply, will determine how the land can be used. This may restrict such things as whether you can build on vacant land or how you can alter or develop the land and its buildings over time.

The local council can give you advice about the planning scheme, as well as details of any other restrictions that may apply, such as design guidelines or bushfire safety design. There may also be restrictions – known as encumbrances – on the property's title, which prevent you from developing the property. You can find out about encumbrances by looking at the section 32 statement.

### **Are there any proposed or granted planning permits?**

The local council can advise you if there are any proposed or issued planning permits for any properties close by. Significant developments in your area may change the local 'character' (predominant style of the area) and may increase noise or traffic near the property.

## **Safety**

### **Is the building safe to live in?**

Building laws are in place to ensure building safety. Professional building inspections can help you assess the property for electrical safety, possible illegal building work, adequate pool or spa fencing and the presence of asbestos, termites, or other potential hazards.

## **Building permits**

### **Have any buildings or retaining walls on the property been altered, or do you plan to alter them?**

There are laws and regulations about how buildings and retaining walls are constructed, which you may wish to investigate to ensure any completed or proposed building work is approved. The local council may be able to give you information about any building permits issued for recent building works done to the property, and what you must do to plan new work. You can also commission a private building surveyor's assessment.

### **Are any recent building or renovation works covered by insurance?**

Ask the vendor if there is any owner-builder insurance or builder's warranty to cover defects in the work done to the property.

## **Utilities and essential services**

### **Does the property have working connections for water, sewerage, electricity, gas, telephone and internet?**

Unconnected services may not be available, or may incur a fee to connect. You may also need to choose from a range of suppliers for these services. This may be particularly important in rural areas where some services are not available.

## **Buyers' rights**

### **Do you know your rights when buying a property?**

The contract of sale and section 32 statement contain important information about the property, so you should request to see these and read them thoroughly. Many people engage a lawyer or conveyancer to help them understand the contracts and ensure the sale goes through correctly. If you intend to hire a professional, you should consider speaking to them before you commit to the sale. There are also important rules about the way private sales and auctions are conducted. These may include a cooling-off period and specific rights associated with 'off the plan' sales. The important thing to remember is that, as the buyer, you have rights.

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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 11936 FOLIO 432

Security no : 124076595285J  
Produced 18/03/2019 10:49 AM

LAND DESCRIPTION

Lot 1 on Plan of Subdivision 716735J.  
PARENT TITLE Volume 10003 Folio 304  
Created by instrument PS716735J 01/12/2017

REGISTERED PROPRIETOR

Estate Fee Simple  
Sole Proprietor  
PLACELEA PTY LTD of 82 CARLISLE CRESCENT OAKLEIGH VIC 3166  
PS716735J 01/12/2017

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AK956821R 12/03/2014  
NATIONAL AUSTRALIA BANK LTD

COVENANT as to part 1314661

COVENANT as to part 1366753

COVENANT as to part 1397953

COVENANT as to part 1450575

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE PS716735J FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 8-12 NATALIA AVENUE OAKLEIGH SOUTH VIC 3167

ADMINISTRATIVE NOTICES

NIL



eCT Control 16089P NATIONAL AUSTRALIA BANK LIMITED  
Effective from 01/12/2017

OWNERS CORPORATIONS

The land in this folio is affected by  
OWNERS CORPORATION 1 PLAN NO. PS716735J

DOCUMENT END

The information supplied by G&M Lawyers has been obtained from GlobalX by agreement between them. The information supplied has been obtained by GlobalX who is licensed by the State to provide this information via LANDATA® System

<b>PLAN OF SUBDIVISION</b>		LV USE ONLY EDITION 1	PS 716735 J	
<p style="text-align: center;">LOCATION OF LAND</p> PARISH: MORDIALLOC TOWNSHIP: --- SECTION: 2 CROWN ALLOTMENT: 1 (PART) CROWN PORTION: ---  TITLE REFERENCE: Vol. 10003 Fol. 304 LAST PLAN REFERENCE: LOT 1 LP 221672 F POSTAL ADDRESS: 12, 12A & 12B NATALIA AVENUE (at time of subdivision) OAKLEIGH SOUTH, 3167 MGA COORDINATES: E 333550 ZONE: 55 (of approx centre of land in plan) N 5801750 GDA 94		Council Name: Monash City Council  Council Reference Number: TPS/11746 Planning Permit Reference: TPA/46925 SPEAR Reference Number: S096126H  Certification This plan is certified under section 6 of the Subdivision Act 1988  Public Open Space A requirement for public open space under section 18 of the Subdivision Act 1988 has not been made  Digitally signed by: Fiona Johnstone for Monash City Council on 05/10/2017  Statement Of Compliance issued: 12/10/2017		
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON	This is a Spear Plan Building Boundaries are defined by thick continuous lines. Location of Boundaries defined by Buildings Median: Denoted Thus  Exterior Face: All Other Boundaries		
Nil	Nil			
NOTATIONS				
DEPTH LIMITATION: DOES NOT APPLY  Survey: This plan is based on survey.  This survey has been connected to permanent marks no(s) 251 In Proclaimed Survey Area No. ---  STAGING This is not a staged subdivision. Planning Permit No.				
EASEMENT INFORMATION				
LEGEND: A - Appurtenant Easement      E - Encumbering Easement      R - Encumbering Easement (Road)				
Easements and rights implied by Section 12(2) of the Subdivision Act 1988 apply to the whole of the land in this plan				
Easement Reference	Purpose	Width (metres)	Origin	Land Benefited/In Favour Of
E-1	DRAINAGE & SEWERAGE	1.83	LP 10114	ALL LOTS ON LP 10114
 NOBELIUS LAND SURVEYORS P.O. BOX 461 PAKENHAM 3810 Ph 03 5941 4112 Fax 03 5941 7359 mail@nobelius.com.au		Digitally signed by: Timothy Deane Walker (Nobelius Land Surveyors Pty Ltd), Surveyor's Plan Version (B), 10/07/2017, SPEAR Ref: S096126H		Sheet 1 of 2 Sheets ORIGINAL SHEET SIZE A3 PLAN REGISTERED TIME: 2:01PM DATE: 01/12/17  Ethan KAO Assistant Registrar of Titles

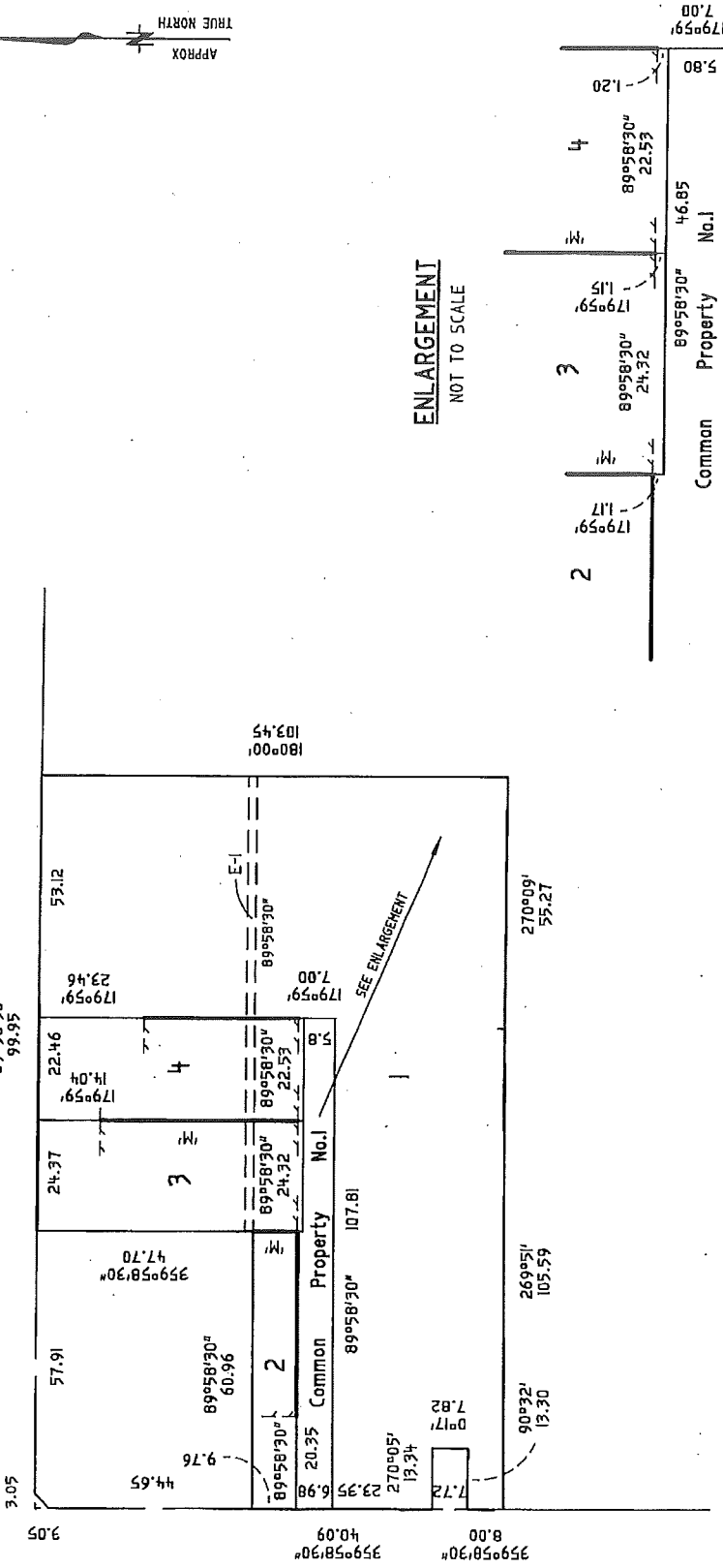
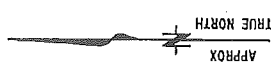
Amended by: Timothy Deane Walker, 30/11/2017.

PS 716735 J

NATALIA AVENUE

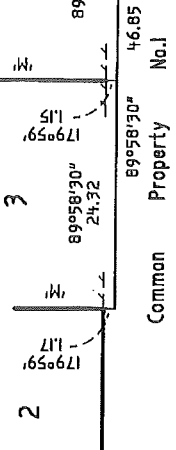
ROAD

COORA



**ENLARGEMENT**  
NOT TO SCALE

SEE ENLARGEMENT



**NOBELIUS LAND SURVEYORS**  
 P.O. BOX 461  
 PAKENHAM 3810  
 Ph 03 5941 4112  
 Fax 03 5941 7359  
 robenobelius.com.au

SCALE  
 10 0 10 20 30 40  
 LENGTHS ARE IN METRES

ORIGINAL SCALE 1 : 1000

Sheet 2  
 ORIGINAL SHEET SIZE A3

Digitally signed by: Timothy Deane Walker (Nobellius Land Surveyors Pty Ltd),  
 Menzies City Council,  
 05/10/2017,  
 SPEAR Ref: S098126H

Digitally signed by: Timothy Deane Walker (Nobellius Land Surveyors Pty Ltd),  
 Menzies City Council,  
 05/10/2017,  
 SPEAR Ref: S098126H

Amended by: Timothy Deane Walker, 30/11/2017.



# Department of Environment, Land, Water & Planning

## Owners Corporation Search Report

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Produced: 18/03/2019 11:10:54 AM

**OWNERS CORPORATION 1**  
**PLAN NO. PS716735J**

The land in PS716735J is affected by 1 Owners Corporation(s)

**Land Affected by Owners Corporation:**  
Common Property 1, Lots 1 - 4.

**Limitations on Owners Corporation:**  
Unlimited

**Postal Address for Services of Notices:**  
82 CARLISLE CRESCENT OAKLEIGH VIC 3166  
  
OC037337F 01/12/2017

**Owners Corporation Manager:**  
NIL

**Rules:**  
Model Rules apply unless a matter is provided for in Owners Corporation Rules. See Section 139(3) Owners Corporation Act 2006

**Owners Corporation Rules:**  
NIL

**Additional Owners Corporation Information:**  
OC037337F 01/12/2017

**Notations:**  
NIL

**Entitlement and Liability:**  
NOTE – Folio References are only provided in a Premium Report.

Land Parcel	Entitlement	Liability
Common Property 1	0	0
Lot 1	25	25
Lot 2	25	25
Lot 3	25	25
Lot 4	25	25
<b>Total</b>	<b>100.00</b>	<b>100.00</b>

From 31 December 2007 every Body Corporate is deemed to be an Owners Corporation. Any reference to a Body Corporate in any Plan,



# Department of Environment, Land, Water & Planning

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## Owners Corporation Search Report

Produced: 18/03/2019 11:10:54 AM

**OWNERS CORPORATION 1**  
**PLAN NO. PS716735J**

Instrument or Folio is to be read as a reference to an Owners Corporation.

Statement End.

<p>274 73</p>	<p>2092831</p>	<p>MULLETT &amp; LANGFORD  <i>John A. H. Bull</i></p>
<p>Stamp: FREEHOLD          Stamp: 4-DEC-1928          Stamp: 6.2.29          Stamp: 23/1/29          Stamp: 30.1.29          Stamp: 6.2.29          Stamp: 6.2.29          Stamp: 6.2.29</p>	<p>Stamp: THE GOVERNMENT OF VICTORIA          Stamp: CHIEF CLERK          Stamp: 13 JAN 1929          Stamp: TRANSFER OF LAND</p>	<p>VICTORIA. 1397953</p> <p>I, <u>GEORGE PORTER OATO</u> formerly of Neerim Road, Murrumbidgee but now of "Tosari" Junction Road, Baulkham Hills, Estate Agent being registered as the proprietor of an estate in fee simple in the land hereinafter described subject to the encumbrances notified hereunder in consideration of the sum of Fifty pounds paid to me by <u>HORACE WILLIAM COOK</u> Joiner and <u>HILDA MAY COOK</u> Clerk both of Garinish Road, Clayton <u>DO HEREBY TRANSFER</u> to the said Horace William Cook and Hilda May Cook as tenants in common in equal shares All my estate and interest in <u>ALL THAT</u> piece of land being lot thirteen on Plan of Subdivision Number 10114 lodged in the Office of Titles being part of Crown Allotment one, Section two, Parish of Mordialloc County of Bourke and being part of the land more particularly described in Certificate of Title entered in the Register Book Volume 3668 Folio 737491 together with all registered and appurtenant easements <u>AND</u> the said Horace William Cook and the said Hilda May Cook do hereby for themselves and each of them, their and each of their respective heirs executors administrators and transferees <u>COVENANT</u> with the said George Porter Oato his heirs executors administrators and transferees registered proprietor or proprietors for the time being of the untransferred land comprised in the said Certificate of Title that the said Horace William Cook and the said Hilda May Cook their and each of their respective heirs executors administrators and transferees will not remove from the said land hereby transferred any sand gravel or clay except for the purpose of building thereon</p> <p><u>DATED</u> the <u>Sixth</u> day of <u>November</u> One thousand nine hundred and twenty-eight.</p> <p><u>SIGNED</u> by the said <u>GEORGE PORTER OATO</u>          in New South Wales in the presence of )  <i>George Porter Oato</i>  <i>John A. H. Bull</i></p> <p>Stamp: IMPACHED</p>

SIGNED by the said HORACE WINSTAN  
COOK in Victoria in the presence of

*H. W. Cook*

*[Signature]*

SIGNED by the said HILDA MAY COOK  
in Victoria in the presence of

*H. M. Cook*

*[Signature]*

ENCUMBRANCES REFERRED TO

Special Railway Condition contained in Crown Grant to Henry  
De Carle and William Jones.



TRANSFER OF LAND

- to -


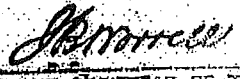
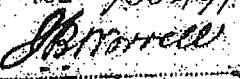
G. P. OATTO ESQ.

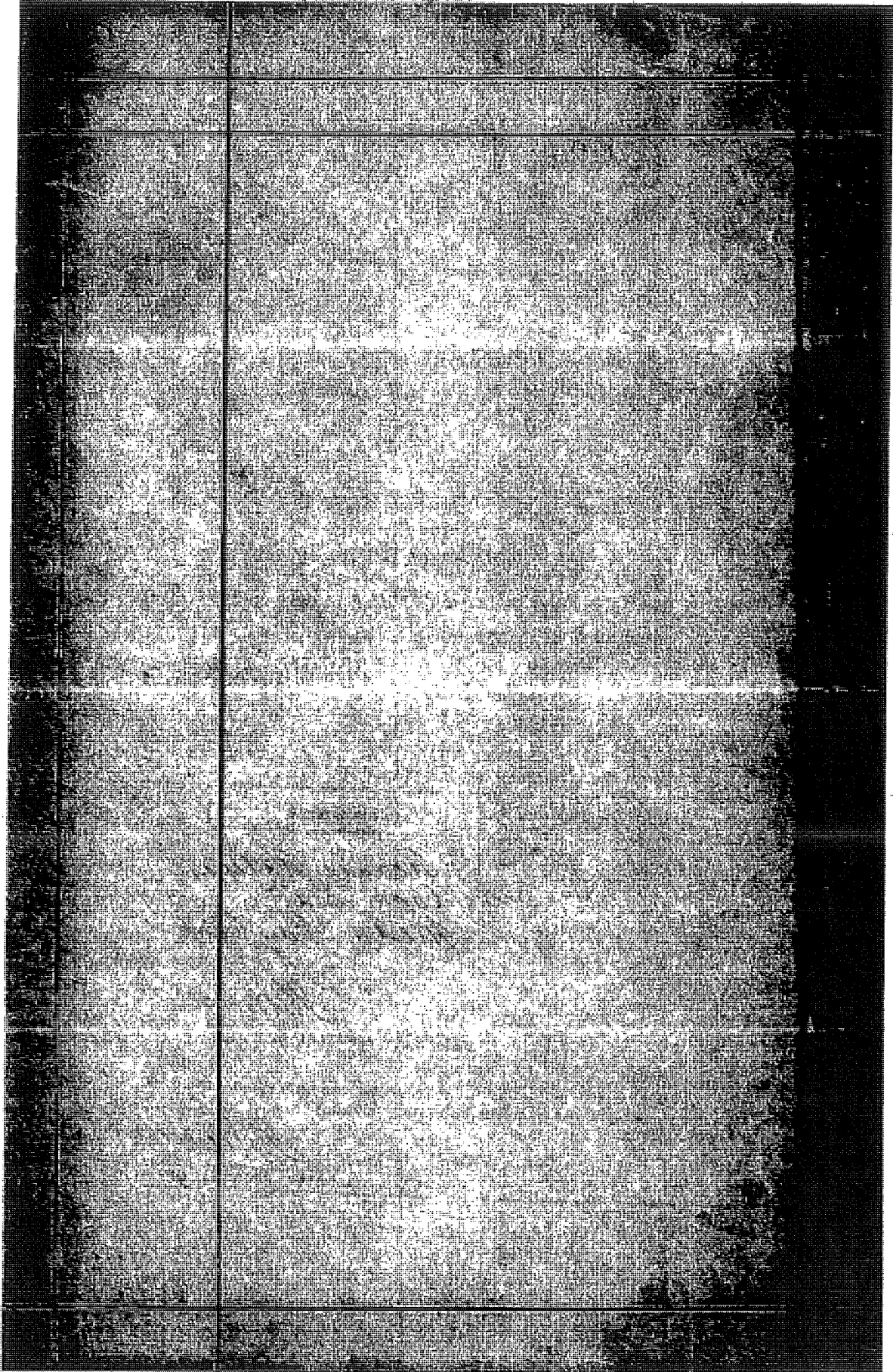
E. W. COOK ESQ. & H. N. COOK

WILLIAMS & LANGFORD  
Solicitors  
325 Collins Street  
MELBOURNE

DATED 1928

MEMORIAL OF INSTRUMENT

NATURE OF INSTRUMENT	TIME OF ITS PRODUCTION FOR REGISTRATION	TO WHOM GIVEN	NUMBER OR SYMBOL THEREON
Transfer as to part	12th of January 1929	To Horace William and Hilda May Cook	1397953
  ASSISTANT REGISTRAR OF TITLES			
I CERTIFY THAT A MEMORIAL OF THE WITHIN INSTRUMENT WAS ENTERED, AT THE TIME LAST ABOVE MENTIONED IN THE REGISTER BOOK VOL. 3668. FOL. 133491.			
 ASSISTANT REGISTRAR OF TITLES			



3118030 3118030 1450575

PREEROLL

RECEIVED  
 HENDERSON & BALL  
 VICTORIA  
 TRANSFER OF LAND  
 125 MAR 1930

IMAGED

I GEORGE PORTER CATO formerly of Neerim Road Murrumbidgee but now of "Tosari" Junction Road Baulkham Hills Estate Agent being registered as the proprietor of an estate in fee simple in the land hereinafter described subject to the encumbrances notified hereunder, in consideration of the sum of Sixty-two pounds ten shillings paid to me by STANLEY KENNETT of 4 Marne Street Surrey Hills, DO HEREBY TRANSFER to the said Stanley Kennett All my estate and interest in ALL THAT piece of Land being Lot twelve on Plan of Subdivision No. 10114 lodged in the Office of Titles being part of Crown Allotment Section two Parish of Mordialloc County of Bourke and being a part of the land described in Certificate of Title Volume 3668 Folio 733491 AND the said Stanley Kennett hereby for himself his heirs executors administrators or transferees covenants with the said George Porter Cato his heirs executors or administrators the registered proprietor or proprietors for the time being of the untransferred land comprised in the said Certificate of Title that he the said Stanley Kennett his heirs executors and transferees will not remove from the said Lot any sand gravel or clay except for the purpose of building thereon.

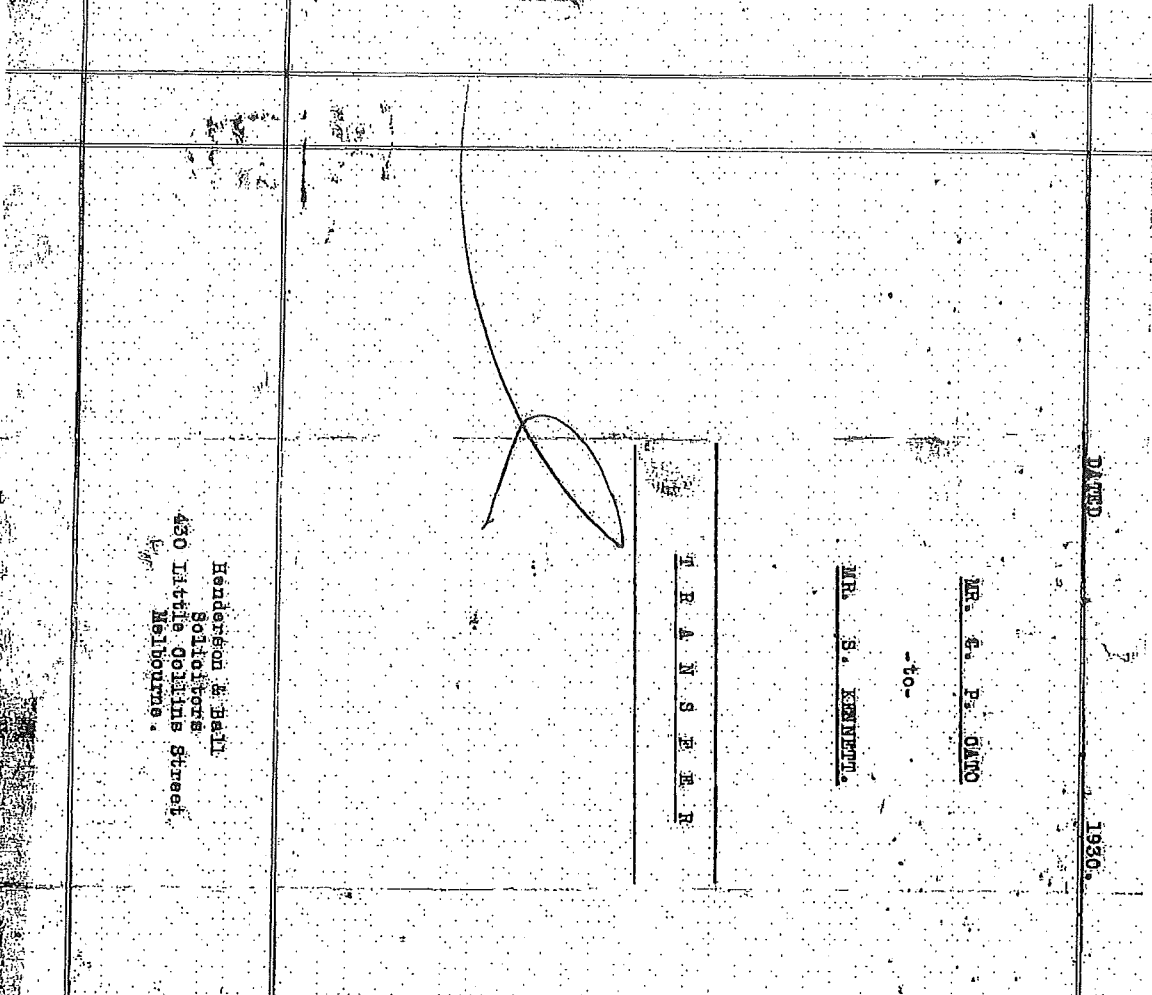
DATED the fifteenth day of March One thousand nine hundred and thirty.

SIGNED in New South Wales by the said GEORGE PORTER CATO in the presence of: *G.P. Cato*

SIGNED in Victoria by the said STANLEY KENNETT in the presence of: *Stanley Kennett*

ENCUMBRANCES REFERRED TO.  
 Special railway condition contained in Crown Grants to Henry De Gable and William Jones.  
 As to so much of the said Lot as is colored blue on the said Plan of Subdivision. The covenants (if any) affecting the same.

1818 1930  
 28/3/30  
 24/3



MEMORIAL OF INSTRUMENT.

NATURE OF INSTRUMENT	TIME OF ITS PRODUCTION FOR REGISTRATION	TO WHOM GIVEN	REGISTER OR SERIAL NUMBER
TRANSFER AS TO PART	THE 20 <sup>th</sup> DAY OF <i>March</i> 1930	TO <i>Stanley Kennett</i>	<i>1450575</i>

*10*

ASSISTANT REGISTRAR OF TITLES

I Certify THAT A MEMORIAL OF THE WITHIN INSTRUMENT WAS ENTERED, AT THE TIME LAST ABOVE MENTIONED IN THE REGISTER BOOK VOL. *3660* FOL. *733491*.



ASSISTANT REGISTRAR OF TITLES

2021915  
 1366753

HENDERSON & BALL  
 VICTORIA.

TRANSFER OF

*G.P. paid*

*Annual Fee Paid 28/9/28 part 1/11/28 part 1/12/28 part*

*Victoria No. 1366753*

*Any easements implied*

*at 23.4.28*

*Signed*

*37/48*

I, GEORGE PORTER GATO formerly of Neerim Road Murrumbidgee but now of "Tosari" Junction Road Baulkham Hills Estate Agent being registered as the proprietor of an estate in fee simple in the land hereinafter described subject to the encumbrances notified hereunder, in consideration of the sum of NINETY POUNDS paid to me by ERIC GRANVILLE MURRAY PHILLIPS of 69 Barkly Street St. Kilda Accountant DO HEREBY TRANSFER to the said Eric Granville Murray Phillips All my estate and interest in ALL THAT piece of land, being Lots Fourteen and Twenty-eight on Plan of Subdivision Number 10114 lodged in the Office of Titles being part of Crown Allotment Two Section Two Parish of Mordialloc County of Bourke and being part of the land described in Certificates of Title Volume 3668 Folio 733491 and Volume 4749 Folio 949727 And the said Eric Granville Murray Phillips HEREBY for himself his heirs executors administrators and transferees COVENANTS with the said George Porter Gato his executor or administrator the registered proprietor or proprietors for the time being of the untransferred land comprised in the said Certificates of Title that he the said Eric Granville Murray Phillips his heirs executors administrators and transferees will not remove from the said land any sand gravel or clay except for the purpose of building thereon.

D A T E D the 15<sup>th</sup> day of May One thousand nine hundred and twenty-eight.

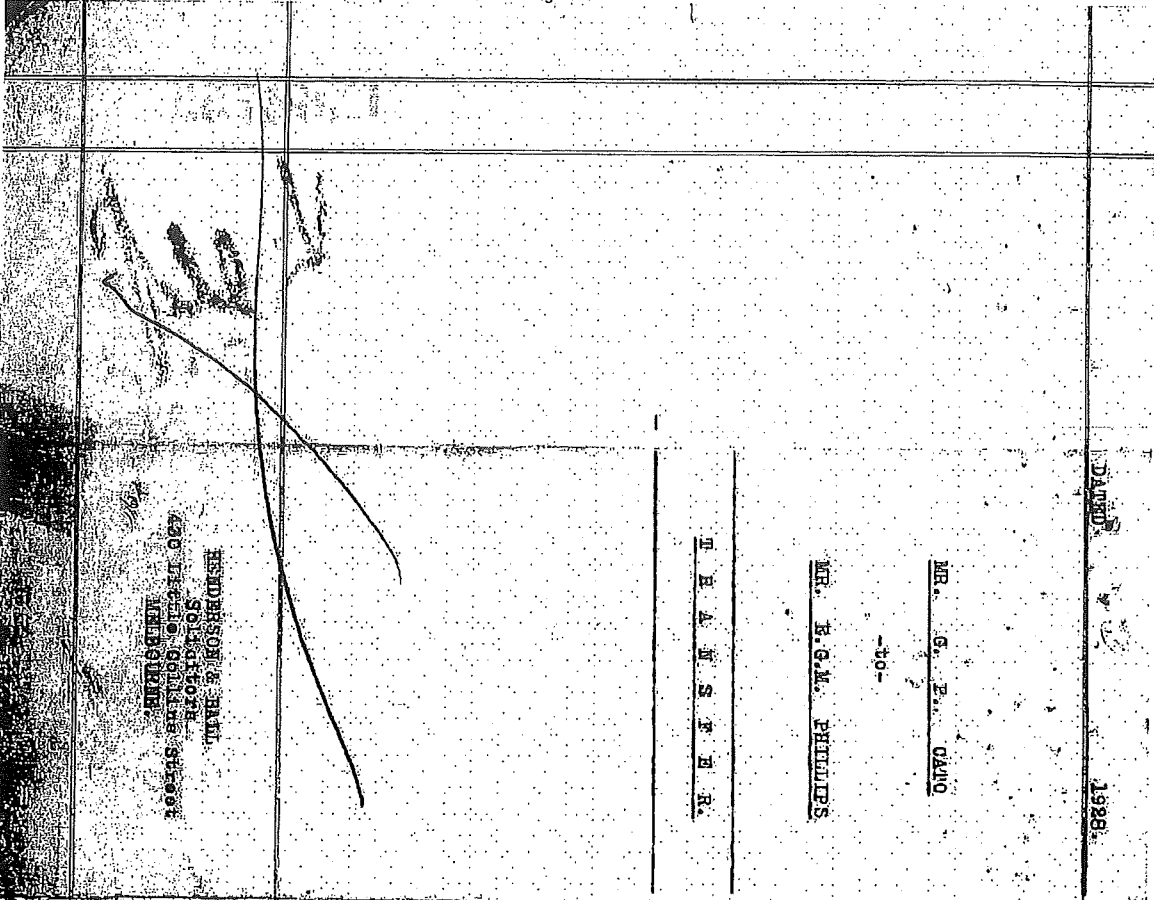
S I G N E D in New South Wales by the )  
 said GEORGE PORTER GATO in the presence )  
 of: E. A. Power J.P.  
*at Paramatta*

S I G N E D in Victoria by the said ERIC GRANVILLE MURRAY PHILLIPS in the presence of: Eric G. Phillips  
*Howard W. Phillips Clerk to Messrs Henderson & Ball Solicitors Melbourne*

ENCUMBRANCES REFERRED TO.  
 As to the land described in Certificate of Title Volume 3668 Folio 733491 - Special railway condition contained in Crown Grants to Henry De Garle and William Jones - As to so much of said Lot Fourteen as is colored blue on the said Plan of Subdivision - any easements implied under Act 3168.

IMAGED





MEMORIAL OF INSTRUMENT.

NATURE OF INSTRUMENT	THE PRODUCE TO WHICH	TO WHOM GIVEN	NUMBER OF SYMBOL THEREON
TRANSFER AS TO PART	THE 26 <sup>th</sup> DAY OF May 1928	To Eric Granville Murray Phillips	1366/53

*J. Sparrowell*  
 ASSISTANT REGISTRAR OF TITLES

I CERTIFY THAT A MEMORIAL OF THE INSTRUMENT WAS ENTERED AT THE TIME LAST MENTIONED IN THE REGISTER BOOK VOL 3668 FOL 733491 4949

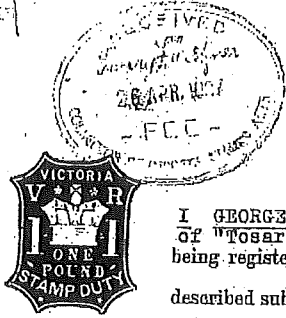
*J. Sparrowell*  
 ASSISTANT REGISTRAR OF TITLES

~~2807502~~ 2805630 FREEHOLD.

HENDERSON & BALL  
VICTORIA

1314661

TRANSFER OF LAND



C.O.T.  
2 MAY 1927

I GEORGE PORTER GATO formerly of Neerim Road Murrumbidgee but now of "Tosari" Junction Road Baulkham Hills Estate Agent being registered as the proprietor of an estate in fee simple in the land hereinafter described subject to the encumbrances notified hereunder, in consideration of the sum of SIXTY TWO POUNDS TEN SHILLINGS paid to me by JOSEPH JAMES BRIGINSHAW of 13 Bridge Street Elsternwick Gentleman

STAMP DUTY  
6 APR 1927

DO HEREBY TRANSFER to the said Joseph James Briginshaw

All my estate and interest in All that Piece of land being Lot Eleven on Plan of Subdivision No. 10114 lodged in the Office of Titles being part of Crown Allotment No. Section Two

Parish of Mordialloc County of Bourke and being part of the land described in Certificate of Title Volume 3668 Folio 733491

Together with all registered appurtenant and reserved easements AND the said Joseph James Briginshaw hereby for himself his heirs executors administrators and transferees covenants with the said George Porter Gato his executors or administrators the registered proprietor or proprietor for the time being of the untransferred land comprised in the said Certificate of Title that he the said Joseph James Briginshaw his heirs executors administrators and transferees will not remove from the said land any sand gravel or clay except for the purpose of building thereon.

Dated the Twenty first day of March One thousand nine hundred and twenty-seven.

*Soll.* *New South Wales*  
SIGNED in Victoria by the said GEORGE PORTER GATO

*G. Gato*

in the presence of *Red Ink*  
*3668 Plan*  
Signed in Victoria by the said JOSEPH JAMES BRIGINSHAW

*Joseph J. Briginshaw*

in the presence of *Efflower*  
*born 7/13/1868*  
*Blue Ink*  
*3668 Plan*  
Clerk to Henderson & Ball  
Totara Elsternwick

IMAGED

ENCUMBRANCES REFERRED TO

Special railway condition contained in Crown Grants to Henry Decarle and William Jones

Note.—The witness may be (within the limits of Victoria) either the Registrar or an Assistant Registrar, or a Barrister, Solicitor, or Clerk to a Solicitor of the Supreme Court, Registrar of County Court, Clerk of Petty Sessions, Town Clerk, Shire Secretary, Postmaster, Postmistress, Justice of the Peace, Head Teacher of State School, Bank Manager, Secretary of Building Society, or Minister of Religion authorized to celebrate marriages within Victoria.

*WBC*  
*27/5/27*  
*27.4.27*  
*24.5.27*



## LAND INFORMATION CERTIFICATE

CITY OF MONASH

Local Government Act 1989 - Section 229

Certificate Number 50421

Issued 25-Mar-2019

This certificate provides information regarding valuation, rates, charges, other moneys owing and any orders and notices made under the Local Government Act 1958, Local Government Act 1989 or under a local law or by-law of the council, as at the above date.

This certificate is **not required** to include information regarding planning, building, health, land fill, land slip, other flooding information or service easements. Information regarding these matters may be available from the Council or the relevant authority. A fee may be charged for such information.

### Property Information

Property Location: 12 Natalia Avenue OAKLEIGH SOUTH VIC 3167

Title Details: PTL 1 LP 221672F Parish of Mordialloc

- Please note that the property, which is the subject of your application for a Land Information Certificate, is presently valued as a Part Lot. A Supplementary Valuation will be returned, when Council receives Titles Office release and a subsequent rate adjustment may be levied.
- Please note that the property which is the subject of your application for a Land Information Certificate is presently part of a subdivision and is not yet separately rated. Accordingly no Certificate can be issued on this property. This Certificate has been issued on the property to be subdivided. As a result of this subdivision, a Supplementary Valuation will be returned in due course and a subsequent rate adjustment may be levied.

### Valuation Details

Current level of Value Date:	01-Jan-2018
Valuation Date operative for Rating purposes:	01-Jul-2018
Capital Improved Value:	4,040,000
Site Value:	4,040,000
Net Annual Value:	260,279

This Council uses "Capital Improved Value" of the property for rating purposes.

### Due Dates for Payment

1. **Arrears Rates & Charges & Arrears Legal - Immediately - PLEASE NOTE** If this certificate has Arrears Rates & Charges greater than \$100.00 or any Arrears Legal then the owner must contact Australian Receivables Ltd on 1300 303 855 to discuss this debt as further legal action may be pending and additional costs incurred.
2. **Legal/Bank fees/Interest raised current year - Immediately.**
3. **In Full - 15 February 2019.** If amount unpaid after this date refer to point 1 above.
4. **Four Instalments** – 1 October 2018, 30 November 2018, 28 February 2019 & 31 May 2019.
5. **Ten Instalments** – Commencing 03 September 2018 ending 03 June 2019.

### Rates & Charges – multiple assessments may apply (see below) for the year ending 30 June 2019

#### **Assessment No. 1774934**

Residential/Supplementary Rate		7,095.15
Residential Waste		22.00
Fire Services Levy		3,182.30
Government Rebate-Pension		0.00
Council Rebate-Pension		0.00
Fire Services Rebate-Pension		0.00
Arrears Rates & Charges	B/Fwd 01/07/2018	0.00
Arrears Legal	B/Fwd 01/07/2018	0.00
Interest raised current year on	Arrears Rates & Charges	0.00
Interest raised current year on	Overdue Instals/General/Supp Rates	0.00
Legal/Bank Fees		0.00
Payments		-10,299.45
Overpayments		0.00
Refunds		0.00

#### **BALANCE OWING**

Assessment No. 1774934

\$0.00

The Local Government Act 1989, Section 175, requires all arrears/interest/legal fees amounts to be paid in full immediately upon settlement. Section 175 of the Local Government Act 1989 refers to the purchasers' responsibilities for payments upon becoming the owner of the land.

To confirm the amount payable please contact Customer Service on (03) 9518 3555. Please note, overdue amounts continue to accrue interest at 10.00% pa until payment in full is received by Council.



**Notices, Orders, Outstanding or Potential Liability/Sub-divisional**

A. Potential liability for rates under the Cultural and Recreational Land Act 1963:

- N/A

B. Potential liability for property to become rateable under Section 173 or 174A of the Local Government Act 1989:

- N/A

C. Outstanding monies required to be paid under Section 18 of the Subdivision Act 1988 or the Local Government Act 1958 or 1989:

- Application for subdivision has been received, however, there is no Public Open Space required for this subdivision. Enquiries should be directed to Town Planning on 9518 3463.

D. Monies owed under Section 227 of the Local Government Act 1989:

- N/A

E. Flood levels specified by Council:

- N/A

F. Other Information under Section 229 (3) of the Local Government Act 1989:

- A notice may be/has been served on the owner to clear a potential fire hazard non-compliance with this notice will result in a charge being levied. Council's Local Law No. 3 requires the owners of the land shall keep it free of vegetation and any other materials which are likely to constitute a fire hazard. Enquires to Local Laws on (03) 9518 3555.

**IMPORTANT TO NOTE**

- Verbal confirmation of any variation to this certificate **will not** be given after 23-Jun-2019. A new certificate **must** be applied for after this date.
- No liability will be accepted for verbal updates given or for any changes that occur after the issue date.
- In all cases Council recommends a new Certificate be applied for to have written updated information.
- Amounts shown as paid on this certificate may be subject to clearance by a Bank.
- Overdue amounts accrue interest on a daily basis at 10.00% pa.

I have received the sum of **\$26.30** being the fee for this Certificate.

**PLEASE NOTE:** The prescribed fee for a Land Information Certificate effective from 1 July 2018 is \$26.30.

**PAYMENT OPTIONS:**

**Payment can be made direct to Council  
by using the payment link and reference/s below:**

<https://www.monash.vic.gov.au/Services/Payments>

Reference: 1774934

Amount: \$0.00

Total: \$0.00

Or via BPay



Billor Code: 1826

Ref: 0001774934                      \$0.00

Via internet or phone banking

*Margaret D Spowart*

**MARGARET SPOWART**

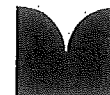
Coordinator Customer Services

Reference No: 31115034-015-2

Landata

GPO Box 527

MELBOURNE VIC 3001



# LAND INFORMATION CERTIFICATE

CITY OF MONASH

Local Government Act 1989 - Section 229

Certificate Number 50422

Issued 25-Mar-2019

This certificate provides information regarding valuation, rates, charges, other moneys owing and any orders and notices made under the Local Government Act 1958, Local Government Act 1989 or under a local law or by-law of the council, as at the above date.

This certificate is **not required** to include information regarding planning, building, health, land fill, land slip, other flooding information or service easements. Information regarding these matters may be available from the Council or the relevant authority. A fee may be charged for such information.

### Property Information

Property Location: 12B Natalia Avenue OAKLEIGH SOUTH VIC 3167

Title Details: PTL 1 LP 221672F Parish of Mordialloc

- Please note that the property, which is the subject of your application for a Land Information Certificate, is presently valued as a Part Lot. A Supplementary Valuation will be returned, when Council receives Titles Office release and a subsequent rate adjustment may be levied.
- Please note that the property which is the subject of your application for a Land Information Certificate is presently part of a subdivision and is not yet separately rated. Accordingly no Certificate can be issued on this property. This Certificate has been issued on the property to be subdivided. As a result of this subdivision, a Supplementary Valuation will be returned in due course and a subsequent rate adjustment may be levied.

### Valuation Details

Current level of Value Date: 01-Jan-2018

Valuation Date operative for Rating purposes: 01-Jul-2018

Capital Improved Value: 1,150,000

Site Value: 1,150,000

Net Annual Value: 74,131

This Council uses "Capital Improved Value" of the property for rating purposes.

### Due Dates for Payment

1. **Arrears Rates & Charges & Arrears Legal** - Immediately - **PLEASE NOTE** If this certificate has Arrears Rates & Charges greater than \$100.00 or any Arrears Legal then the owner must contact Australian Receivables Ltd on 1300 303 855 to discuss this debt as further legal action may be pending and additional costs incurred.
2. **Legal/Bank fees/Interest raised current year** - Immediately.
3. **In Full** - 15 February 2019. If amount unpaid after this date refer to point 1 above.
4. **Four Instalments** – 1 October 2018, 30 November 2018, 28 February 2019 & 31 May 2019.
5. **Ten Instalments** – Commencing 03 September 2018 ending 03 June 2019.

### Rates & Charges – multiple assessments may apply (see below) for the year ending 30 June 2019

#### Assessment No. 1774942

Residential/Supplementary Rate	2,019.65
Residential Waste	22.00
Fire Services Levy	1,063.95
Government Rebate-Pension	0.00
Council Rebate-Pension	0.00
Fire Services Rebate-Pension	0.00
Arrears Rates & Charges	B/Fwd 01/07/2018 0.00
Arrears Legal	B/Fwd 01/07/2018 0.00
Interest raised current year on	Arrears Rates & Charges 0.00
Interest raised current year on	Overdue Instals/General/Supp Rates 0.00
Legal/Bank Fees	0.00
Payments	-3,105.60
Overpayments	0.00
Refunds	0.00

**BALANCE OWING**

Assessment No. 1774942

**\$0.00**

The Local Government Act 1989, Section 175, requires all arrears/interest/legal fees amounts to be paid in full immediately upon settlement. Section 175 of the Local Government Act 1989 refers to the purchasers' responsibilities for payments upon becoming the owner of the land.

To confirm the amount payable please contact Customer Service on (03) 9518 3555. Please note, overdue amounts continue to accrue interest at 10.00% pa until payment in full is received by Council.

**Notices, Orders, Outstanding or Potential Liability/Sub-divisional**

A. Potential liability for rates under the Cultural and Recreational Land Act 1963:

- N/A

B. Potential liability for property to become rateable under Section 173 or 174A of the Local Government Act 1989:

- N/A

C. Outstanding monies required to be paid under Section 18 of the Subdivision Act 1988 or the Local Government Act 1958 or 1989:

- Application for subdivision has been received, however, there is no Public Open Space required for this subdivision. Enquiries should be directed to Town Planning on 9518 3463.

D. Monies owed under Section 227 of the Local Government Act 1989:

- N/A

E. Flood levels specified by Council:

- N/A

F. Other Information under Section 229 (3) of the Local Government Act 1989:

- A notice may be/have been served on the owner to clear a potential fire hazard non-compliance with this notice will result in a charge being levied. Council's Local Law No. 3 requires the owners of the land shall keep it free of vegetation and any other materials which are likely to constitute a fire hazard. Enquires to Local Laws on (03) 9518 3555.

**IMPORTANT TO NOTE**

- Verbal confirmation of any variation to this certificate **will not** be given after 23-Jun-2019. A new certificate **must** be applied for after this date.
- No liability will be accepted for verbal updates given or for any changes that occur after the issue date.
- In all cases Council recommends a new Certificate be applied for to have written updated information.
- Amounts shown as paid on this certificate may be subject to clearance by a Bank.
- Overdue amounts accrue interest on a daily basis at 10.00% pa.


I have received the sum of **\$26.30** being the fee for this Certificate.

**PLEASE NOTE:** The prescribed fee for a Land Information Certificate effective from 1 July 2018 is **\$26.30**.

**PAYMENT OPTIONS:**

<p><b>Payment can be made direct to Council by using the payment link and reference/s below:</b></p>
<p><a href="https://www.monash.vic.gov.au/Services/Payments">https://www.monash.vic.gov.au/Services/Payments</a></p>
<p><b>Reference: 1774942</b></p>
<p>Amount: \$0.00</p>
<p>Total: \$0.00</p>

Or via BPay

	<p><b>Biller Code: 1826</b></p> <p>Ref: 0001774942          \$0.00</p>
---	--

Via internet or phone banking

*Margaret Spewart*

**MARGARET SPOWART**  
Coordinator Customer Services

Reference No: 31139142-005-7

Landata  
GPO Box 527  
MELBOURNE VIC 3001



# Department of Environment, Land, Water & Planning

## Owners Corporation Search Report

Copyright State of Victoria. This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act 1968 (Cth) and for the purposes of Section 32 of the Sale of Land Act 1962 (Vic) or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA REGD TM System. The State of Victoria accepts no responsibility for any subsequent release, publication or reproduction of the information.

Produced: 18/03/2019 11:10:54 AM

**OWNERS CORPORATION 1**  
**PLAN NO. PS716735J**

The land in PS716735J is affected by 1 Owners Corporation(s)

**Land Affected by Owners Corporation:**  
Common Property 1, Lots 1 - 4.

**Limitations on Owners Corporation:**  
Unlimited

**Postal Address for Services of Notices:**  
82 CARLISLE CRESCENT OAKLEIGH VIC 3166  
  
OC037337F 01/12/2017

**Owners Corporation Manager:**  
NIL

**Rules:**  
Model Rules apply unless a matter is provided for in Owners Corporation Rules. See Section 139(3) Owners Corporation Act 2006

**Owners Corporation Rules:**  
NIL

**Additional Owners Corporation Information:**  
OC037337F 01/12/2017

**Notations:**  
NIL

**Entitlement and Liability:**

NOTE – Folio References are only provided in a Premium Report.

Land Parcel	Entitlement	Liability
Common Property 1	0	0
Lot 1	25	25
Lot 2	25	25
Lot 3	25	25
Lot 4	25	25
<b>Total</b>	<b>100.00</b>	<b>100.00</b>

From 31 December 2007 every Body Corporate is deemed to be an Owners Corporation. Any reference to a Body Corporate in any Plan,



# Department of Environment, Land, Water & Planning

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## Owners Corporation Search Report

Produced: 18/03/2019 11:10:54 AM

<b>OWNERS CORPORATION 1</b> <b>PLAN NO. PS716735J</b>
--

Instrument or Folio is to be read as a reference to an Owners Corporation.

Statement End.



\*\*\*\* Delivered by the LANDATA® System, Department of Environment, Land, Water & Planning \*\*\*\*

## ROADS PROPERTY CERTIFICATE

The search results are as follows:

Shirley Luong  
Level 1, 228 Smith St  
COLLINGWOOD 3066

Client Reference: 190144

NO PROPOSALS. As at the 18th March 2019, VicRoads has no approved proposals requiring any part of the property described in your application. You are advised to check your local Council planning scheme regarding land use zoning of the property and surrounding area.

This certificate was prepared solely on the basis of the Applicant-supplied address described below, and electronically delivered by LANDATA®.

8-12 NATALIA AVENUE, OAKLEIGH SOUTH 3167  
CITY OF MONASH

This certificate is issued in respect of a property identified above. VicRoads expressly disclaim liability for any loss or damage incurred by any person as a result of the Applicant incorrectly identifying the property concerned.

Date of issue: 18th March 2019

Telephone enquiries regarding content of certificate: 13 11 71

[Vicroads Certificate] # 31115034 - 31115034104916 '190144'



Your Ref: 31115034-016-9

Our Ref: CERT1 No. 57641

20-Mar-2019

Landata  
GPO Box 527  
MELBOURNE VIC 3001

**PROPERTY:** 8-12 Natalia Avenue OAKLEIGH SOUTH VIC 3167

Thank you for your request for property information relating to the above property address.

Occupancy Permits and Certificates of Final Inspection issued in preceding 10 years are as follows:

**Building Permit Details:**

Permits / Certificates were issued, in the preceding 10 years, on the following date(s):  
No Permits or Certificates have been issued.

**Notices/Orders**

There are no current Notices or Orders issued under the Building Act 1993, Building Regulations 2018, Building Interim Regulations 2017, Building Regulations 2006, Building (Interim) Regulations 2005, or Building Regulations 1994, of which this department is aware.

**Smoke Detectors:**

All dwellings/units are required to be fitted with self-contained smoke alarms in accordance with Regulation 145 of the Building Regulations 2018.

**Swimming Pools & Spas:**

The property owner is responsible for providing and maintaining pool/spa barriers in accordance with the Building Regulations 2018. Your pool can be inspected and a Certificate of Compliance issued on request – a fee is applicable. Swimming pools/spas that don't comply may incur a fine and/or a Building Notice.

**Part 5 – Siting**

Part 5 of the Building Regulations 2018 applies to the construction of a Class 1 or 10 building on this allotment. Scheduled variations to Regulations 74, 75, 76, 77, 79, 80, 86 and 89 apply within the City of Monash.

**RICHARD WHITTING**

Municipal Building Surveyor

# PLANNING CERTIFICATE

Official certificate issued under Section 199 Planning & Environment Act 1987  
and the Planning and Environment Regulations 2005

CERTIFICATE REFERENCE NUMBER

574293

APPLICANT'S NAME & ADDRESS

SHIRLEY LUONG C/- GXS  
MELBOURNE

VENDOR

PLACELEA PTY LTD

PURCHASER

REFERENCE

190144

This certificate is issued for:

LOT 1 PLAN PS716735, LOT CM1 PLAN PS716735 ALSO KNOWN AS 8 - 12 NATALIA AVENUE OAKLEIGH SOUTH  
MONASH CITY

The land is covered by the:

MONASH PLANNING SCHEME

The Minister for Planning is the responsible authority issuing the Certificate.

The land:

- is included in a INDUSTRIAL 1 ZONE
- is within a DESIGN AND DEVELOPMENT OVERLAY - SCHEDULE 1

A detailed definition of the applicable Planning Scheme is available at :  
(<http://planningschemes.dpcd.vic.gov.au/schemes/monash>)

Historic buildings and land protected under the Heritage Act 1995 are recorded in the Victorian  
Heritage Register at:  
(<http://vhd.heritage.vic.gov.au/>)

Additional site-specific controls may apply.  
The Planning Scheme Ordinance should be  
checked carefully.

The above information includes all  
amendments to planning scheme maps  
placed on public exhibition up to the date  
of issue of this certificate and which are  
still the subject of active consideration

Copies of Planning Schemes and  
Amendments can be inspected at the  
relevant municipal offices.

LANDATA®  
2 Lonsdale Street  
Melbourne VIC 3000  
Tel: (03) 9194 0606

18 March 2019

Hon. Richard Wynne MP  
Minister for Planning

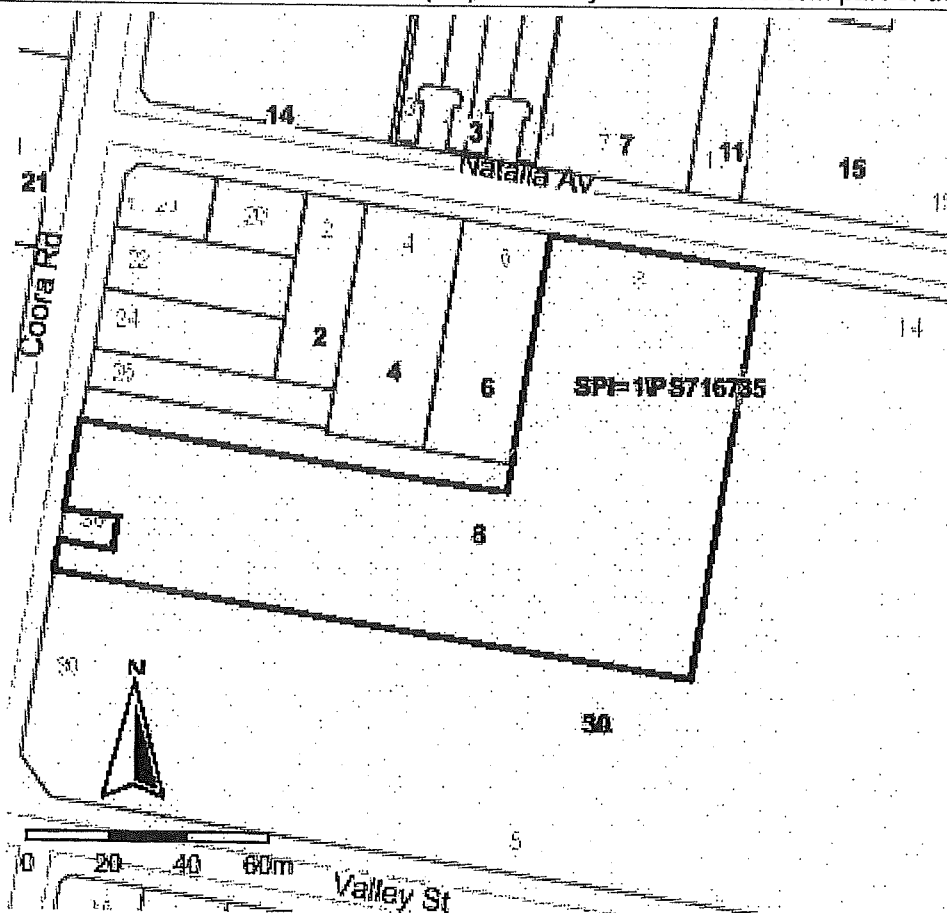


The attached certificate is issued by the Minister for Planning of the State of Victoria and is protected by statute.

The document has been issued based on the property information you provided. You should check the map below - it highlights the property identified from your information.

If this property is different to the one expected, you can phone (03) 9194 0606 or email [landata.enquiries@delwp.vic.gov.au](mailto:landata.enquiries@delwp.vic.gov.au).

**Please note: The map is for reference purposes only and does not form part of the certificate.**



Copyright © State Government of Victoria. Service provided by [maps.land.vic.gov.au](http://maps.land.vic.gov.au)

Choose the authoritative Planning Certificate

*Why rely on anything less?*

As part of your section 32 statement, the authoritative Planning Certificate provides you and / or your customer with the statutory protection of the State of Victoria.  
Order online before 4pm to receive your authoritative Planning Certificate the same day, in most cases within the hour.  
Next business day delivery, if further information is required from you.

Privacy Statement

The information obtained from the applicant and used to produce this certificate was collected solely for the purpose of producing this certificate. The personal information on the certificate has been provided by the applicant and has not been verified by LANDATA®. The property information on the certificate has been verified by LANDATA®. The zoning information on the certificate is protected by statute. The information on the certificate will be retained by LANDATA® for auditing purposes and will not be released to any third party except as required by law.



# Land Tax Clearance Certificate

## Land Tax Act 2005



SHIRLEY LUONG

**Your Reference:** LD:31115034-018-3.19014

**Certificate No:** 28980462

**Issue Date:** 18 MAR 2019

**Enquiries:** ESYSPROD

**Land Address:** 8-12 NATALIA AVENUE OAKLEIGH SOUTH VIC 3167

Land Id	Lot	Plan	Volume	Folio	Tax Payable
44569187	1	716735	11936	432	\$18,562.50

**Vendor:** PLACELEA PTY LTD

**Purchaser:** FOR INFORMATION PURPOSES

Current Land Tax	Year	Taxable Value	Proportional Tax	Penalty/Interest	Total
PAPASOTIRIOU INVESTMENT TRUST	2019	\$1,297,500	\$18,562.50	\$0.00	\$18,562.50

**Comments:** Land Tax will be payable but is not yet due - please see note 6 on reverse.

Current Vacant Residential Land Tax	Year	Taxable Value	Proportional Tax	Penalty/Interest	Total

**Comments:**

Arrears of Land Tax	Year	Proportional Tax	Penalty/Interest	Total

This certificate is subject to the notes that appear on the reverse. The applicant should read these notes carefully. To request an update for this certificate go to: [www.sro.vic.gov.au/certificates](http://www.sro.vic.gov.au/certificates)

Paul Broderick  
Commissioner of State Revenue

<b>CAPITAL IMP VALUE:</b>	<b>\$1,297,500</b>
<b>SITE VALUE:</b>	<b>\$1,297,500</b>
<b>AMOUNT PAYABLE:</b>	<b>\$18,562.50</b>

## Land Tax Clearance Certificate - Remittance Advice

**Certificate No:** 28980462

**Land ID:** 44569187

**Amount Payable:** \$18,562.50

State Revenue Office  
GPO Box 4376  
MELBOURNE VIC 3001

Please return this section with your payment. For further information refer overleaf.  
Do not mark below this line.

<0001856250<0001856250>028980462000<028980462000>424<424>

# Notes to certificates under Section 105 of the Land Tax Act 2005



Certificate No: 28980462

- Under Section 96 of the Land Tax Act 2005 (the Act), unpaid land tax (including special land tax and vacant residential land tax) is a first charge on the land to which it relates and should the vendor default, payment will be obtained from the purchaser. The purchaser should take into account the possibility that the vendor may default where land tax has been assessed but not paid.
- If land tax (including special land tax and vacant residential land tax) is due but not paid on a property, the Land Tax Clearance Certificate will certify the amount of land tax due and payable on that land. This amount will be binding on the Commissioner of State Revenue (the Commissioner) for purposes of section 96 of the Act whether or not it is paid to the State Revenue Office (SRO) on, or shortly after, settlement.
- The amount of land tax on this certificate relates to the amount of land tax (including special land tax and vacant residential land tax) due and payable as at the date of the application only and not to any future liability or the tax status of the land.
- A 'Nil' Land Tax Clearance certificate does not mean that the land on the certificate is exempt from land tax or vacant residential land tax.
- If land tax (including special land tax or vacant residential land tax) will be payable on a property but payment is not due at the time the application is processed, the certificate will certify the amount that should be retained by the purchaser at settlement and remitted to the SRO. The Commissioner will consider himself bound by this amount against the purchaser, only if the amount is remitted to the SRO within 28 days after settlement.
- If the amount in 3. (above) is understated, the Commissioner has the right to seek recovery of the correct amount, or the balance, as the case may be, from
  - the vendor, or
  - the purchaser, if the vendor defaults and the certified amount has not been remitted to the SRO within 28 days after settlement.
- If an amount is certified in respect of a proposed sale which is not completed, the Commissioner will not be bound by the same amount in respect of a later sale of the subject land - another certificate must be applied for in respect of that transaction.
- If an amount certified is excessively high (for example, because an exemption or concession has not been deducted in calculating the amount) the Commissioner will issue an amended certificate, without an additional fee being charged on receipt of sufficient evidence to that effect from the vendor.
- If no land tax (including special land tax or vacant residential land tax) is stated as being payable in respect of the property, the Commissioner will consider himself bound by that certification, in respect of the purchaser, if the land is subsequently found to be taxable and the vendor defaults.
- If the vendor refuses to be bound by an amount stated by the Commissioner and does not agree to the amount being withheld and remitted at settlement, the purchaser cannot rely on such refusal as a defence to an action by the Commissioner to recover the outstanding amount from the purchaser under Sections 96 or 98 of the Act.
- The information on a certificate cannot preclude the Commissioner from taking action against a vendor to recover outstanding land tax (including special land tax and vacant residential land tax).

## For Information Only

### LAND TAX CALCULATION BASED ON SINGLE OWNERSHIP

Land Tax = \$5,355.00

Taxable Value = \$1,297,500

Calculated as \$2,975 plus ( \$1,297,500 - \$1,000,000)  
multiplied by 0.800 cents.

## Further information

Internet	<a href="http://www.sro.vic.gov.au">www.sro.vic.gov.au</a>
Email	<a href="mailto:sro@sro.vic.gov.au">sro@sro.vic.gov.au</a> (Attn: Land Tax)
Phone	13 21 61 (local call cost)
Fax	03 9628 6853
Mail	State Revenue Office GPO Box 4376 MELBOURNE VIC 3001

## Payment options

Make cheque payable to **State Revenue Office, Victoria** marked 'Not Negotiable' and return with the remittance advice to:



### Payment by mail:

- State Revenue Office  
GPO Box 4376  
MELBOURNE VIC 3001

Land Tax Clearance Certificates are available via the SRO website [www.sro.vic.gov.au/certificates](http://www.sro.vic.gov.au/certificates)



# INFORMATION STATEMENT

STATEMENT UNDER SECTION 158, WATER ACT 1989

Shirley Luong  
E-mail: certificates@landata.vic.gov.au

Statement for property:  
LOT 1 NATALIA AVENUE OAKLEIGH  
SOUTH 3167  
1.PS 716735

REFERENCE NO.	YOUR REFERENCE	DATE OF ISSUE	CASE NUMBER
27D//07251/00018	LANDATA CER 31115034-027-5	18 MAR 2019	33353023

## 1. Statement of Fees Imposed

(a) By Other Authorities	
(b) By South East Water	

**TOTAL UNPAID BALANCE** \$0.00

- Financial Updates (free service) are only available online please go to (type / copy the complete address shown below): <https://secureapp.southeastwater.com.au/PropertyConnect#/order/info/update>

\* Please Note: if usage charges appear above, the amount shown includes one or more of the following:

Water Usage, Recycled Water Usage, Sewage Disposal, Fire Service Usage and Trade Waste Volumetric Fees.

Interest may accrue on the South East Water charges listed in this statement if they are not paid by the due date as set out in the bill.

- The total annual service fees and volumetric fees for water usage and sewerage disposal for each class of property are set out at [www.southeastwater.com.au](http://www.southeastwater.com.au).
- Updates of rates and other charges will only be provided for up to six months from the date of this statement.
- If this property has recently been subdivided from a "parent" title, there may be service or other charges owing on the "parent" which will be charged to this property, once sold, that do not appear on this statement. You must contact us to see if there are any such charges as they may be charged to this property on sale and should therefore be adjusted with the owner of the parent title beforehand.
- If the property is sold, the vendor is liable to pay all fees incurred in relation to the property until the vendor gives South East Water a Notice of Disposition of Land required by the Water (Disposition of Land) Regulations 2010. Please include the Reference Number set out above in that Notice.
- Fees relating to the property may change from year-to-year in accordance with the Essential Service Commission's Price Determination for South East Water.
- Every fee referred to above is a charge against the property and will be recovered from a purchaser of the property if it is not paid by the vendor.

AUTHORISED OFFICER:

TERRY SCHUBACH  
GENERAL MANAGER  
CUSTOMER SERVICE DELIVERY

**South East Water**  
**Information Statement Applications**  
PO Box 2268, Seaford, VIC 3198



## INFORMATION STATEMENT

STATEMENT UNDER SECTION 158, WATER ACT 1989

- Information about when and how outstanding fees may be paid, collected and recovered is set out in the Essential Services Commission's Customer Service Code, Urban Water Businesses.
- If this Statement only sets out rates and fees levied by Parks Victoria and Melbourne Water, the property may not be connected to South East Water's works. To find out whether the property is, or could be connected upon payment of the relevant charges, or whether it is separately metered, telephone 131 694.
- For a new connection to our water or sewer services, fees / charges will be levied.

### 2. Encumbrance Summary

Where available, the location of sewers is shown on the attached plan. Please ensure where manholes appear, that they remain accessible at all times "DO NOT COVER". Where driveways/paving is proposed to be constructed over easements for water supply/sewerage purposes, or within 1 metre of a South East Water asset, the owner will be responsible for all costs associated with any demolition and or re-instatement works, necessary to allow maintenance and or repair of the asset effected. Where changes to the surface levels requires maintenance shafts/holes to be altered, all works must be carried out by South East Water approved contractors only. For information call 131694. For all other works, prior consent is required from south East Water for any construction over easements for water supply/sewerage purposes, or within 1 metre of a South East Water asset.

Information available at Melbourne Water indicates that this property is not subject to flooding from Melbourne Water's drainage system, based on a flood level that has a probability of occurrence of 1% in any one year.

#### **ENCUMBRANCE ENQUIRY EMAIL [infostatements@sew.com.au](mailto:infostatements@sew.com.au)**

If no plan is attached to this Statement, South East Water is not aware of any works belonging to South East Water being present on the property.

If a plan is attached to this Statement, it indicates the nature of works belonging to South East Water, their approximate location, and the approximate location of any easement relating to those works.

#### **Important Warnings**

The map base for any attached plan is not created by South East Water which cannot and does not guarantee the accuracy, adequacy or completeness of any information in the plan, especially the exact location of any of South East Water's works, which may have changes since the attached plan was prepared. Their location should therefore be proven by hand before any works are commenced on the land.

Unless South East Water's prior written approval is obtained, it is an offence to cause any structure to be built or any filling to be placed on a South East Water easement or within 1 metre laterally of any of its works or to permit any structure to be built above or below any such area.

Any work that requires any South East Water manhole or maintenance shaft to be altered may only be done by a contractor approved by South East Water at the property owner's cost.

If the owner builds or places filling in contravention of that requirement, the owner will be required to pay the cost of any demolition or re-instatement of work that South East Water considers necessary, in order to maintain, repair or replace its asset.

This Statement does not include any information about current or outstanding consent issued for plumbing works on at the property.

AUTHORISED OFFICER:

TERRY SCHUBACH  
GENERAL MANAGER  
CUSTOMER SERVICE DELIVERY

**South East Water**  
**Information Statement Applications**  
PO Box 2268, Seaford, VIC 3198

## INFORMATION STATEMENT

STATEMENT UNDER SECTION 158, WATER ACT 1989

### 3. Disclaimer

This Statement does not contain all the information about the property that a prospective purchaser may wish to know. Accordingly, appropriate enquiries should be made of other sources and information.

South East Water has prepared the information in this Statement with due care and diligence. It cannot and does not accept liability for any loss or damage arising from reliance on the information given, beyond the extent set out in section 155 of the Water Act 1989 and sections 18 and 29 of the Australian Consumer Law.

AUTHORISED OFFICER:



TERRY SCHUBACH  
GENERAL MANAGER  
CUSTOMER SERVICE DELIVERY

**South East Water**  
**Information Statement Applications**  
PO Box 2268, Seaford, VIC 3198

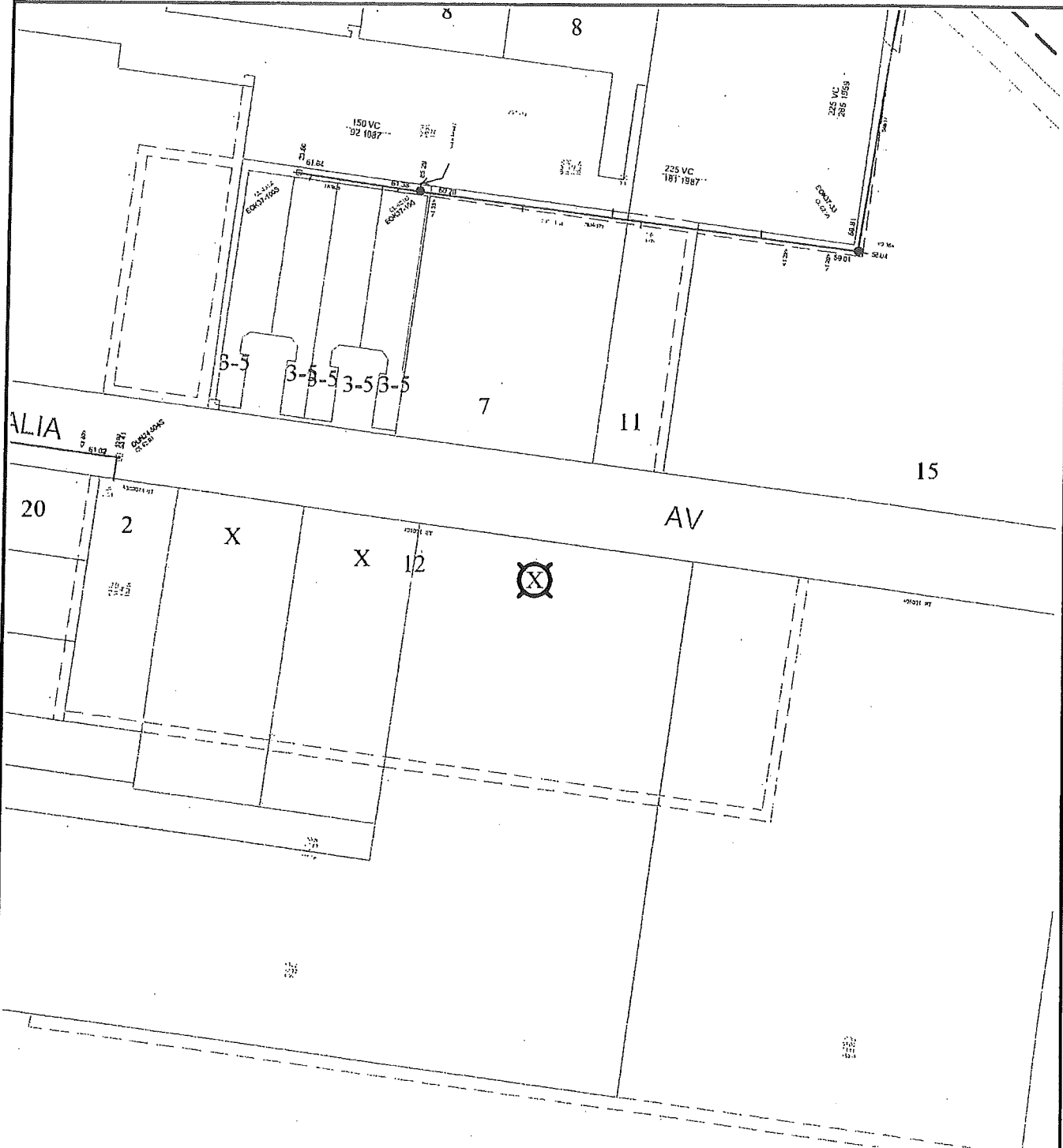




Case Number: 33353023



Date: 18MARCH2019



**WARNING:** This plan is issued solely for the purpose of assisting you in identifying South East Water's and Melbourne Water's specified assets through further investigation only. It is not to be used for any other purpose, including to identify any other assets, property boundaries or dimensions. Accordingly, the location of all assets should be proven by hand on site prior to the commencement of any work. (Refer to attached letter for further details). Assets labelled AC may contain asbestos and therefore works on these assets must be undertaken in accordance with OH&S Regulations. Abandoned and currently unused assets are shown in orange.

———	Title/Road Boundary		Subject Property		Maintenance Hole
- - - - -	Proposed Title/Road		Sewer Main		Inspection Shaft
- - - - -	Easement		Direction of Flow	<1.0>	Offset from Boundary
Melbourne Water Assets					
	Sewer Main		Underground Drain		Natural Waterway
	Maintenance Hole		Channel Drain		Underground Drain M.H.

# ASSET INFORMATION - WATER

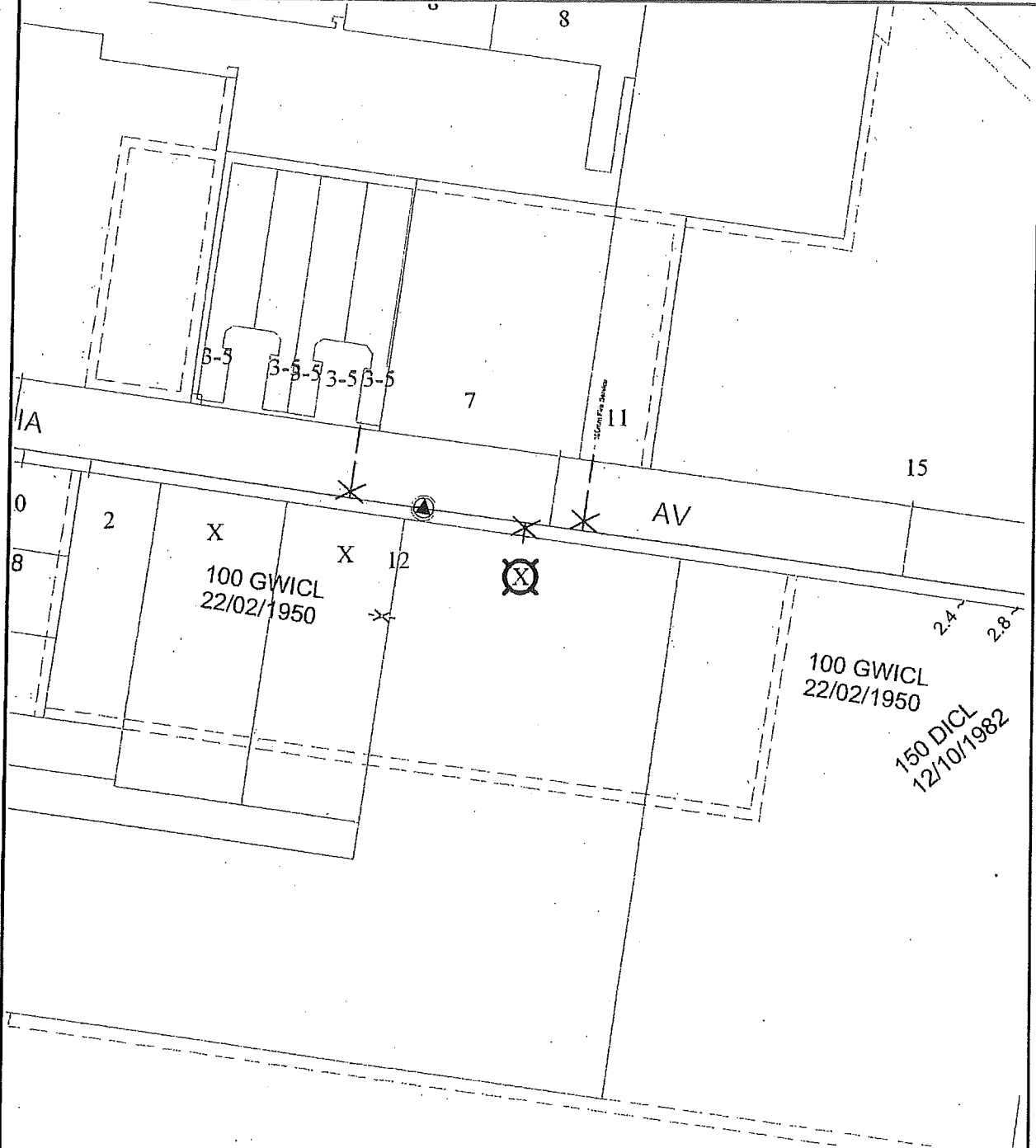
Property: Lot 1 LOT 1 NATALIA AVENUE OAKLEIGH SOUTH 3167



Case Number: 33353023



Date: 18MARCH2019



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LEGEND					
	Title/Road Boundary		Subject Property		Hydrant
	Proposed Title/Road		Water Main Valve		Fireplug/Washout
	Easement		Water Main		Offset from Boundary



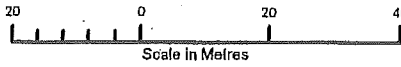
# ASSET INFORMATION - RECYCLED WATER

(RECYCLE WATER WILL APPEAR IF IT'S AVAILABLE)

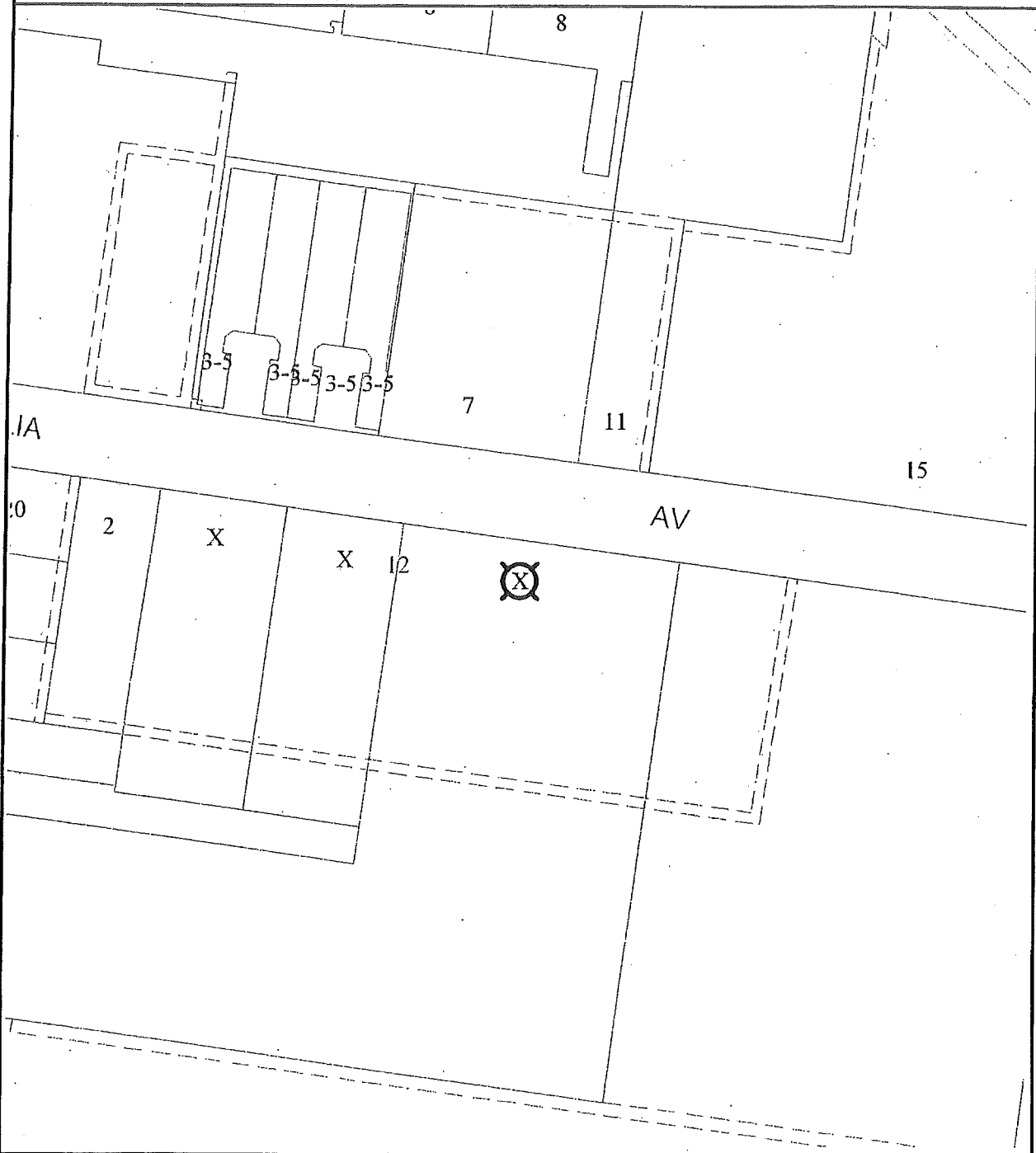
Property: Lot 1 LOT 1 NATALIA AVENUE OAKLEIGH SOUTH 3167



Case Number: 33353023



Date: 18MARCH2019



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LEGEND			
	Title/Road Boundary		Subject Property
	Proposed Title/Road		Recycled Water Main Valve
	Easement		Recycled Water Main
			Hydrant
			Fireplug/Washout
	~ 1.0		Offset from Boundary

Your Ref: 31115034-016-9

Our Ref: CERT1 No. 57641

20-Mar-2019

**Landata**  
GPO Box 527  
MELBOURNE VIC 3001

**PROPERTY:** 8-12 Natalia Avenue OAKLEIGH SOUTH VIC 3167

Thank you for your request for property information relating to the above property address.

Occupancy Permits and Certificates of Final Inspection issued in preceding 10 years are as follows:

**Building Permit Details:**

Permits / Certificates were issued, in the preceding 10 years, on the following date(s):  
No Permits or Certificates have been issued.

**Notices/Orders**

There are no current Notices or Orders issued under the Building Act 1993, Building Regulations 2018, Building Interim Regulations 2017, Building Regulations 2006, Building (Interim) Regulations 2005, or Building Regulations 1994, of which this department is aware.

**Smoke Detectors:**

All dwellings/units are required to be fitted with self-contained smoke alarms in accordance with Regulation 145 of the Building Regulations 2018.

**Swimming Pools & Spas:**

The property owner is responsible for providing and maintaining pool/spa barriers in accordance with the Building Regulations 2018. Your pool can be inspected and a Certificate of Compliance issued on request – a fee is applicable. Swimming pools/spas that don't comply may incur a fine and/or a Building Notice.

**Part 5 – Siting**

Part 5 of the Building Regulations 2018 applies to the construction of a Class 1 or 10 building on this allotment. Scheduled variations to Regulations 74, 75, 76, 77, 79, 80, 86 and 89 apply within the City of Monash.

RICHARD WHITTING

Municipal Building Surveyor



\*\*\*\* Delivered by the LANDATA® System, Department of Environment, Land, Water & Planning \*\*\*\*

## ROADS PROPERTY CERTIFICATE

The search results are as follows:

Shirley Luong  
Level 1, 228 Smith St  
COLLINGWOOD 3066

Client Reference: 190144

NO PROPOSALS. As at the 18th March 2019, VicRoads has no approved proposals requiring any part of the property described in your application. You are advised to check your local Council planning scheme regarding land use zoning of the property and surrounding area.

This certificate was prepared solely on the basis of the Applicant-supplied address described below, and electronically delivered by LANDATA®.

8-12 NATALIA AVENUE, OAKLEIGH SOUTH 3167  
CITY OF MONASH

This certificate is issued in respect of a property identified above. VicRoads expressly disclaim liability for any loss or damage incurred by any person as a result of the Applicant incorrectly identifying the property concerned.

Date of issue: 18th March 2019

Telephone enquiries regarding content of certificate: 13 11 71

[Vicroads Certificate] # 31115034 - 31115034104916 '190144'

# Land Tax Clearance Certificate

## Land Tax Act 2005



SHIRLEY LUONG

**Your Reference:** LD:31115034-018-3.19014  
**Certificate No:** 28980462  
**Issue Date:** 18 MAR 2019  
**Enquiries:** ESYSPROD

**Land Address:** 8 -12 NATALIA AVENUE OAKLEIGH SOUTH VIC 3167

Land Id	Lot	Plan	Volume	Folio	Tax Payable
44569187	1	716735	11936	432	\$18,562.50

**Vendor:** PLACELEA PTY LTD  
**Purchaser:** FOR INFORMATION PURPOSES

Current Land Tax	Year	Taxable Value	Proportional Tax	Penalty/Interest	Total
PAPASOTRIOU INVESTMENT TRUST	2019	\$1,297,500	\$18,562.50	\$0.00	\$18,562.50

**Comments:** Land Tax will be payable but is not yet due - please see note 6 on reverse.

Current Vacant Residential Land Tax	Year	Taxable Value	Proportional Tax	Penalty/Interest	Total

**Comments:**

Arrears of Land Tax	Year	Proportional Tax	Penalty/Interest	Total

This certificate is subject to the notes that appear on the reverse. The applicant should read these notes carefully. To request an update for this certificate go to: [www.sro.vic.gov.au/certificates](http://www.sro.vic.gov.au/certificates)

**Paul Broderick**  
 Commissioner of State Revenue

<b>CAPITAL IMP VALUE:</b>	<b>\$1,297,500</b>
<b>SITE VALUE:</b>	<b>\$1,297,500</b>
<b>AMOUNT PAYABLE:</b>	<b>\$18,562.50</b>

### Land Tax Clearance Certificate - Remittance Advice

**Certificate No:** 28980462  
**Land ID:** 44569187  
**Amount Payable:** \$18,562.50

State Revenue Office  
 GPO Box 4376  
 MELBOURNE VIC 3001

Please return this section with your payment. For further information refer overleaf.  
 Do not mark below this line.

<0001856250<0001856250>028980462000<028980462000>424<424>

# Notes to certificates under Section 105 of the Land Tax Act 2005



Certificate No: 28980462

- Under Section 96 of the Land Tax Act 2005 (the Act), unpaid land tax (including special land tax and vacant residential land tax) is a first charge on the land to which it relates and should the vendor default, payment will be obtained from the purchaser. The purchaser should take into account the possibility that the vendor may default where land tax has been assessed but not paid.
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## For Information Only

LAND TAX CALCULATION BASED ON SINGLE OWNERSHIP

Land Tax = \$5,355.00

Taxable Value = \$1,297,500

Calculated as \$2,975 plus (\$1,297,500 - \$1,000,000) multiplied by 0.800 cents.

## Further information

Internet	<a href="http://www.sro.vic.gov.au">www.sro.vic.gov.au</a>
Email	<a href="mailto:sro@sro.vic.gov.au">sro@sro.vic.gov.au</a> (Attn: Land Tax)
Phone	13 21 61 (local call cost)
Fax	03 9628 6853
Mail	State Revenue Office GPO Box 4376 MELBOURNE VIC 3001

## Payment options

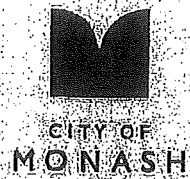
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MELBOURNE VIC 3001

Land Tax Clearance Certificates are available via the SRO website [www.sro.vic.gov.au/certificates](http://www.sro.vic.gov.au/certificates)



Reference: TPA/49429

23 January 2019

Chris Costa  
The Costa Group Pty Ltd  
204-208 Waverley Rd  
MOUNT WAVERLEY VIC 3149

Dear Sir

**8-12 NATALIA AVENUE OAKLEIGH SOUTH VIC 3167  
PLANNING PERMIT APPLICATION - TPA/49429**

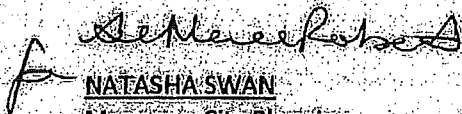
I am pleased to advise that application TPA/49429 for the construction of a warehouse premises including a reduction in the applicable car parking requirement and display of business identification signage has been approved subject to conditions.

The planning permit and an endorsed copy of the plans and Sustainable Management Plan are enclosed.

Your attention is drawn to the conditions of the permit. Please read them carefully.

If you have any questions, please contact Anne Maree Roberts, Senior Statutory Planner, on 9518 3068.

Yours sincerely

  
**NATASHA SWAN**  
Manager, City Planning

Encls





**PLANNING  
PERMIT**

Permit No.: **TPA/49429**  
 Planning Scheme: **Monash Planning Scheme**  
 Responsible Authority: **Monash City Council**

**ADDRESS OF THE LAND**

8-12 Natalia Avenue OAKLEIGH SOUTH VIC 3167

**THE PERMIT ALLOWS**


The construction of a warehouse premises including a reduction in the applicable car parking requirement and display of business identification signage

**THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT**

1. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
3. The amenity of the area must not be detrimentally affected by the development, through the:
  - (a) transport of materials, goods or commodities to or from the land;
  - (b) appearance of any building, works or materials; and
  - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
4. No goods must be stored or left exposed outside the building/s so as to be visible from any public road or thoroughfare.
5. No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.
6. Adequate provision shall be made for the storage and collection of garbage and other solid wastes and these facilities are to be located on the site to the satisfaction

Page 1 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority: 

### IMPORTANT INFORMATION ABOUT THIS NOTICE

#### WHAT HAS BEEN DECIDED?

The Responsible Authority has issued a permit.

(Note: This is not a permit granted under Division 5 or 6 of Part 4 of the Planning and Environment Act 1987.)

#### CAN THE RESPONSIBLE AUTHORITY AMEND THIS PERMIT?

The Responsible Authority may amend this permit under Division 1A of Part 4 of the Planning and Environment Act 1987.

#### WHEN DOES A PERMIT BEGIN?

A permit operates:

- from the date specified in the permit, or
- if no date is specified, from:
  - (i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal, or
  - (ii) the date on which it was issued, in any other case.

#### WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if-
  - the development or any stage of it does not start within the time specified in the permit, or
  - the development requires the certification of a plan of subdivision or consolidation under the *Subdivision Act 1988* and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or
  - the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the *Subdivision Act 1988*.
2. A permit for the use of land expires if-
  - the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit, or
  - the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if-
  - the development or any stage of it does not start within the time specified in the permit; or
  - the development or any stage of it is not completed within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
  - the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
  - the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the *Planning and Environment Act 1987*, or to any combination of use, development or any of those circumstances requires the certification of a plan under the *Subdivision Act 1988*, unless the permit contains a different provision-
  - the use or development of any stage is to be taken to have started when the plan is certified; and
  - the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

#### WHAT ABOUT REVIEWS?

- The person who applied for the permit may apply for a review of any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal, in which case no right of appeal exists.
- An application for review must be lodged within 60 days after the permit was issued, unless a notice of decision to grant a permit has been issued previously, in which case the application for review must be lodged within 60 days after the giving of that notice.
- An application for review is lodged with the Victorian Civil and Administrative Tribunal.
- An application for review must be made on an application for review form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
- An application for review must state the grounds upon which it is based.
- A copy of an application for review must also be served on the responsible authority.
- Details about applications for review and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal.

## PLANNING PERMIT

No. TPA/49429

of the Responsible Authority.

7. Prior to the commencement of works on the site, the owner shall prepare a Waste Management Plan for the collection and disposal of garbage and recyclables for all uses on the site. The Waste Management Plan shall provide for:
- a) The method of collection of garbage and recyclables for uses;
  - b) Designation of methods of collection including the need to provide for private services or utilisation of council services;
  - c) Appropriate areas of bin storage on site and areas for bin storage on collection days;
  - d) Measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas;
  - e) Litter management.

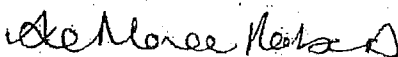
A copy of this plan must be submitted to Council.

8. Concurrent with the endorsement of any plans, a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority. The report must include, but is not limited to, the following:
- a) Demonstration of how 'best practice' sustainability measures have been addressed, having regard to the relevant aspects of Clause 21.13 of the Planning Scheme.
  - b) Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
  - c) Document the means by which the appropriate target or performance is to be achieved.
  - d) Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
  - e) Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.
  - f) Any relevant requirements of the Condition 1 sub-clauses hereof.

All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to the endorsed Sustainable Management Plan may occur without written consent of the Responsible Authority and (to the extent material and necessary) any relevant flow-on changes to the design response must be also incorporated into the endorsed

Page 2 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority: 

## PLANNING PERMIT

No. TPA/49429

architectural plans.

9. Prior to the occupation of the development approved under this permit, a report from the author of the endorsed Sustainable Management Plan (or similarly qualified person or company) must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that (in relation to those relevant completed dwellings ready for occupation) all measures specified in the Sustainable Management Plan have been implemented in accordance with the approved plan.
  
10. Before the development starts, a construction management plan must be prepared and submitted to the Responsible Authority for approval. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
  - a) measures to control noise, dust and water runoff;
  - b) prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
  - c) the location of where building materials are to be kept during construction;
  - d) site security;
  - e) maintenance of safe movements of vehicles to and from the site during the construction phase;
  - f) on-site parking of vehicles associated with construction of the development;
  - g) wash down areas for trucks and vehicles associated with construction activities;
  - h) cleaning and maintaining surrounding road surfaces;
  - i) a requirement that construction works must only be carried out during the following hours:
    - Monday to Friday (inclusive) – 7.00am to 6.00pm;
    - Saturday – 9.00am to 1.00pm;
    - Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings. This does not include excavation or the use of heavy machinery).
  
11. No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.
  
12. A landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be

Page 3 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority:

*Stacey Roberts*

## PLANNING PERMIT

No. TPA/49429

submitted to and approved by the Responsible Authority prior to the commencement of any works. The plan must show the proposed landscape treatment of the site including:-

- the location of all existing trees and other vegetation to be retained on site;
- provision of canopy trees with spreading crowns located throughout the site including substantial planting within the front setback;
- planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material;
- the location and details of all fencing;
- the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site;
- details of all proposed hard surface materials including pathways.

When approved the plan will be endorsed and will then form part of the permit.

13. The existing street tree in Coora Road will be removed and replaced by Council at the cost of the developer. Payment of \$11,452.90 is required prior to the commencement of the development. Note – This amount is valid for 6 months from the date of issue of the permit.
14. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed and maintained to the satisfaction of the Responsible Authority.
15. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties. The on-site drainage system must prevent discharge from driveways onto the footpath. Such a system may include either:
  - a) a trench grate (150mm minimum internal width) located within the property; and/or
  - b) shaping the driveway so that water is collected in a grated pit on the property; and/or
  - c) another Council approved equivalent.
16. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of

Page 4 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority:

*De Mace Roberts*

## PLANNING PERMIT

No. TPA/49429

Monash, the Responsible Authority, prior to works commencing.

17. Before the development starts, a site layout plan drawn to scale and dimensioned must be approved by the Responsible Authority.

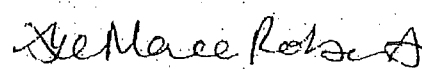
The plans must show a drainage scheme providing for the collection of stormwater within the site and for the conveying of the stormwater to the nominated point of discharge.

If the point of discharge cannot be located then notify Council's Engineering Division immediately.

18. Parking areas and access lanes must be kept available for these purposes at all times.
19. The loading and unloading of goods from vehicles must only be carried out on the land.
20. Driveways must be maintained in a fit and proper state so as not to compromise the ability of vehicles to enter and exit the site in a safe manner or compromise operational efficiency of the road or public safety (e.g. by spilling gravel onto the roadway).
21. The development must be provided with a corner splay or area at least 50% clear of visual obstructions (which may include adjacent landscaping areas with a height of less than 0.9 metres) extending at least 2.0 metres long x 2.5 metres deep (within the property) from the edge of the exit lane of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
22. The layout of the development shall follow the Design Standards for car parking set out in Clause 52.06-8 of the Monash Planning Scheme.
23. The accessible parking spaces must be designed (other than length of space which should be 4.9 metres) in accordance with the Australian Standard for *Off-Street Parking for people with disabilities, AS/NZS 2890.6*.
24. Before the development permitted is completed, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
- a) Constructed to the satisfaction of the Responsible Authority;
  - b) Properly formed to such levels that they can be used in accordance with the plans;

Page 5 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority: 

## PLANNING PERMIT

No. TPA/49429

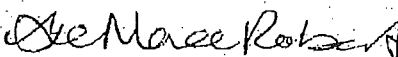
- c) Surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
- d) Drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
- e) Line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.

Parking areas and access lanes must be kept available for these purposes at all times.

- 25. The location and details of signs shown on the endorsed plans must not be altered without the written consent of the responsible Authority.
- 26. All signs must be located wholly within the boundary of the land.
- 27. The sign must not distract drivers due to its colouring, be mistaken for a traffic signal, be able to be mistaken as an instruction to drivers or constitute a road safety hazard in any way.
- 28. The sign must not obstruct the view of motorists, obscure traffic signals or constitute a road safety hazard in any way.
- 29. The intensity of the light in the signs must be limited so as not to cause glare or distraction to motorists, or loss of amenity in the surrounding area, to the satisfaction of the Responsible Authority.
- 30. The approval contained in this permit for the sign shown on the endorsed plans expires fifteen years from the date of this permit.
- 31. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
  - The development is not started before 2 years from the date of issue.
  - The development is not completed before 4 years from the date of issue.
 In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

Page 6 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority: 

## PLANNING PERMIT

No. TPA/49429

NOTES-

1. Building approval must be obtained prior to the commencement of the above approved works.
2. No signs must be constructed or displayed without a further permit unless a permit is not required under the provisions of the Monash Planning Scheme.
3. Building Permit approval for this development must take into consideration the location of future subdivision boundaries and their compliance with the Fire Separation Provisions of the Building Code of Australia, including Separating Walls and Openings near Boundaries, as well as the requirements of the Building Regulations.
4. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
5. Disabled access to the building must be provided to the satisfaction of the Responsible Authority. All work carried out to provide disabled access must be constructed in accordance with Australian Standards Design for Access and Mobility AS 1428.1.
6. Any new drainage work within the road reserve, the work will require the approval of the Council's Engineering Division prior to the works commencing. One copy of the plans (A3-A1 size) for the drainage works must be submitted to and approved by the Engineering Division. The plans are to show sufficient information to determine that the drainage works will meet all drainage conditions of the permit. A refundable security deposit of \$500 is to be paid prior to the drainage works commencing.
7. Engineering permits must be obtained for new vehicle crossings and for new connections to the Council pits and these works are to be inspected by Council (telephone: 9518 3555).
8. Use of Easement approval is required. Approval should be given subject to:
  - Council and South East Water approval being obtained.
  - The use of easement agreement being signed by Council.
  - A construction joint being made along the easement line.
9. The proposed crossings are to be constructed in accordance with the City of Monash standards.
10. Approval of each proposed crossing, and a permit for installation or modification of

Page 7 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority:

*DeMare Roberts*



## PLANNING PERMIT

No. TPA/49429

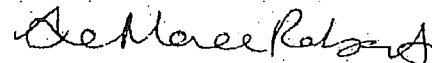
any vehicle crossing is required from Council's Engineering Department.

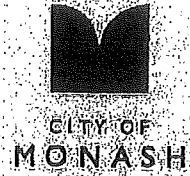
11. The redundant crossings are to be removed and reinstated with kerb and channel to the satisfaction of Council. The footpath and naturestrip are to be reinstated to the satisfaction of Council.
12. All new crossings are to be no closer than 1.0 metre measured at the kerb to the edge of any tree canopy, power pole, drainage or service pit or other services. Approval from affected service authorities is required as part of the vehicle crossing application process
13. Tree planting should be kept off the drainage easement.

Page 8 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority:





Reference: TPA/49429

23 January 2019

Chris Costa  
The Costa Group Pty Ltd  
204-208 Waverley Rd  
MOUNT WAVERLEY VIC 3149

Dear Sir

8-12 NATALIA AVENUE OAKLEIGH SOUTH VIC 3167  
PLANNING PERMIT APPLICATION TPA/49429

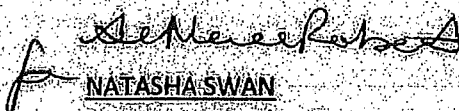
I am pleased to advise that application TPA/49429 for the construction of a warehouse premises including a reduction in the applicable car parking requirement and display of business identification signage has been approved subject to conditions.

The planning permit and an endorsed copy of the plans and Sustainable Management Plan are enclosed.

Your attention is drawn to the conditions of the permit. Please read them carefully.

If you have any questions, please contact Anne Maree Roberts, Senior Statutory Planner, on 9518 3068.

Yours sincerely

  
NATASHA SWAN  
Manager, City Planning

Ends



**PLANNING  
PERMIT**

Permit No.: **TPA/49429**  
 Planning Scheme: **Monash Planning Scheme**  
 Responsible Authority: **Monash City Council**

**ADDRESS OF THE LAND**

8-12 Natalia Avenue OAKLEIGH SOUTH VIC 3167

**THE PERMIT ALLOWS**


The construction of a warehouse premises including a reduction in the applicable car parking requirement and display of business identification signage

**THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT**

1. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
3. The amenity of the area must not be detrimentally affected by the development, through the:
  - (a) transport of materials, goods or commodities to or from the land;
  - (b) appearance of any building, works or materials; and
  - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
4. No goods must be stored or left exposed outside the building/s so as to be visible from any public road or thoroughfare.
5. No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.
6. Adequate provision shall be made for the storage and collection of garbage and other solid wastes and these facilities are to be located on the site to the satisfaction

Page 1 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority: 

**IMPORTANT INFORMATION ABOUT THIS NOTICE****WHAT HAS BEEN DECIDED?**

The Responsible Authority has issued a permit.

(Note: This is not a permit granted under Division 5 or 6 of Part 4 of the Planning and Environment Act 1987.)

**CAN THE RESPONSIBLE AUTHORITY AMEND THIS PERMIT?**

The Responsible Authority may amend this permit under Division 1A of Part 4 of the Planning and Environment Act 1987.

**WHEN DOES A PERMIT BEGIN?**

A permit operates:

- from the date specified in the permit; or
- if no date is specified, from:
  - (i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal; or
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**WHEN DOES A PERMIT EXPIRE?**

1. A permit for the development of land expires if-
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  - the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the *Subdivision Act 1988*.
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  - the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
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  - the development or any stage of it is not completed within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
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4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the *Planning and Environment Act 1987*, or to any combination of use, development or any of those circumstances requires the certification of a plan under the *Subdivision Act 1988*, unless the permit contains a different provision-
  - the use or development of any stage is to be taken to have started when the plan is certified; and
  - the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

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## PLANNING PERMIT

No. TPA/49429

of the Responsible Authority.

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- a) The method of collection of garbage and recyclables for uses;
  - b) Designation of methods of collection including the need to provide for private services or utilisation of council services;
  - c) Appropriate areas of bin storage on site and areas for bin storage on collection days;
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  - e) Litter management.

A copy of this plan must be submitted to Council.

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  - b) Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
  - c) Document the means by which the appropriate target or performance is to be achieved.
  - d) Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
  - e) Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.
  - f) Any relevant requirements of the Condition 1 sub-clauses hereof.

All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to the endorsed Sustainable Management Plan may occur without written consent of the Responsible Authority and (to the extent material and necessary) any relevant flow-on changes to the design response must be also incorporated into the endorsed

Page 2 of 8

Date issued:  
23 January 2019

Signature for the

Responsible Authority: 

## PLANNING PERMIT

No. TPA/49429

architectural plans.

9. Prior to the occupation of the development approved under this permit, a report from the author of the endorsed Sustainable Management Plan (or similarly qualified person or company) must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that (in relation to those relevant completed dwellings ready for occupation) all measures specified in the Sustainable Management Plan have been implemented in accordance with the approved plan.
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- a) measures to control noise, dust and water runoff;
  - b) prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
  - c) the location of where building materials are to be kept during construction;
  - d) site security;
  - e) maintenance of safe movements of vehicles to and from the site during the construction phase;
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    - Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings. This does not include excavation or the use of heavy machinery).
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- planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material;
- the location and details of all fencing;
- the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site;
- details of all proposed hard surface materials including pathways.

When approved the plan will be endorsed and will then form part of the permit.

13. The existing street tree in Coora Road will be removed and replaced by Council at the cost of the developer. Payment of \$11,452.90 is required prior to the commencement of the development. Note – This amount is valid for 6 months from the date of issue of the permit.
14. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed and maintained to the satisfaction of the Responsible Authority.
15. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties. The on-site drainage system must prevent discharge from driveways onto the footpath. Such a system may include either:
  - a) a trench grate (150mm minimum internal width) located within the property; and/or
  - b) shaping the driveway so that water is collected in a grated pit on the property; and/or
  - c) another Council approved equivalent.
16. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of

Page 4 of 8

Date issued:  
23 January 2019

Signature for the

Responsible Authority: 

## PLANNING PERMIT

No. TPA/49429

Monash, the Responsible Authority, prior to works commencing.

17. Before the development starts, a site layout plan drawn to scale and dimensioned must be approved by the Responsible Authority.

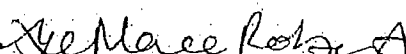
The plans must show a drainage scheme providing for the collection of stormwater within the site and for the conveying of the stormwater to the nominated point of discharge.

If the point of discharge cannot be located then notify Council's Engineering Division immediately.

18. Parking areas and access lanes must be kept available for these purposes at all times.
19. The loading and unloading of goods from vehicles must only be carried out on the land.
20. Driveways must be maintained in a fit and proper state so as not to compromise the ability of vehicles to enter and exit the site in a safe manner or compromise operational efficiency of the road or public safety (e.g. by spilling gravel onto the roadway).
21. The development must be provided with a corner splay or area at least 50% clear of visual obstructions (which may include adjacent landscaping areas with a height of less than 0.9 metres) extending at least 2.0 metres long x 2.5 metres deep (within the property) from the edge of the exit lane of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
22. The layout of the development shall follow the Design Standards for car parking set out in Clause 52.06-8 of the Monash Planning Scheme.
23. The accessible parking spaces must be designed (other than length of space which should be 4.9 metres) in accordance with the Australian Standard for *Off-Street Parking for people with disabilities, AS/NZS 2890.6*.
24. Before the development permitted is completed, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
- a) Constructed to the satisfaction of the Responsible Authority;
  - b) Properly formed to such levels that they can be used in accordance with the plans;

Page 5 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority: 



## PLANNING PERMIT

No. TPA/49429

- c) Surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
- d) Drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
- e) Line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.

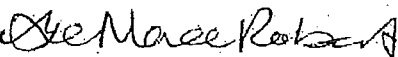
Parking areas and access lanes must be kept available for these purposes at all times.

- 25. The location and details of signs shown on the endorsed plans must not be altered without the written consent of the responsible Authority.
- 26. All signs must be located wholly within the boundary of the land.
- 27. The sign must not distract drivers due to its colouring, be mistaken for a traffic signal, be able to be mistaken as an instruction to drivers or constitute a road safety hazard in any way.
- 28. The sign must not obstruct the view of motorists, obscure traffic signals or constitute a road safety hazard in any way.
- 29. The intensity of the light in the signs must be limited so as not to cause glare or distraction to motorists, or loss of amenity in the surrounding area, to the satisfaction of the Responsible Authority.
- 30. The approval contained in this permit for the sign shown on the endorsed plans expires fifteen years from the date of this permit.
- 31. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
  - The development is not started before 2 years from the date of issue.
  - The development is not completed before 4 years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

Page 6 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority: 

## PLANNING PERMIT

No. TPA/49429

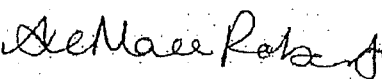
NOTES-

1. Building approval must be obtained prior to the commencement of the above approved works.
2. No signs must be constructed or displayed without a further permit unless a permit is not required under the provisions of the Monash Planning Scheme.
3. Building Permit approval for this development must take into consideration the location of future subdivision boundaries and their compliance with the Fire Separation Provisions of the Building Code of Australia, including Separating Walls and Openings near Boundaries, as well as the requirements of the Building Regulations.
4. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
5. Disabled access to the building must be provided to the satisfaction of the Responsible Authority. All work carried out to provide disabled access must be constructed in accordance with Australian Standards Design for Access and Mobility AS 1428.1.
6. Any new drainage work within the road reserve, the work will require the approval of the Council's Engineering Division prior to the works commencing. One copy of the plans (A3-A1 size) for the drainage works must be submitted to and approved by the Engineering Division. The plans are to show sufficient information to determine that the drainage works will meet all drainage conditions of the permit. A refundable security deposit of \$500 is to be paid prior to the drainage works commencing.
7. Engineering permits must be obtained for new vehicle crossings and for new connections to the Council pits and these works are to be inspected by Council (telephone: 9518 3555).
8. Use of Easement approval is required. Approval should be given subject to:
  - Council and South East Water approval being obtained.
  - The use of easement agreement being signed by Council.
  - A construction joint being made along the easement line.
9. The proposed crossings are to be constructed in accordance with the City of Monash standards.
10. Approval of each proposed crossing, and a permit for installation or modification of

Page 7 of 8

Date issued:  
23 January 2019

Signature for the

Responsible Authority: 

## PLANNING PERMIT

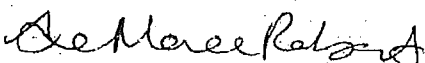
No. TPA/49429

any vehicle crossing is required from Council's Engineering Department.

11. The redundant crossings are to be removed and reinstated with kerb and channel to the satisfaction of Council. The footpath and naturestrip are to be reinstated to the satisfaction of Council.
12. All new crossings are to be no closer than 1.0 metre measured at the kerb to the edge of any tree canopy, power pole, drainage or service pit or other services. Approval from affected service authorities is required as part of the vehicle crossing application process
13. Tree planting should be kept off the drainage easement.

Page 8 of 8

Date issued:  
23 January 2019

Signature for the  
Responsible Authority: 

Declaration of Registrar of Titles or other authorised person, taking Declaration of attesting witness.

Appeared before me at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_

One thousand nine hundred and \_\_\_\_\_

the attesting witness to this instrument and declared that he personally knew \_\_\_\_\_ the person signing the same and whose signature the said \_\_\_\_\_ attested; and that the name purporting to be the signature of the said \_\_\_\_\_ in his own handwriting, and that he was of sound mind and freely and voluntarily signed such instrument.

HENDERSON & BALL  
SOLICITORS  
430 LITTLE COLLINS STREET, MELBOURNE.

**Transfer**

MR. J. J. BRIGSHAW.

MR. G. F. OATO.

TO

Date: March 1927.

**MEMORIAL OF INSTRUMENT**

Nature of Instrument.	Time of its Production for Registration.	To Whom given.	Number of Symbol thereon.
TRANSFER. AS TO PART	The 2 <sup>nd</sup> day of May 1927.	to Joseph James Brigshaw	1314661.

*J. J. O.*

*Assistant Registrar of Titles.*

I certify that a memorial of the within Instrument was entered at the time last above mentioned in the Register Book Vol. 3668. Fol. 733491.

*Assistant Registrar of Titles.*

# Sample owners corporation certificate

Owners Corporation Act 2006 Section 151, Owners Corporations Regulations 2018 Regulation 16

Owners corporation number	PS716735J		
Address	8- 12 Natalia Avenue , Clayton South Victoria		
This certificate is issued for lot	1	on plan of subdivision number	Common Property
Postal address	82 CARLISLE CRESCENT OAKLEIGH VIC 3166		
Applicant for the certificate	Placelea Pty Ltd		
Address for delivery of certificate	228 Smith Street, Collingwood Victoria		
Date that the application was received	15 June 2019		

## Important:

The information in this certificate is issued on (insert date) 15 June 2019

You can inspect the owners corporations register for additional information and you should obtain a new certificate for current information prior to settlement.

1.	The current annual fees for the lot *per quarter or *annually (*strike out if not applicable) are:
	<i>Estimated at \$400 per quarter</i>
2.	The date which the fees for the lot have been paid up to is:
	The fees are paid up to 31 December 2017.
3.	The total of any unpaid fees or charges for the lot is: Nil
4.	The special fees or levies which have been struck, and the dates on which they were struck and are payable are: Nil

5.	Repairs, maintenance or other work which has been or is about to be performed, and which may incur additional charges not included in annual fees, maintenance fund or special fees as set out above: NIL
6.	The owners corporation has the following insurance cover: TBA •
7.	Has the owners corporation resolved that the members may arrange their own insurance under section 63 of the Act? If so, provide the date of that resolution:
	No
8.	The total funds held by the owners corporation NIL:
	The total funds should report the best available statement of financial position of the owners corporation  The statement of financial position at the end of the last financial year of the owners corporation on NOT APPLICABLE
9.	Are there any liabilities of the owners corporation that are not covered by annual fees, special levies and repairs and maintenance as set out above? If so, provide details:
	NIL
10.	Are there any current contracts, leases, licences or agreements affecting the common property? If so, provide details: Nil
11.	Are there any current agreements to provide services to lot owners, occupiers or the public? If so, provide details: NIL
12.	Are there any notices or orders served on the owners corporation in the last 12 months that have not been satisfied? If so, provide details:
	<i>Sample 1</i>  There are no notices or orders as at (insert date)
13.	Are there any legal proceedings to which the owners corporation is a party and any circumstances of which the owners corporation is aware that are likely to give rise to proceedings? If so, provide details:

14.	Has the owners corporation appointed or resolved to appoint a manager? NO:
	A manager is appointed. NO
15.	Has an administrator been appointed for the owners corporation, or has there been a proposal for the appointment of an administrator? NO
16.	A copy of the minutes of the most recent annual general meeting of the owners corporation. NONE
17.	Documents required to be attached to the owners corporation certificate are: NIL
	<ul style="list-style-type: none"> <li>• A copy of all resolutions made at the last annual general meeting NIL</li> <li>• A copy of the consolidated rules registered at Land Victoria</li> <li>• A copy of Schedule 3 of the Owners Corporations Regulations 2018 entitled "Statement of advice and information for prospective purchasers and lot owners"</li> </ul>
18.	<p>Note:</p> <p>More information can be obtained by an inspection of the owners corporation register.</p> <p>Please make your request to inspect the owners corporation register in writing to:</p>

This owners corporation certificate was prepared by:

Postal address

82 CARLISLE CRESCENT OAKLEIGH VIC 3166

(signature)

(print name)

(name of management company if relevant) as delegate of the owners corporation

**The common seal of owners corporation number**

was affixed in accordance with Section 20 of the *Owners Corporations Act 2006* and in the presence of:

# Statement of advice and information for prospective purchasers and lot owners

Schedule 3, Regulation 17, Owners Corporations Regulations 2018

## What is an owners corporation?

The lot you are considering buying is part of an owners corporation. Whenever a plan of subdivision creates common property, an owners corporation is responsible for managing the common property. A purchaser of a lot that is part of an owners corporation automatically becomes a member of the owners corporation when the transfer of that lot to the purchaser has been registered with Land Victoria.

If you buy into an owners corporation, you will be purchasing not only the individual property, but also ownership of, and the right to use, the common property as set out in the plan of subdivision. This common property may include driveways, stairs, paths, passages, lifts, lobbies, common garden areas and other facilities set up for use by owners and occupiers. In order to identify the boundary between the individual lot you are purchasing (for which the owner is solely responsible) and the common property (for which all members of the owners corporation are responsible), you should closely inspect the plan of subdivision.

## How are decisions made by an owners corporation?

As an owner, you will be required to make financial contributions to the owners corporation, in particular for the repair, maintenance and management of the common property. Decisions as to the management of this common property will be the subject of collective decision making. Decisions as to these financial contributions, which may involve significant expenditure, will be decided by a vote.

## Owners corporation rules

The owners corporation rules may deal with matters such as car parking, noise, pets, the appearance or use of lots, behaviour of owners, occupiers or guests and grievance procedures.

You should look at the owners corporation rules to consider any restrictions imposed by the rules.

## Lot entitlement and lot liability

The plan of subdivision will also show your lot entitlement and lot liability. Lot liability represents the share of owners corporation expenses that each lot owner is required to pay.

Lot entitlement is an owner's share of ownership of the common property, which determines voting rights. You should make sure that the allocation of lot liability and entitlement for the lot you are considering buying seems fair and reasonable.

## Further information

If you are interested in finding out more about living in an owners corporation, you can contact Consumer Affairs Victoria. If you require further information about the particular owners corporation you are buying into you can inspect that owners corporation's information register.

## Management of an owners corporation

An owners corporation may be self-managed by the lot owners or professionally managed by an owners corporation manager. If an owners corporation chooses to appoint a professional manager, it must be a manager registered with the Business Licensing Authority (BLA).

If you are uncertain about any aspect of the owners corporation or the documents you have received from the owners corporation, you should seek expert advice.



## **Model rules for an owners corporation**

### **1. Health, safety and security**

#### **1.1 Health, safety and security of lot owners, occupiers of lots and others**

A lot owner or occupier must not use the lot, or permit it to be used, so as to cause a hazard to the health, safety and security of an owner, occupier, or user of another lot.

#### **1.2 Storage of flammable liquids and other dangerous substances and materials**

(1) Except with the approval in writing of the owners corporation, an owner or occupier of a lot must not use or store on the lot or on the common property any flammable chemical, liquid or gas or other flammable material.

(2) This rule does not apply to—

(a) chemicals, liquids, gases or other material used or intended to be used for domestic purposes;

or

(b) any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

#### **1.3 Waste disposal**

An owner or occupier must ensure that the disposal of garbage or waste does not adversely affect the health, hygiene or comfort of the occupiers or users of other lots.

### **2. Committees and sub-committees**

#### **2.1 Functions, powers and reporting of committees and sub-committees**

A committee may appoint members to a sub committee without reference to the owners corporation.

### **3. Management and administration**

#### **3.1 Metering of services and apportionment of costs of services**

(1) The owners corporation must not seek payment or reimbursement for a cost or charge from a lot owner or occupier that is more than the amount that the supplier would have charged the lot owner or occupier for the same goods or services.

(2) If a supplier has issued an account to the owners corporation, the owners corporation cannot recover from the lot owner or occupier an amount which includes any amount that is able to be claimed as a concession or rebate by or on behalf of the lot owner or occupier from the relevant supplier.

(3) Subrule (2) does not apply if the concession or rebate—

(a) must be claimed by the lot owner or occupier and the owners corporation has given the lot owner or occupier an opportunity to claim it and the lot owner or occupier has not done so by the payment date set by the relevant supplier; or

(b) is paid directly to the lot owner or occupier as a refund.

## **4. Use of common property**

### **4.1 Use of common property**

(1) An owner or occupier of a lot must not obstruct the lawful use and enjoyment of the common property by any other person entitled to use the common property.

(2) An owner or occupier of a lot must not, without the written approval of the owners corporation, use for the owner or occupier's own purposes as a garden any portion of the common property.

(3) An approval under subrule (2) may state a period for which the approval is granted.

(4) If the owners corporation has resolved that an animal is a danger or is causing a nuisance to the common property, it must give reasonable notice of this resolution to the owner or occupier who is keeping the animal.

(5) An owner or occupier of a lot who is keeping an animal that is the subject of a notice under subrule (4) must remove that animal.

(6) Subrules (4) and (5) do not apply to an animal that assists a person with an impairment or disability.

### **4.2 Vehicles and parking on common property**

An owner or occupier of a lot must not, unless in the case of an emergency, park or leave a motor vehicle or other vehicle or permit a motor vehicle or other vehicle—

(a) to be parked or left in parking spaces situated on common property and allocated for other lots; or

(b) on the common property so as to obstruct a driveway, pathway, entrance or exit to a lot; or

(c) in any place other than a parking area situated on common property specified for that purpose by the owners corporation.

### **4.3 Damage to common property**

(1) An owner or occupier of a lot must not damage or alter the common property without the written approval of the owners corporation.

(2) An owner or occupier of a lot must not damage or alter a structure that forms part of the common property without the written approval of the owners corporation.

(3) An approval under subrule (1) or (2) may state a period for which the approval is granted, and may specify the works and conditions to which the approval is subject.

(4) An owner or person authorised by an owner may install a locking or safety device to protect the lot against intruders, or a screen or barrier to prevent entry of animals or insects, if the device, screen or barrier is soundly built and is consistent with the colour, style and materials of the building.

(5) The owner or person referred to in subrule (4) must keep any device, screen or barrier installed in good order and repair.

## **5. Lots**

## **5.1 Change of use of lots**

An owner or occupier of a lot must give written notification to the owners corporation if the owner or occupier changes the existing use of the lot in a way that will affect the insurance premiums for the owners corporation.

### **Example**

If the change of use results in a hazardous activity being carried out on the lot, or results in the lot being used for commercial or industrial purposes rather than residential purposes.

## **5.2 External appearance of lots**

- (1) An owner or occupier of a lot must obtain the written approval of the owners corporation before making any changes to the external appearance of their lot.
- (2) An owners corporation cannot unreasonably withhold approval, but may give approval subject to reasonable conditions to protect quiet enjoyment of other lot owners, structural integrity or the value of other lots and/or common property.

## **5.3 Requiring notice to the owners corporation of renovations to lots**

An owner or occupier of a lot must notify the owners corporation when undertaking any renovations or other works that may affect the common property and/or other lot owners' or occupiers' enjoyment of the common property.

# **6. Behaviour of persons**

## **6.1 Behaviour of owners, occupiers and invitees on common property**

An owner or occupier of a lot must take all reasonable steps to ensure that guests of the owner or occupier do not behave in a manner likely to unreasonably interfere with the peaceful enjoyment of any other person entitled to use the common property.

## **6.2 Noise and other nuisance control**

- (1) An owner or occupier of a lot, or a guest of an owner or occupier, must not unreasonably create any noise likely to interfere with the peaceful enjoyment of any other person entitled to use the common property.
- (2) Subrule (1) does not apply to the making of a noise if the owners corporation has given written permission for the noise to be made.

# **7. Dispute resolution**

- (1) The grievance procedure set out in this rule applies to disputes involving a lot owner, manager, or an occupier or the owners corporation.
- (2) The party making the complaint must prepare a written statement in the approved form.
- (3) If there is a grievance committee of the owners corporation, it must be notified of the dispute by the complainant.
- (4) If there is no grievance committee, the owners corporation must be notified of any dispute by the complainant, regardless of whether the owners corporation is an immediate party to the dispute.
- (5) The parties to the dispute must meet and discuss the matter in dispute, along with either the grievance committee or the owners corporation, within 14 working days after the dispute comes to the attention of all the parties.

- (6) A party to the dispute may appoint a person to act or appear on the party's behalf at the meeting.
- (7) If the dispute is not resolved, the grievance committee or owners corporation must notify each party of the party's right to take further action under Part 10 of the *Owners Corporations Act 2006*.
- (8) This process is separate from and does not limit any further action under Part 10 of the *Owners Corporations Act 2006*.



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VOLUME 11936 FOLIO 432

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Produced 15/12/2019 08:42 AM

**LAND DESCRIPTION**

Lot 1 on Plan of Subdivision 716735J.  
PARENT TITLE Volume 10003 Folio 304  
Created by instrument PS716735J 01/12/2017

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Sole Proprietor  
PLACELEA PTY LTD of 82 CARLISLE CRESCENT OAKLEIGH VIC 3166  
PS716735J 01/12/2017

**ENCUMBRANCES, CAVEATS AND NOTICES**

MORTGAGE AK956821R 12/03/2014  
NATIONAL AUSTRALIA BANK LTD

COVENANT as to part 1314661

COVENANT as to part 1366753

COVENANT as to part 1397953

COVENANT as to part 1450575

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

**DIAGRAM LOCATION**

SEE PS716735J FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NUMBER	STATUS	DATE
AS583367U	CHANGE ADDRESS OWNER CORP Registered	08/10/2019

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 8-12 NATALIA AVENUE OAKLEIGH SOUTH VIC 3167

**ADMINISTRATIVE NOTICES**

NIL

eCT Control 16089P NATIONAL AUSTRALIA BANK LIMITED  
Effective from 01/12/2017




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## OWNERS CORPORATIONS

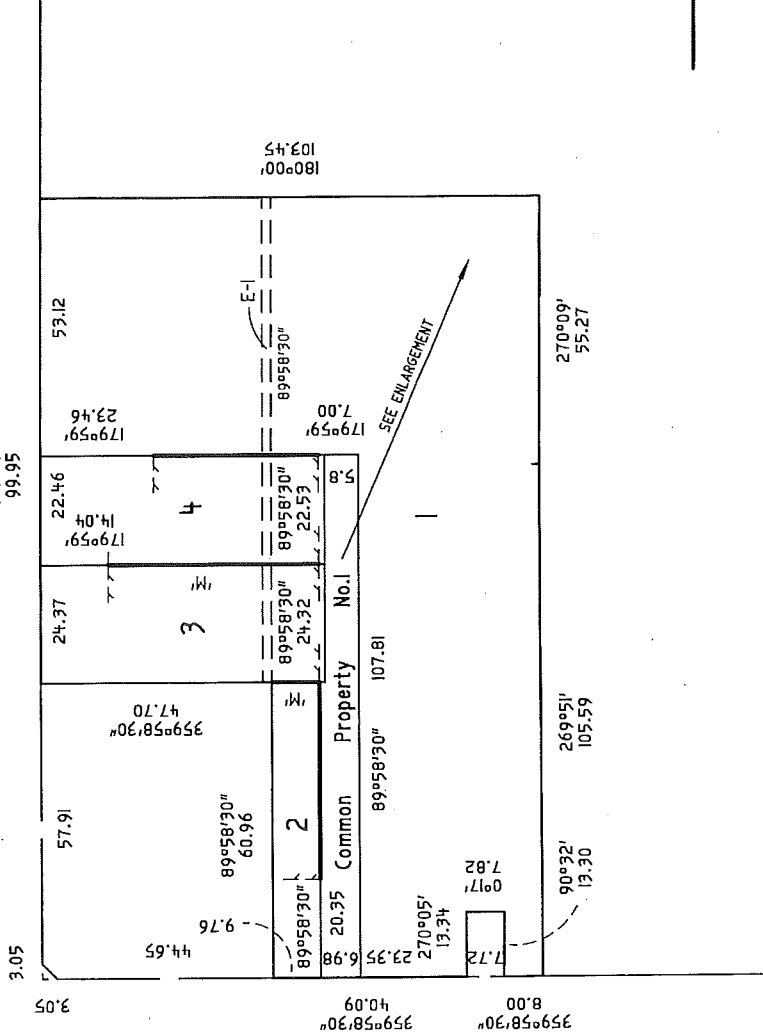
The land in this folio is affected by  
OWNERS CORPORATION 1 PLAN NO. PS716735J

DOCUMENT END

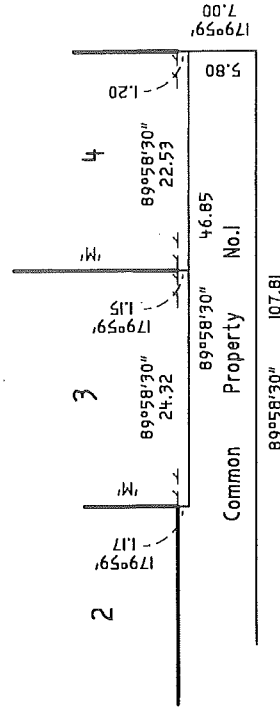
<b>PLAN OF SUBDIVISION</b>		LV USE ONLY EDITION 1	PS 716735 J	
<p style="text-align: center;">LOCATION OF LAND</p> <p>PARISH: MORDIALLOC TOWNSHIP: --- SECTION: 2 CROWN ALLOTMENT: 1 (PART) CROWN PORTION: ---</p> <p>TITLE REFERENCE: Vol. 10003 Fol. 304 LAST PLAN REFERENCE: LOT 1 LP 221672 F</p> <p>POSTAL ADDRESS: 12, 12A &amp; 12B NATALIA AVENUE (at time of subdivision) OAKLEIGH SOUTH, 3167</p> <p>MGA COORDINATES: E 333550                      ZONE: 55 (of approx centre of land in plan) N 5801750                      GDA 94</p>		<p>Council Name: Monash City Council</p> <p>Council Reference Number: TPS/11746 Planning Permit Reference: TPA/46925 SPEAR Reference Number: S096126H</p> <p>Certification</p> <p>This plan is certified under section 6 of the Subdivision Act 1988</p> <p>Public Open Space</p> <p>A requirement for public open space under section 18 of the Subdivision Act 1988 has not been made</p> <p>Digitally signed by: Fiona Johnstone for Monash City Council on 05/10/2017</p> <p>Statement Of Compliance issued: 12/10/2017</p>		
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON	<p>This is a Spear Plan</p> <p>Building Boundaries are defined by thick continuous lines.</p> <p><u>Location of Boundaries defined by Buildings</u></p> <p>Median: Denoted Thus <span style="border-top: 1px solid black; padding-top: 2px;">M</span></p> <p>Exterior Face: All Other Boundaries</p>		
Nil	Nil			
NOTATIONS				
DEPTH LIMITATION: DOES NOT APPLY				
Survey: This plan is based on survey.				
This survey has been connected to permanent marks no(s) 251 In Proclaimed Survey Area No. ---				
STAGING	This is not a staged subdivision. Planning Permit No.			
EASEMENT INFORMATION				
LEGEND: A - Appurtenant Easement                      E - Encumbering Easement                      R - Encumbering Easement (Road)				
Easements and rights implied by Section 12(2) of the Subdivision Act 1988 apply to the whole of the land in this plan				
Easement Reference	Purpose	Width (metres)	Origin	Land Benefited/In Favour Of
E-1	DRAINAGE & SEWERAGE	1.83	LP 10114	ALL LOTS ON LP 10114
 <p><b>NOBELIUS LAND SURVEYORS</b> P.O. BOX 461 PAKENHAM 3810 Ph 03 5941 4112 Fax 03 5941 7359 mail@nobelius.com.au</p>		<p>Digitally signed by: Timothy Deane Walker (Nobelius Land Surveyors Pty Ltd), Surveyor's Plan Version (B), 10/07/2017, SPEAR Ref: S096126H</p>		<p>Sheet 1 of 2 Sheets</p> <p>ORIGINAL SHEET SIZE A3</p> <p>PLAN REGISTERED TIME: 2:01PM DATE: 01/12/17</p> <p>Ethan KAO Assistant Registrar of Titles</p>

PS 716735 J


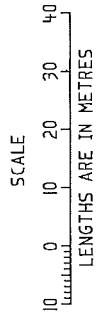
NATALIA AVENUE



**ENLARGEMENT**  
NOT TO SCALE



**NOBELIUS LAND SURVEYORS**  
 P.O. BOX 461  
 PAKENHAM 3810  
 Ph 03 5941 412  
 Fax 03 5941 7359  
 rob@nobelius.com.au

ORIGINAL SCALE 1 : 1000

Sheet 2  
ORIGINAL SHEET SIZE A3

Digitally signed by: Timothy Deane Walker (Nobelius Land Surveyors Pty Ltd),  
 05/10/2017,  
 10/07/2017, SPEAR Ref: S096126H

Amended by: Timothy Deane Walker, 30/11/2017.





# Department of Environment, Land, Water & Planning

## Owners Corporation Search Report (Premium)

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Produced: 15/12/2019 08:55:07 AM

**OWNERS CORPORATION 1  
PLAN NO. PS716735J**

The land in PS716735J is affected by 1 Owners Corporation(s)

**Land Affected by Owners Corporation:**

Common Property 1, Lots 1 - 4.

**Limitations on Owners Corporation:**

Unlimited

**Postal Address for Services of Notices:**

82 CARLISLE CRESCENT OAKLEIGH VIC 3166

OC037337F 01/12/2017

**Owners Corporation Manager:**

NIL

**Rules:**

Model Rules apply unless a matter is provided for in Owners Corporation Rules. See Section 139(3) Owners Corporation Act 2006

**Owners Corporation Rules:**

NIL

**Additional Owners Corporation Information:**

OC037337F 01/12/2017

**Notations:**

NIL

**Entitlement and Liability:**

Land Parcel	Folio References	Entitlement	Liability
Common Property 1	11936/436	0	0
Lot 1	11936/432	25	25
Lot 2	11936/433	25	25
Lot 3	11936/434	25	25
Lot 4	11936/435	25	25
<b>Total</b>		<b>100.00</b>	<b>100.00</b>



# Department of Environment, Land, Water & Planning

## Owners Corporation Search Report (Premium)

Produced: 15/12/2019 08:55:07 AM

OWNERS CORPORATION 1  
PLAN NO: PS716735J

From 31 December 2007 every Body Corporate is deemed to be an Owners Corporation. Any reference to a Body Corporate in any Plan, Instrument or Folio is to be read as a reference to an Owners Corporation.

Statement End.

# PLANNING CERTIFICATE

Official certificate issued under Section 199 Planning & Environment Act 1987  
and the Planning and Environment Regulations 2005

## CERTIFICATE REFERENCE NUMBER

629825

## APPLICANT'S NAME & ADDRESS

FRANCA DAL POZZO C/- GXS  
MELBOURNE

## VENDOR

PLACELEA PTY LTD

## PURCHASER

## REFERENCE

190144

This certificate is issued for:

LOT CM1 PLAN PS716735, LOT 1 PLAN PS716735 ALSO KNOWN AS 8 - 12 NATALIA AVENUE OAKLEIGH SOUTH  
MONASH CITY

The land is covered by the:

MONASH PLANNING SCHEME

The Minister for Planning is the responsible authority issuing the Certificate.

The land:

- is included in a INDUSTRIAL 1 ZONE
- is within a DESIGN AND DEVELOPMENT OVERLAY - SCHEDULE 1

A detailed definition of the applicable Planning Scheme is available at :  
(<http://planningschemes.dpcd.vic.gov.au/schemes/monash>)

Historic buildings and land protected under the Heritage Act 1995 are recorded in the Victorian  
Heritage Register at:  
(<http://vhd.heritage.vic.gov.au/>)

Additional site-specific controls may apply.  
The Planning Scheme Ordinance should be  
checked carefully.  
The above information includes all  
amendments to planning scheme maps  
placed on public exhibition up to the date  
of issue of this certificate and which are  
still the subject of active consideration

Copies of Planning Schemes and  
Amendments can be inspected at the  
relevant municipal offices.

LANDATA@  
2 Lonsdale Street  
Melbourne VIC 3000  
Tel: (03) 9194 0606

15 December 2019

Hon. Richard Wynne MP  
Minister for Planning

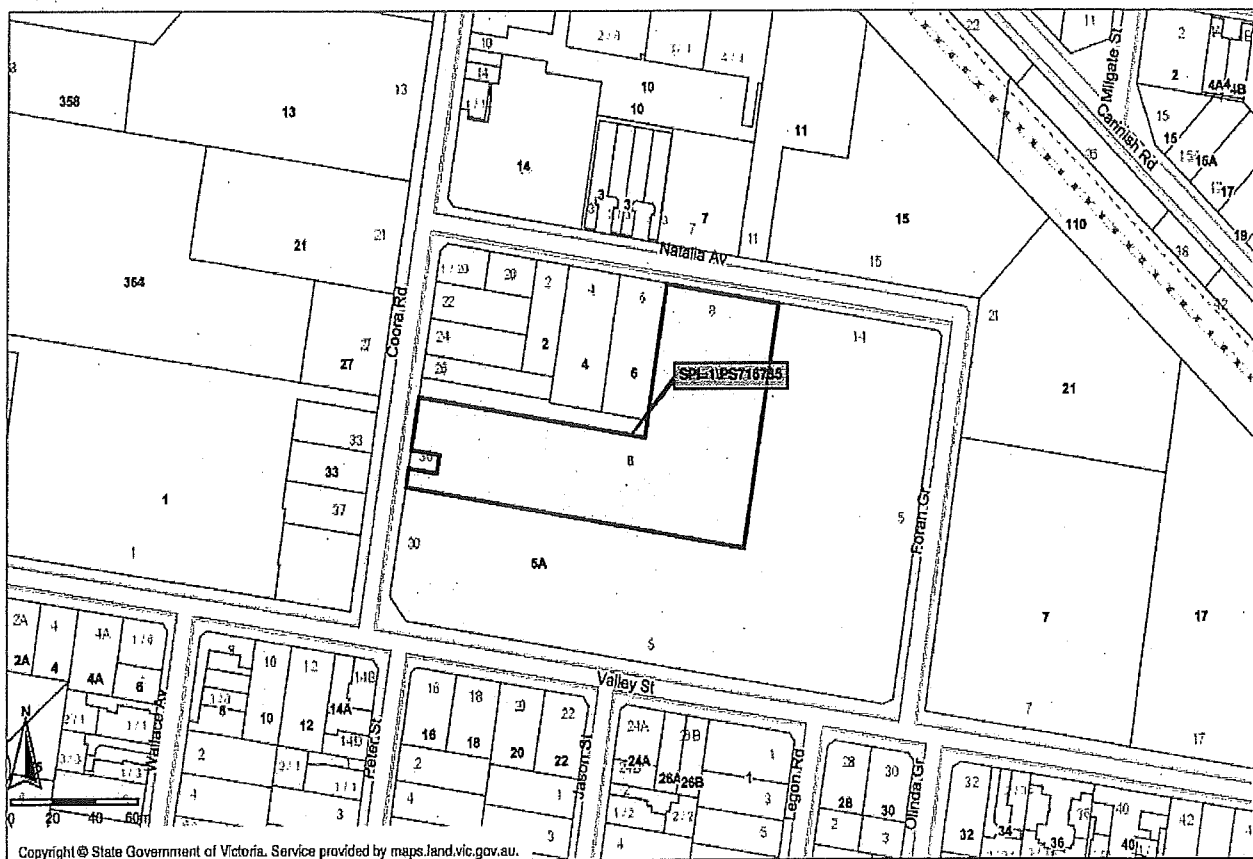


The attached certificate is issued by the Minister for Planning of the State of Victoria and is protected by statute.

The document has been issued based on the property information you provided. You should check the map below - it highlights the property identified from your information.

If this property is different to the one expected, you can phone (03) 9194 0606 or email [landata.enquiries@delwp.vic.gov.au](mailto:landata.enquiries@delwp.vic.gov.au).

**Please note: The map is for reference purposes only and does not form part of the certificate.**



### Choose the authoritative Planning Certificate

#### *Why rely on anything less?*

As part of your section 32 statement, the authoritative Planning Certificate provides you and / or your customer with the statutory protection of the State of Victoria.

Order online before 4pm to receive your authoritative Planning Certificate the same day, in most cases within the hour. Next business day delivery, if further information is required from you.

### Privacy Statement

The information obtained from the applicant and used to produce this certificate was collected solely for the purpose of producing this certificate. The personal information on the certificate has been provided by the applicant and has not been verified by LANDATA®. The property information on the certificate has been verified by LANDATA®. The zoning information on the certificate is protected by statute. The information on the certificate will be retained by LANDATA® for auditing purposes and will not be released to any third party except as required by law.





# INFORMATION STATEMENT

STATEMENT UNDER SECTION 158, WATER ACT 1989

Franca Dal Pozzo  
E-mail: [certificates@landata.vic.gov.au](mailto:certificates@landata.vic.gov.au)

Statement for property:  
LOT 1 NATALIA AVENUE OAKLEIGH  
SOUTH 3167  
1 PS 716735

REFERENCE NO.	YOUR REFERENCE	DATE OF ISSUE	CASE NUMBER
27D//07251/00018	LANDATA CER 34069076-026-7	15 DEC 2019	35372707

## 1. Statement of Fees Imposed

The property is classified as a serviced property with respect to charges which as listed below in the Statement of Fees.

~~(a) By Other Authorities~~

~~(b) By South East Water~~

**TOTAL UNPAID BALANCE** \$0.00

- Financial Updates (free service) are only available online please go to (type / copy the complete address shown below): <https://secureapp.southeastwater.com.au/PropertyConnect/#/order/info/update>

\* Please Note: if usage charges appear above, the amount shown includes one or more of the following:

Water Usage, Recycled Water Usage, Sewage Disposal, Fire Service Usage and Trade Waste Volumetric Fees.

Interest may accrue on the South East Water charges listed in this statement if they are not paid by the due date as set out in the bill.

- The total annual service fees and volumetric fees for water usage and sewerage disposal for each class of property are set out at [www.southeastwater.com.au](http://www.southeastwater.com.au).
- Updates of rates and other charges will only be provided for up to six months from the date of this statement.
- If this property has recently been subdivided from a "parent" title, there may be service or other charges owing on the "parent" which will be charged to this property, once sold, that do not appear on this statement. You must contact us to see if there are any such charges as they may be charged to this property on sale and should therefore be adjusted with the owner of the parent title beforehand.
- If the property is sold, the vendor is liable to pay all fees incurred in relation to the property until the vendor gives South East Water a Notice of Disposition of Land required by the Water (Disposition of Land) Regulations 2010. Please include the Reference Number set out above in that Notice.
- Fees relating to the property may change from year-to-year in accordance with the Essential Service Commission's Price Determination for South East Water.

AUTHORISED OFFICER:

TERRY SCHUBACH  
GENERAL MANAGER  
CUSTOMER SERVICE DELIVERY

**South East Water**  
**Information Statement Applications**  
PO Box 2268, Seaford, VIC 3198



## INFORMATION STATEMENT

STATEMENT UNDER SECTION 158, WATER ACT 1989

- Every fee referred to above is a charge against the property and will be recovered from a purchaser of the property if it is not paid by the vendor.
- Information about when and how outstanding fees may be paid, collected and recovered is set out in the Essential Services Commission's Customer Service Code, Urban Water Businesses.
- If this Statement only sets out rates and fees levied by Parks Victoria and Melbourne Water, the property may not be connected to South East Water's works. To find out whether the property is, or could be connected upon payment of the relevant charges, or whether it is separately metered, telephone 131 694.
- For a new connection to our water or sewer services, fees / charges will be levied.

### 2. Encumbrance Summary

Where available, the location of sewers is shown on the attached plan. Please ensure where manholes appear, that they remain accessible at all times "DO NOT COVER". Where driveways/paving is proposed to be constructed over easements for water supply/sewerage purposes, or within 1 metre of a South East Water asset, the owner will be responsible for all costs associated with any demolition and or re-instatement works, necessary to allow maintenance and or repair of the asset effected. Where changes to the surface levels requires maintenance shafts/holes to be altered, all works must be carried out by South East Water approved contractors only. For information call 131694. For all other works, prior consent is required from south East Water for any construction over easements for water supply/sewerage purposes, or within 1 metre of a South East Water asset.

Information available at Melbourne Water indicates that this property is not subject to flooding from Melbourne Water's drainage system, based on a flood level that has a probability of occurrence of 1% in any one year.

#### **ENCUMBRANCE ENQUIRY EMAIL [infostatements@sew.com.au](mailto:infostatements@sew.com.au)**

If no plan is attached to this Statement, South East Water is not aware of any works belonging to South East Water being present on the property.

If a plan is attached to this Statement, it indicates the nature of works belonging to South East Water, their approximate location, and the approximate location of any easement relating to those works.

#### **Important Warnings**

The map base for any attached plan is not created by South East Water which cannot and does not guarantee the accuracy, adequacy or completeness of any information in the plan, especially the exact location of any of South East Water's works, which may have changes since the attached plan was prepared. Their location should therefore be proven by hand before any works are commenced on the land.

Unless South East Water's prior written approval is obtained, it is an offence to cause any structure to be built or any filling to be placed on a South East Water easement or within 1 metre laterally of any of its works or to permit any structure to be built above or below any such area.

Any work that requires any South East Water manhole or maintenance shaft to be altered may only be done by a contractor approved by South East Water at the property owner's cost.

If the owner builds or places filling in contravention of that requirement, the owner will be required to pay the cost of any demolition or re-instatement of work that South East Water considers necessary, in order to maintain, repair or replace its asset.

This Statement does not include any information about current or outstanding consent issued for plumbing works on at the property.

AUTHORISED OFFICER:

TERRY SCHUBACH  
GENERAL MANAGER  
CUSTOMER SERVICE DELIVERY

**South East Water**  
**Information Statement Applications**  
PO Box 2268, Seaford, VIC 3198



## INFORMATION STATEMENT

STATEMENT UNDER SECTION 158, WATER ACT 1989

### 3. Disclaimer

This Statement does not contain all the information about the property that a prospective purchaser may wish to know. Accordingly, appropriate enquiries should be made of other sources and information.

South East Water has prepared the information in this Statement with due care and diligence. It cannot and does not accept liability for any loss or damage arising from reliance on the information given, beyond the extent set out in section 155 of the Water Act 1989 and sections 18 and 29 of the Australian Consumer Law.

AUTHORISED OFFICER:

A handwritten signature in black ink, appearing to read "Terry Schubach".

TERRY SCHUBACH  
GENERAL MANAGER  
CUSTOMER SERVICE DELIVERY

**South East Water**  
**Information Statement Applications**  
PO Box 2268, Seaford, VIC 3198



# ASSET INFORMATION - SEWER & DRAINAGE

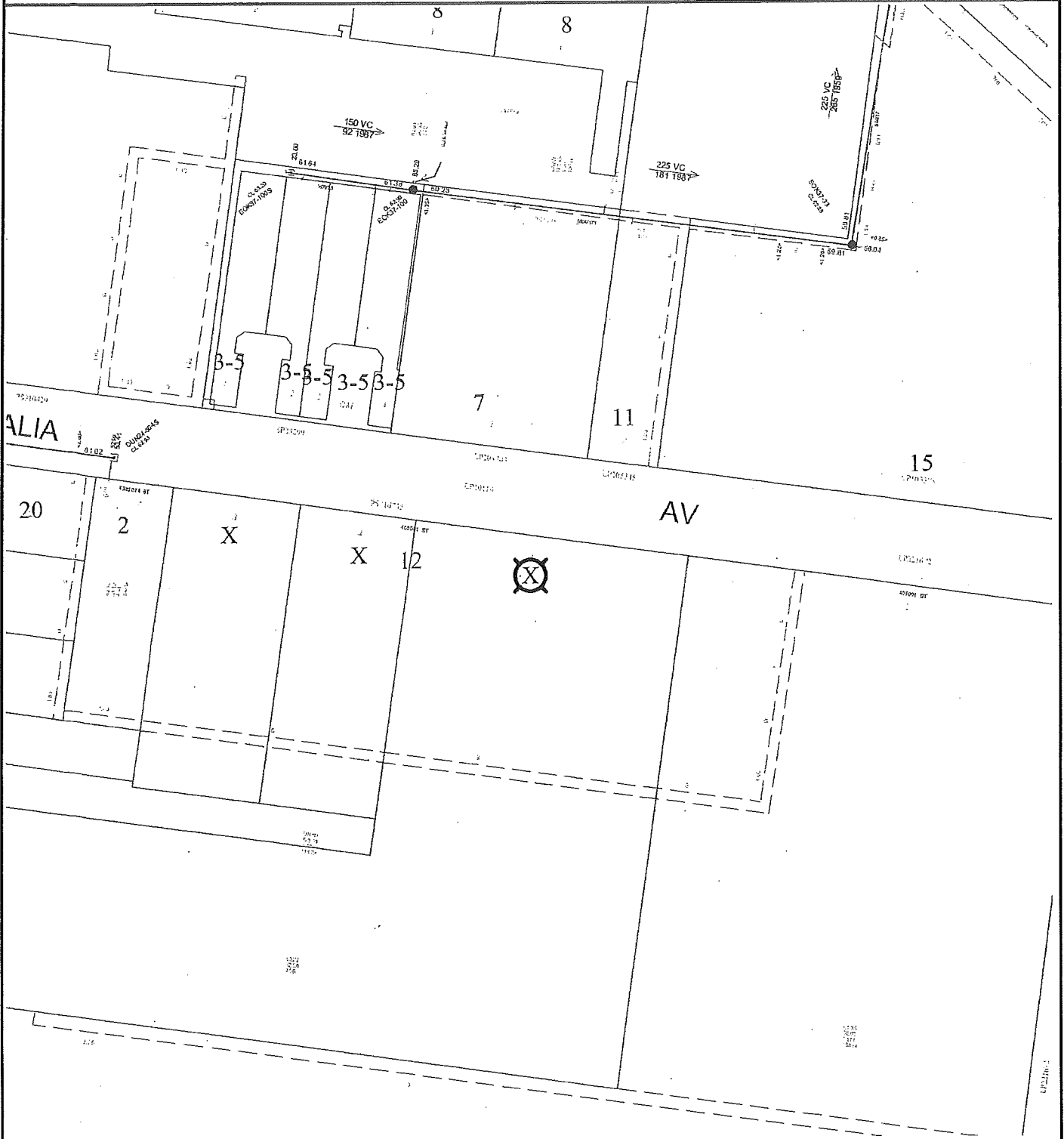
Property: Lot 1 LOT 1 NATALIA AVENUE OAKLEIGH SOUTH 3167



Case Number: 35372707



Date: 15DECEMBER2019



**WARNING:** This plan is issued solely for the purpose of assisting you in identifying South East Water's and Melbourne Water's specified assets through further investigation only. It is not to be used for any other purpose, including to identify any other assets, property boundaries or dimensions. Accordingly, the location of all assets should be proven by hand on site prior to the commencement of any work. (Refer to attached letter for further details). Assets labelled AC may contain asbestos and therefore works on these assets must be undertaken in accordance with OH&S Regulations. Abandoned and currently unused assets are shown in orange.

Title/Road Boundary	Subject Property	Maintenance Hole
Proposed Title/Road	Sewer Main	Inspection Shaft
Easement	Direction of Flow	Offset from Boundary
<b>Melbourne Water Assets</b>		
Sewer Main	Underground Drain	Natural Waterway
Maintenance Hole	Channel Drain	Underground Drain M.H.





# ASSET INFORMATION - WATER

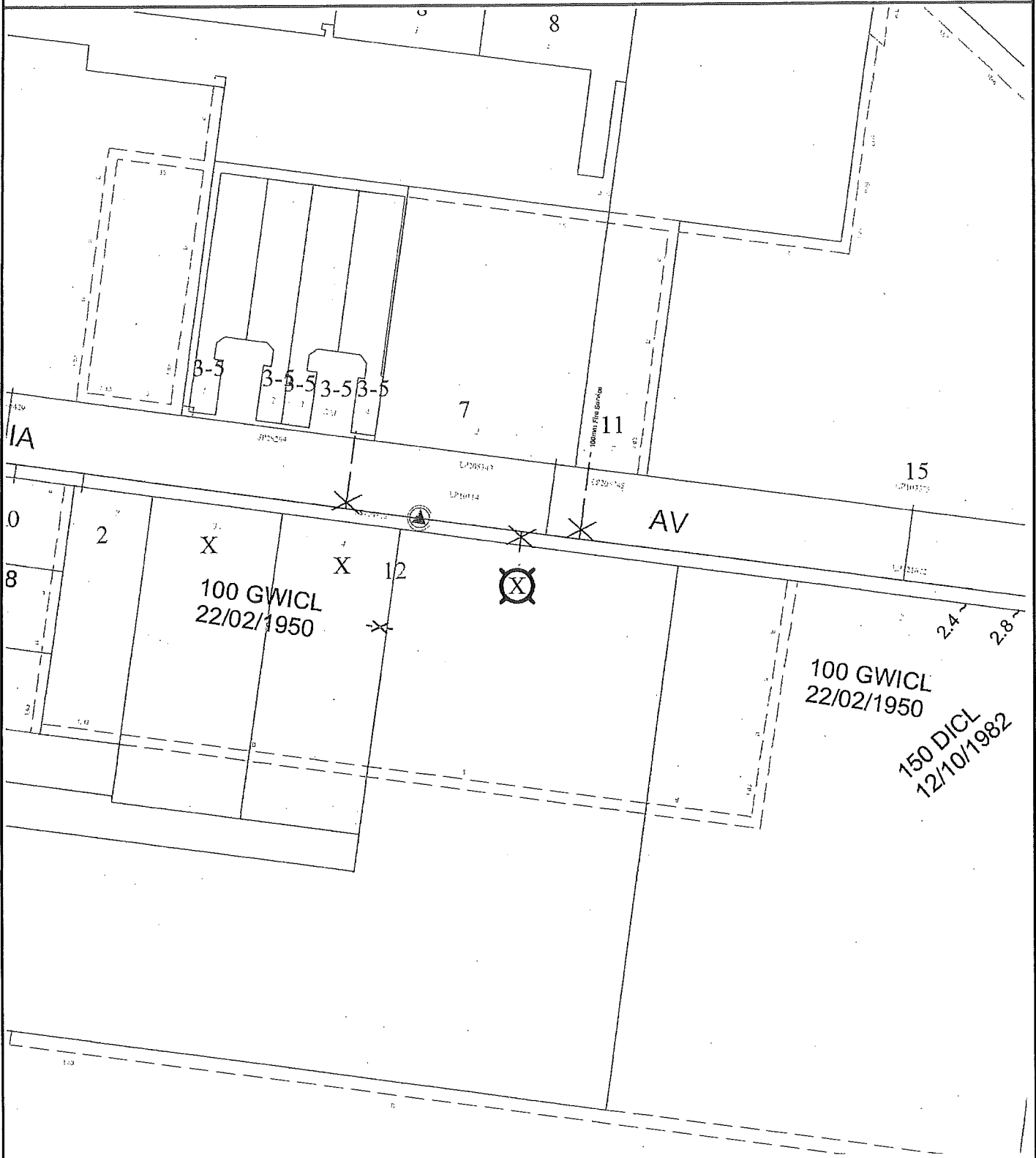
Property: Lot 1 LOT 1 NATALIA AVENUE OAKLEIGH SOUTH 3167



Case Number: 35372707



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**WARNING:** This plan is issued solely for the purpose of assisting you in identifying South East Water's and Melbourne Water's specified assets through further investigation only. It is not to be used for any other purpose, including to identify any other assets, property boundaries or dimensions. Accordingly, the location of all assets should be proven by hand on site prior to the commencement of any work. (Refer to attached letter for further details). Assets labelled AC may contain asbestos and therefore works on these assets must be undertaken in accordance with OH&S Regulations. Abandoned and currently unused assets are shown in orange.

**LEGEND**

Title/Road Boundary	Subject Property	Hydrant	Electrolysis
Proposed Title/Road	Water Main Valve	Fireplug/Washout	
Easement	Water Main	Offset from Boundary	



# ASSET INFORMATION - RECYCLED WATER

(RECYCLE WATER WILL APPEAR IF IT'S AVAILABLE)

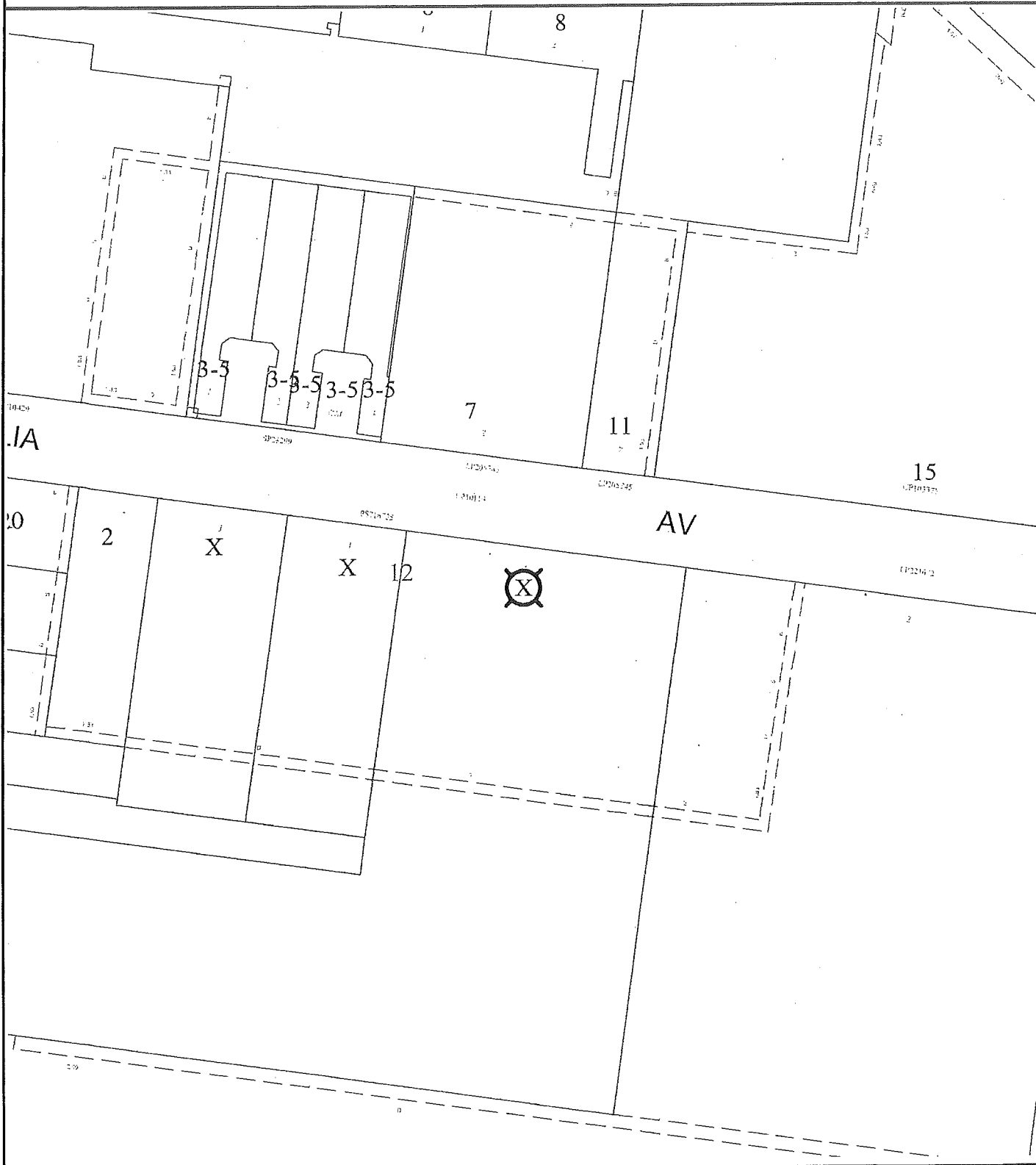
Property: Lot 1 LOT 1 NATALIA AVENUE OAKLEIGH SOUTH 3167



Case Number: 35372707



Date: 15DECEMBER2019



**WARNING:** This plan is issued solely for the purpose of assisting you in identifying South East Water's and Melbourne Water's specified assets through further investigation only. It is not to be used for any other purpose, including to identify any other assets, property boundaries or dimensions. Accordingly, the location of all assets should be proven by hand on site prior to the commencement of any work. (Refer to attached letter for further details). Assets labelled AC may contain asbestos and therefore works on these assets must be undertaken in accordance with OH&S Regulations. Abandoned and currently unused assets are shown in orange.

### LEGEND

- Title/Road Boundary
- - - - - Proposed Title/Road
- ==== Easement



- Subject Property
- ⊗ Recycled Water Main Valve
- ⊗ Recycled Water Main

- ⊗ ⊕ Hydrant
- ⊗ ⊕ Fireplug/Washout
- ~ 1.0 Offset from Boundary



# Department of Environment, Land, Water & Planning

## Owners Corporation Search Report (Premium)

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Produced: 15/12/2019 08:55:07 AM

**OWNERS CORPORATION 1**  
**PLAN NO. PS716735J**

The land in PS716735J is affected by 1 Owners Corporation(s)

**Land Affected by Owners Corporation:**  
Common Property 1, Lots 1 - 4.

**Limitations on Owners Corporation:**  
Unlimited

**Postal Address for Services of Notices:**  
82 CARLISLE CRESCENT OAKLEIGH VIC 3166  
  
OC037337F 01/12/2017

**Owners Corporation Manager:**  
NIL

**Rules:**  
Model Rules apply unless a matter is provided for in Owners Corporation Rules. See Section 139(3) Owners Corporation Act 2006

**Owners Corporation Rules:**  
NIL

**Additional Owners Corporation Information:**  
OC037337F 01/12/2017

**Notations:**  
NIL

**Entitlement and Liability:**

Land Parcel	Folio References	Entitlement	Liability
Common Property 1	11936/436	0	0
Lot 1	11936/432	25	25
Lot 2	11936/433	25	25
Lot 3	11936/434	25	25
Lot 4	11936/435	25	25
<b>Total</b>		<b>100.00</b>	<b>100.00</b>





# Department of Environment, Land, Water & Planning

## Owners Corporation Search Report (Premium)

Produced: 15/12/2019 08:55:07 AM

**OWNERS CORPORATION 1**  
**PLAN NO. PS716735J**

From 31 December 2007 every Body Corporate is deemed to be an Owners Corporation. Any reference to a Body Corporate in any Plan, Instrument or Folio is to be read as a reference to an Owners Corporation.

Statement End.



\*\*\*\* Delivered by the LANDATA® System, Department of Environment, Land, Water & Planning \*\*\*\*

## ROADS PROPERTY CERTIFICATE

The search results are as follows:

Franca Dal Pozzo  
Level 1, 228 Smith St  
COLLINGWOOD 3066

Client Reference: 190144

NO PROPOSALS. As at the 15th December 2019, VicRoads has no approved proposals requiring any part of the property described in your application. You are advised to check your local Council planning scheme regarding land use zoning of the property and surrounding area.

This certificate was prepared solely on the basis of the Applicant-supplied address described below, and electronically delivered by LANDATA®.

8-12 NATALIA AVENUE, OAKLEIGH SOUTH 3167  
CITY OF MONASH

This certificate is issued in respect of a property identified above. VicRoads expressly disclaim liability for any loss or damage incurred by any person as a result of the Applicant incorrectly identifying the property concerned.

Date of issue: 15th December 2019

Telephone enquiries regarding content of certificate: 13 11 71

[Vicroads Certificate] # 34069076 - 34069076084238 '190144'

---

## NOTICE OF DEFAULT

- To the Initial Purchaser: **Vincent Frank Tesoriero &/or Nominees**  
of Level 5, 141 Walker Street North Sydney NSW 2060  
email: vtesoriero@forumgroup.com.au
- To the Subsequent Purchaser: **Natave Pty Ltd as Trustee for the Oakleigh Discretionary Trust (ACN 651 532 035)**  
of 2-4 Birmingham Street, Alexandria NSW 2015; and  
16 Virginia Street, Kensington NSW 2033
- And to the Purchaser's Legal Practitioners: **SLF Lawyers**  
Level 2, 395 Collins St, Melbourne VIC 3000  
email: rsenewiratne@slflawyers.com.au

## SCHEDULE

1. Vendor: **Placelea Pty Ltd (ACN 006 289 621)**  
of 12 Natalia Avenue, Oakleigh South Vic 3161
2. Initial Purchaser: **Vincent Frank Tesoriero &/or Nominees**  
of Level 5, 141 Walker Street North Sydney NSW 2060  
email: vtesoriero@forumgroup.com.au
3. Subsequent Purchaser: **Natave Pty Ltd as Trustee for the Oakleigh Discretionary Trust (ACN 651 532 035)**  
of 2-4 Birmingham Street, Alexandria NSW 2015; and  
16 Virginia Street, Kensington NSW 2033
4. Date of contract: 16 December 2019
5. Land description: (Parent Title 11936 Folio 432 being on Lot 1 **and** part of Common Property of Lot 1 on Plan of Subdivision 716735J)  
  
**CERTIFICATE OF TITLE VOLUME 12298 FOLIO 008 BEING LOT 5 ON PS7167735**; being the new Title Particulars arising from the Registration of the Plan of Subdivision of the Common Property (Two Lot Boundary Re-Alignment - between Common Property & Lot 1).
6. Property address: 8-12 Natalia Avenue, Oakleigh South Victoria 3167
7. Purchase price: \$5,860,000.00 plus GST
8. Settlement Date: **3 August 2021**

**INITIALLY PURSUANT TO THE CONTRACT OF SALE** was due on the latter of 230 (equivalent to 7.5 months) from the day of sale or 14 days after the Vendor has notified the Purchaser in writing of Registration of the Plan of Subdivision of the Common Property (Two Lot Boundary Re-Alignment - between Common Property & Lot 1) referred to in Special Condition 14

---

**Take notice that**

- a) You are in default of the terms and conditions of the contract detailed in the Schedule, and the particulars of default are specified in Item 11 of the Schedule.
- b) The Vendor intends to enforce and exercise its rights and remedies under the contract unless the default is remedied by You within 14 days from the date of service of this notice upon you and the reasonable legal costs specified in Item 11 are paid.
- c) Unless the default is remedied by You within 14 days the Vendor reserves the right to end the contract in accordance with general condition 28.
- d) The Vendor is entitled to any interest that has accrued on the deposit in accordance with general condition 12.2.
- e) In addition to any other remedy, the Vendor may sue for damages for breach of contract.
- f) The ending of the contract does not affect the rights of the Vendor as a consequence of the default.
- g) Alternatively, the Purchaser may seek specific performance of the contract.

**Date: 4 August 2021**

*G & M Lawyers*

---

**Signed by G & M Lawyers**

For and on behalf of the Vendor

---

**From:** Anthony Sommer <[Anthony.Sommer@minterellison.com](mailto:Anthony.Sommer@minterellison.com)>

**Sent:** Friday, 20 August 2021 11:34

**To:** Christopher Nehme <[cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)>

**Cc:** Caitlin Murray <[Caitlin.Murray@minterellison.com](mailto:Caitlin.Murray@minterellison.com)>; Pierre Safi <[pjsafi@fortislaw.com.au](mailto:pjsafi@fortislaw.com.au)>; Joshua Frangi <[jfrangi@fortislaw.com.au](mailto:jfrangi@fortislaw.com.au)>; Ramsha Sulaman <[ramsha@fortislaw.com.au](mailto:ramsha@fortislaw.com.au)>; Roy Hanna <[rhanna@fortislaw.com.au](mailto:rhanna@fortislaw.com.au)>; Michael Hughes <[Michael.Hughes@minterellison.com](mailto:Michael.Hughes@minterellison.com)>; Andrew Clarke <[Andrew.Clarke@minterellison.com](mailto:Andrew.Clarke@minterellison.com)>; Simon Brandis <[Simon.Brandis@minterellison.com](mailto:Simon.Brandis@minterellison.com)>; 'Ken Gray' <[KGray@abl.com.au](mailto:KGray@abl.com.au)>

**Subject:** RE: Tesoriero, Papadimitriou and Forum Finance Pty Ltd ats Westpac Banking Corporation Pty Ltd Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Mr Nehme

We refer to:

- a) our letter of 19 August 2021 (**Our Letter**); and
- b) your email below of 19 August 2021 in response to Our Letter (**Your Email**).

In response to the matters set out in Your Email, our clients respond as follows:

1. The arrangements proposed by your client remain entirely opaque to us and our clients.
2. What is now proposed in the draft Nomination Deed appears to be a different deal to that which was foreshadowed in your earlier correspondence. By way of example, the arrangement in your letter of 17 August 2021 was said to be for an amount of \$1.2 million – the draft Nomination Deed contemplates a “reimbursement” of the deposit of \$1.172 million, less other amounts which may be payable (with no explanation provided as to the quantum of any such amounts).
3. Your client has not provided the bulk of the documents requested in paragraph 8 of Our Letter, which we considered necessary to enable our clients to consider the proposal. We press for those documents to be provided, failing which, we will issue a notice to produce for the same.
4. Again, your client has failed or refused to provide an updated affidavit of his assets, given the deficiencies we have identified and corresponded with you about.



In those circumstances, we do not consider it necessary or appropriate to engage with Mr Gray or his client. It is a matter for your client and Mr Gray's client about what steps are taken by them in connection with the proposed transaction, in light of the allegations made in Federal Court of Australia proceedings NSD616/2021 (**Proceedings**). However, should the transaction proceed, our clients require that any funds received by your client are paid into a controlled monies account the signatories of which are MinterEllison and Fortis Law or are paid into Court. We do not consider it appropriate that "the parties" to the Proceedings be giving directions about these matters. Such is a matter between our clients and yours.

All of our clients' rights are reserved.

Regards

\_\_\_\_\_

**Anthony Sommer**

Senior Associate

T +61 2 9921 4182 M +61 431 058 780

anthony.sommer@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com **Follow us on LinkedIn and Twitter**



---

**From:** Anthony Sommer

**Sent:** Friday 20 August 2021 01:47 PM

**To:** 'Christopher Nehme' <[cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)>

**Cc:** Caitlin Murray <[Caitlin.Murray@minterellison.com](mailto:Caitlin.Murray@minterellison.com)>; Pierre Safi <[pjsafi@fortislaw.com.au](mailto:pjsafi@fortislaw.com.au)>; Joshua Frangi <[jfrangi@fortislaw.com.au](mailto:jfrangi@fortislaw.com.au)>; Ramsha Sulaman <[ramsha@fortislaw.com.au](mailto:ramsha@fortislaw.com.au)>; Roy Hanna <[rhanna@fortislaw.com.au](mailto:rhanna@fortislaw.com.au)>; Michael Hughes <[Michael.Hughes@minterellison.com](mailto:Michael.Hughes@minterellison.com)>; Andrew Clarke <[Andrew.Clarke@minterellison.com](mailto:Andrew.Clarke@minterellison.com)>; Sarah Colegrove <[scolegrove@fortislaw.com.au](mailto:scolegrove@fortislaw.com.au)>; 'Ken Gray' <[KGray@abl.com.au](mailto:KGray@abl.com.au)>

**Subject:** RE: Tesoriero, Papadimitriou and Forum Finance Pty Ltd ats Westpac Banking Corporation Pty Ltd Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Mr Nehme

We refer to the emails below.

We confirm that our clients consent to the funds received by your client being held in your firm's trust account until such time as a joint account is established, on the basis of your undertaking not to deal with those funds until such time as the joint account is established.

We will have personnel in our accounts department contact Ms Colegrove in relation to the opening of the joint account.

All of our clients' rights are expressly reserved.

Regards

—

**Anthony Sommer**

Senior Associate

T +61 2 9921 4182 M +61 431 058 780

[anthony.sommer@minterellison.com](mailto:anthony.sommer@minterellison.com)

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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**From:** Christopher Nehme <[cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)>

**Sent:** Friday 20 August 2021 12:20 PM

**To:** Anthony Sommer <[Anthony.Sommer@minterellison.com](mailto:Anthony.Sommer@minterellison.com)>

**Cc:** Caitlin Murray <[Caitlin.Murray@minterellison.com](mailto:Caitlin.Murray@minterellison.com)>; Pierre Safi <[pjsafi@fortislaw.com.au](mailto:pjsafi@fortislaw.com.au)>; Joshua Frangi <[jfrangi@fortislaw.com.au](mailto:jfrangi@fortislaw.com.au)>; Ramsha Sulaman <[ramsha@fortislaw.com.au](mailto:ramsha@fortislaw.com.au)>; Roy Hanna <[rhanna@fortislaw.com.au](mailto:rhanna@fortislaw.com.au)>; Michael Hughes <[Michael.Hughes@minterellison.com](mailto:Michael.Hughes@minterellison.com)>; Andrew Clarke <[Andrew.Clarke@minterellison.com](mailto:Andrew.Clarke@minterellison.com)>; Sarah Colegrove <[scolegrove@fortislaw.com.au](mailto:scolegrove@fortislaw.com.au)>; 'Ken Gray' <[KGray@abl.com.au](mailto:KGray@abl.com.au)>

**Subject:** RE: Tesoriero, Papadimitriou and Forum Finance Pty Ltd ats Westpac Banking Corporation Pty Ltd Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Mr Sommer,

We note your email.

Please confirm that your client, in the interim, will consent to the funds being held in our Trust Account until such time as a joint account is established.

Fortis Law will undertake not to deal with those funds until such time as the appropriate account is established.

Our account's department will make enquiries to set up a Controlled Monies Account forthwith. I have copied in Ms Colegrove our accounts manager who can liaise with your accounts department.

Please feel free to contact me.

Regards

**Christopher Nehme**  
**Partner**

<image001.jpg>

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**From:** Anthony Sommer <[Anthony.Sommer@minterellison.com](mailto:Anthony.Sommer@minterellison.com)>  
**Sent:** Friday, 20 August 2021 11:34  
**To:** Christopher Nehme <[cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)>  
**Cc:** Caitlin Murray <[Caitlin.Murray@minterellison.com](mailto:Caitlin.Murray@minterellison.com)>; Pierre Safi <[pjsafi@fortislaw.com.au](mailto:pjsafi@fortislaw.com.au)>; Joshua Frangi <[jfrangi@fortislaw.com.au](mailto:jfrangi@fortislaw.com.au)>; Ramsha Sulaman <[ramsha@fortislaw.com.au](mailto:ramsha@fortislaw.com.au)>; Roy Hanna <[rhanna@fortislaw.com.au](mailto:rhanna@fortislaw.com.au)>; Michael Hughes <[Michael.Hughes@minterellison.com](mailto:Michael.Hughes@minterellison.com)>; Andrew Clarke <[Andrew.Clarke@minterellison.com](mailto:Andrew.Clarke@minterellison.com)>; Simon Brandis <[Simon.Brandis@minterellison.com](mailto:Simon.Brandis@minterellison.com)>; 'Ken Gray' <[KGray@abl.com.au](mailto:KGray@abl.com.au)>  
**Subject:** RE: Tesoriero, Papadimitriou and Forum Finance Pty Ltd ats Westpac Banking Corporation Pty Ltd Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Mr Nehme

We refer to:

- a) our letter of 19 August 2021 (**Our Letter**); and
- b) your email below of 19 August 2021 in response to Our Letter (**Your Email**).

In response to the matters set out in Your Email, our clients respond as follows:

1. The arrangements proposed by your client remain entirely opaque to us and our clients.
2. What is now proposed in the draft Nomination Deed appears to be a different deal to that which was foreshadowed in your earlier correspondence. By way of example, the arrangement in your letter of 17 August 2021 was said to be for an amount of \$1.2 million

- the draft Nomination Deed contemplates a “reimbursement” of the deposit of \$1.172 million, less other amounts which may be payable (with no explanation provided as to the quantum of any such amounts).
3. Your client has not provided the bulk of the documents requested in paragraph 8 of Our Letter, which we considered necessary to enable our clients to consider the proposal. We press for those documents to be provided, failing which, we will issue a notice to produce for the same.
  4. Again, your client has failed or refused to provide an updated affidavit of his assets, given the deficiencies we have identified and corresponded with you about.

In those circumstances, we do not consider it necessary or appropriate to engage with Mr Gray or his client. It is a matter for your client and Mr Gray’s client about what steps are taken by them in connection with the proposed transaction, in light of the allegations made in Federal Court of Australia proceedings NSD616/2021 (**Proceedings**). However, should the transaction proceed, our clients require that any funds received by your client are paid into a controlled monies account the signatories of which are MinterEllison and Fortis Law or are paid into Court. We do not consider it appropriate that “the parties” to the Proceedings be giving directions about these matters. Such is a matter between our clients and yours.

All of our clients’ rights are reserved.

Regards

\_\_\_\_\_

**Anthony Sommer**

Senior Associate

T +61 2 9921 4182 M +61 431 058 780

anthony.sommer@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com [Follow us on LinkedIn and Twitter](#)



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**From:** Sarah Colegrove <[scolegrove@fortislaw.com.au](mailto:scolegrove@fortislaw.com.au)>  
**Sent:** Friday 10 September 2021 01:18 PM  
**To:** Damien Jones <[Damien.Jones@minterellison.com](mailto:Damien.Jones@minterellison.com)>  
**Cc:** Christopher Nehme <[cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)>; Pierre Safi <[pjsafi@fortislaw.com.au](mailto:pjsafi@fortislaw.com.au)>; Caitlin Murray <[Caitlin.Murray@minterellison.com](mailto:Caitlin.Murray@minterellison.com)>; Anthony Sommer <[Anthony.Sommer@minterellison.com](mailto:Anthony.Sommer@minterellison.com)>  
**Subject:** RE: Tesoriero, Papadimitriou and Forum Finance Pty Ltd ats Westpac Banking Corporation Pty Ltd Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Hi Damien

Please accept my apologies for the late response. I have been very unwell following my vaccination and over two weeks later am only just starting to recover.

Attached is the Trust Receipt and corresponding Trust Statement for your funds, which I can confirm are held in our trust account.

I have been able to make some enquiries through our Bank Manager but have been given more information since my last email which may mean the interest rate of 0.35% and associated product is not an option. If that is the case the best interest rate the bank can offer may only be 0.25%.

I expect to have more information by Monday and will confirm the options available to you then.

Apologies again for the delay in actioning this for you.

Kind regards,  
Sarah Colegrove | **Practice Manager**

Mon	Tue	Wed	Thur	Fri
√	√	√	√	

<image001.jpg>

Level 11, 75 Elizabeth Street | Sydney NSW 2000 | DX 313 Sydney | PO Box 2541 Sydney NSW 2001

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[scolegrove@fortislaw.com.au](mailto:scolegrove@fortislaw.com.au) | [www.fortislaw.com.au](http://www.fortislaw.com.au)

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**From:** Christopher Nehme <[cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)>  
**Sent:** Tuesday 21 September 2021 01:18 PM  
**To:** Anthony Sommer <[Anthony.Sommer@minterellison.com](mailto:Anthony.Sommer@minterellison.com)>; Sarah Colegrove <[scolegrove@fortislaw.com.au](mailto:scolegrove@fortislaw.com.au)>  
**Cc:** Nena Thalib <[Nena.Thalib@minterellison.com](mailto:Nena.Thalib@minterellison.com)>; Damien Jones <[Damien.Jones@minterellison.com](mailto:Damien.Jones@minterellison.com)>; Caitlin Murray <[Caitlin.Murray@minterellison.com](mailto:Caitlin.Murray@minterellison.com)>; 'sazz.nasimi@madgwicks.com.au' <[sazz.nasimi@madgwicks.com.au](mailto:sazz.nasimi@madgwicks.com.au)>; Pierre Safi <[pjsafi@fortislaw.com.au](mailto:pjsafi@fortislaw.com.au)>  
**Subject:** RE: Tesoriero, Papadimitriou and Forum Finance Pty Ltd ats Westpac Banking Corporation Pty Ltd Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Anthony,

We are no longer instructed in this matter.

Mr Sazz Nasimi of Madgwicks is acting on behalf of Mr Tesoriero and related entities, whom we understand will shortly be filing a notice of chance of solicitor.

We have copied in Mr Nasimi.

As to the proceeds held in trust, being the sum of \$773,362.88, Fortis Law will continue to hold that sum as security for payment of legal fees in this matter or further order of Court, particularly in light of your letter to the NAB Bank on 20 September 2021.

For your ease of reference, the balance money from the nomination are held ABL pending a Revenue Assessment.

Regards

**Christopher Nehme**  
**Partner**

<image001.jpg>

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PO Box 2541 Sydney NSW 2001 | DX 313 Sydney  
D +61 2 9233 2722 | F +61 2 9233 2755 | M 0421 77 88 11  
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Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD616/2021

**WESTPAC BANKING CORPORATION ABN 33 007 457 141** and another named in the schedule  
Applicant

**FORUM FINANCE PTY LIMITED** and another named in the schedule  
Respondent

### ORDER

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 01 October 2021

**WHERE MADE:** Sydney

#### THE COURT ORDERS THAT:

##### Orders relating to solicitors' undertaking given by Mr Nehme

1. Within 5 business days of these orders, Fortis Law pay the amount of \$773,362.88 held in its trust account in the name of the third respondent, Vincenzo Frank Tesoriero into Court (**Funds**).
2. Any person who claims an interest in the Funds has liberty to apply in writing on 5 business days' notice.

##### Mr Papas' service information application

3. The applicants have leave to file an interlocutory application, to be served on Rocco Vincenzo Panetta of Panetta Lawyers, requiring that Mr Panetta provide information about the means to communicate with and serve documents on the second respondent, Basile Papadimitriou (**Interlocutory Application**).
4. Pursuant to rule 1.39 of the *Federal Court Rules 2011* (Cth) the time for service of the interlocutory application and any supporting affidavit is abridged to 5pm (AEST) on 4



October 2021, with service to be effected on Mr Panetta by 5pm (AEST) on 4 October 2021 by email to r.panetta@panetta.com.au.

5. The interlocutory application be listed for hearing at 9.30am on 6 October 2021 before Justice Lee.

Case management

6. Proceeding NSD616/2021 commenced by Westpac Banking Corporation, proceeding NSD681/2021 commenced by SMBC Leasing and Finance, Inc. Sydney Branch, and proceeding NSD642/2021 commenced by Societe Generale, be listed for a case management hearing at 9.30am on 20 October 2021 before Justice Lee.

Date that entry is stamped: 1 October 2021

*Sia Lagos*  
Registrar





**Schedule**

No: NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Interested Person	JOHN THOMAS TUCK
Supporting Creditor	SOCIETE GENERALE
Second Interested Person	NATIONAL AUSTRALIA BANK LIMITED
Second Applicant	WESTPAC NEW ZEALAND LIMITED (COMPANY REGISTRATION NUMBER COMPANY NUMBER 1763882)
Third Interested Person	ANTONY RESNICK & MARK JULIAN ROBINSON IN THEIR CAPACITIES AS THE JOINT AND SEVERAL RECEIVERS OF FORUM GROUP PTY LTD (RECEIVERS APPOINTED) ACN 153 336 997
Interested Person	ANTONY RESNICK
Interested Person	MARK JULIAN ROBINSON
Respondent	VINCENZO FRANK TESORIERO
Second Respondent	BASILE PAPADIMITRIOU
Third Respondent	VINCENZO FRANK TESORIERO
Fourth Respondent	FORUM GROUP FINANCIAL SERVICES PTY LTD (ADMINISTRATORS APPOINTED) ACN 623 033 705
Fifth Respondent	FORUM GROUP PTY LTD (RECEIVERS APPOINTED)(ADMINISTRATORS APPOINTED) ACN 153 336 997
Sixth Respondent	FORUM ENVIRO PTY LTD (ADMINISTRATORS APPOINTED) ACN 168 709 840
Seventh Respondent	FORUM ENVIRO (AUST) PTY LTD (ADMINISTRATORS APPOINTED) ACN 607 484 364

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/06/2022 2:35:04 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172  
& ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 17/06/2022 4:44:14 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59  
Rule 29.02(1)

## Affidavit

No. 616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another named in the Schedule

Applicants

**Forum Finance Pty Ltd ACN 153 301 172 (In Liquidation)** and others named in the Schedule

Respondents

Fifth Affidavit of: **Vincenzo Frank Tesoriero**  
Address: 64-66 Berkley St, Hawthorn VIC 3122  
Occupation: Director  
Date: 17 June 2022

### Contents

Document number	Details	Paragraph	Page
1	Fifth Affidavit of Vincenzo Frank Tesoriero sworn on 17 June 2022, in support of the Third Respondent's application filed on 17 June 2022.	3	2
2	Exhibit VFT-5 being a paginated bundle of documents	4	1

Filed on behalf of (name & role of party) Vincenzo Frank Tesoriero, Third Respondent  
Prepared by (name of person/lawyer) Sazz Nasimi  
Law firm (if applicable) Madgwicks Lawyers  
Tel 03 9242 4720 Tel 03 9242 4720  
Email [sazz.nasimi@madgwicks.com.au](mailto:sazz.nasimi@madgwicks.com.au)  
**Address for service** Level 6, 140 William Street, Melbourne VIC 3000  
(include state and postcode)

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DocuSigned by:  
  
228 B06A22BB61D3418...

[Version 3 form approved 02/05/2019]

047678:4848784\_1

I, Vincenzo Frank Tesoriero, director, of 64-66 Berkeley St, Hawthorn VIC 3122 hereby make Oath and Say:

1. I am the Third Respondent.
2. I make this affidavit from my own knowledge save where otherwise indicated. Where I depose to matters that I have been informed of by others, I believe those matters to be true and correct.
3. I make this affidavit in support of my application filed on 17 June 2022 for variation of the freezing order made by the Court on 2 July 2021, in order to:
  - (a) provide for legal expenses incurred to date and expected through to conclusion of the trial;
  - (b) facilitate the release of funds paid into Court and funds paid into a controlled monies account.
4. Annexed to this affidavit and shown to me at the time of swearing this affidavit is a paginated bundle of documents in chronological order marked "VFT-5". This exhibit contains all of the documents referred to in this affidavit. Where reference is made to a specific document or part of a document contained within "VFT-5", it will be referred to by page number of that exhibit.
5. In addition to VFT-5, I also refer to the previous affidavits I have sworn in this proceeding:
  - (a) my affidavit sworn on 21 July 2021 (**my July affidavit**);
  - (b) my affidavit sworn on 3 September 2021 (**my September affidavit**);
  - (c) my affidavit sworn on 19 October 2021 (**my October affidavit**); and
  - (d) my affidavit sworn on 8 November 2021 (**my November affidavit**).

### Freezing order

6. On 2 July 2021, a freezing order was made against me with effect to 5pm on 9 July 2021. That order provided at paragraph 10(b), '*This order does not prohibit... (b) paying \$25,000 on your reasonable legal expenses*'.

A true copy of the order made on 2 July 2021 is exhibited at **VFT-5** at pages 1 to 11.

7. On 9 July 2021, the freezing order was varied by consent without admission with effect until further order of the Court. That order provided, at paragraph 10(b), '*This order does not prohibit... (b) paying \$30,000 per month (up to the sum of \$350,000 unless varied by subsequent order) on your reasonable legal expenses*'.

A true copy of the 9 July 2021 order is exhibited at **VFT-5** at pages 12 to 24.

8. On 12 November 2021, a further variation was made to the freezing order whereby the figure stated at paragraph 10(b) was increased from \$350,000 to \$450,000. The as varied paragraph 10(b) thereafter read as follows, '*This order does not prohibit... (b) paying up to the sum of \$450,000 until 10 March 2022 on your reasonable legal expenses*'.

A true copy of the order made on 12 November 2021 is exhibited at **VFT-5** at pages 25 to 46.

9. At the time that the Freezing Orders were originally made I had cash in my NAB account of approximately \$255,055.06. However, those funds have since been depleted primarily in meeting the interest payments for the various facilities I had at the time.
10. Since the date of the Freezing Orders various parties such as mortgagees and the Receivers have sold numerous properties that were owned by family. The funds realised from the sales of these properties are presently sitting in numerous locations and are under the control of various parties as detailed in the paragraphs below.

#### **Funds paid into Federal Court**

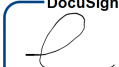
11. In around October 2021, \$773,362.88 was paid into Court by my previous solicitors pursuant to the order made on 1 October 2021. These funds were in respect of the return of the deposit funds that I deposed to at paragraphs 17 to 27 of my October affidavit.

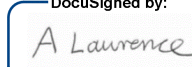
#### **Funds paid into Supreme Court**

12. On or about 3 March 2022, a further sum of \$759,619 was paid into the Supreme Court of Victoria. These funds were in respect to the sale of 1160 Glen Huntly Road 3163 (volume 1041 folio 906), a property formally owned by the company 1160 Glen Huntly Road Pty Ltd. The payment into Court was made by Nicholas James Lawyers acting for Devnull Investments Pty Ltd (ACN 169 689 301) who were the registered mortgagee on title and who had taken possession of the property. A copy of the Certificate of Receipt evidencing the deposit of the above funds is exhibited at **VFT-5** at page 47.

#### **Controlled monies account**

13. On 9 February 2022, the Court ordered that all surplus funds from the sale of the property known as 23 Margaret Street, Rozelle NSW 2039 be paid into a controlled monies account in the joint names of Westpac and Madgwicks ATF myself. Any draw down from this account requires the consent of both parties' solicitors.

DocuSigned by:  
  
175491C4B299484...

DocuSigned by:  
  
B06A22BB61D3418...

14. Following this order, my solicitors took immediate steps to set up a controlled monies account with Westpac Banking Corporation. This was a lengthy process due to the bank's processes for setting up a controlled monies account.
15. On 16 May 2022, the controlled monies account was eventually opened and shortly thereafter the sum of \$1,340,866.65 was paid into that account and which funds represented the surplus monies from the sale of the 23 Margaret Street property. A copy of the Transaction Listing evidencing the payment into the controlled monies account is exhibited at **VFT-5** at page 48.

#### **Funds held in separate controlled monies accounts**

16. A further sum of \$9,808.169.94 is being held in a separate controlled monies account being controlled by the receivers and which funds represent the surplus from the sale of 6 Bulkara Street. A true copy of a letter from Allens confirming the above dated 23 May 2022 is exhibited at **VFT-5** at pages 49 to 51.

#### **Unexpected Expenditure**

17. I have the read the affidavit of Mr Sazz Nasimi dated 9 November 2021 in which he listed the anticipated legal costs that he believed I would incur in defending the claim being made against me (and my entities) by Westpac and others. However, no consideration was given by Mr Nasimi to the various ancillary and associated matters which branch off from the Westpac claim and for which I am also incurring significant legal expenses. Details of these expenses are provided in the paragraphs below.

#### Fortis Law Taxation

18. On or about 12 November 2021, I received a tax invoice from Fortis Law claiming I owed them \$233,660.52 for works undertaken from 3 July 2021 to 29 September 2021. Upon hearing this I instructed my lawyers to immediately dispute the fees on the grounds that they were excessive.
19. On or about 15 December 2021, Fortis Law filed an application for assessment of costs in respect of the works alleged to have been undertaken by them. As a result of the application made, Fortis Law were ordered to file a bill in assessable form with respect to the fees that it was claiming.
20. After numerous failed attempts made by Fortis Law, on 23 March 2022, the relevant documents were finally filed by Fortis Law in the proper form.
21. On 6 May 2022, Madgwicks Lawyers filed a notice of objection together with submissions concerning the fees charged by Fortis Law.
22. On 20 May 2022, Fortis Law filed their submissions in response to my submissions.

23. The next step is for Madgwicks to file further submissions if required. The costs assessment remains ongoing.
24. I have incurred and I continue to incur legal expenses in relation to these works.

#### Statutory Demands

25. On or around 10 December 2021, I on behalf of various entities associated with either me or my father, received from the Receivers 10 separate statutory demands. These demands have significant overlap with the issues, allegations and defences being argued in the present matter. However, notwithstanding this, the Receivers persisted with and maintained the said demands.
26. On 5 May 2022, the Receivers conceded their position on 1 out of the 10 statutory demands. However, despite making this concession the Receivers refused to pay the legal expenses that I had incurred in addressing that statutory demand and instead agreed only to pay the filing fee charged to me for filing the set aside application.
27. The dispute concerning the remaining statutory demands is ongoing and it appears that I will now have to arrange for audited accounts to be completed for each entity in order to address the issue of solvency. I am informed that the costs associated with undertaking this task will be in the vicinity of \$30,000.
28. As a result of the Receivers actions, I have had to incur further unanticipated legal, accounting and other expenses in disputing the statutory demands.

#### Communications with the Parties

29. A common theme which I am experiencing in this matter is that the litigating banks are not exercising any reasonableness and where there is an issue that could be taken, irrespective of how trivial, that issue has been taken. As a result, I am incurring unnecessary legal fees in having my solicitors address such matters. Again, examples of this are provided below.
30. On or about February 2022 the Receivers took possession of the properties situated at James St Clayton Victoria. I understand from my lawyers that at the time of taking possession, my lawyers were trying to negotiate with the Receivers to have them grant me some further time to potentially refinance those properties.
31. In any event, the Receivers subsequently chose to abruptly cease communicating with my lawyers and instead attend the James street site on a weekend in order to take possession of the properties. The sudden nature of the Receivers actions meant that I did not have sufficient time to remove the items which were being stored at the premises. These items were personal belongings such as old photo albums, old clothes,

heirlooms etc. The Receivers took possession of these items and threatened to have them disposed of despite my repeated requests for the return of the items.

32. My solicitors had to write in excess of 20 separate communications to the Receivers in order to obtain the return of these personal items. These letters were an example of unanticipated (and unnecessary) legal expenses being imposed upon me by the various parties.
33. I am presently experiencing a similar situation with respect to my personal items which were at the Bulkara properties (both 5 and 6) when those properties were sold by the Receivers. Again, numerous correspondences have been written to the Receivers in relation to this issue and as yet this issue remains unresolved. I am fearful that if it is not resolved soon, I will have to come back before this Court to make a further application thereby incurring further legal fees.

#### Access to funds for legal expenses

34. I am informed by my solicitors that my fees with Madgwicks Lawyers (including disbursements/counsel fees) were as at the end of April 2022, **\$546,000**. Further, it is estimated additional fees to the conclusion of the trial are \$1.32 million, as shown in the following table.

Anticipated Legal Work	Costs (\$AUD)
Reply, discovery, lay evidence (estimate):	\$467k
Experts (estimate):	\$370k
Trial prep (estimate—2 weeks, 2 counsel + solicitors):	\$155k
Trial (estimate—3 x 6 day weeks, 2 counsel + solicitors):	\$383k
<b>Total:</b>	<b>\$1.32 million</b>

35. To date, \$180,000 from frozen funds has been paid to my legal representatives of which I am informed by my solicitor that \$75,000 (inclusive GST) has been paid to senior counsel, \$21,125.00 (inclusive GST) to junior counsel and Madgwicks had received \$60,909.63 (inclusive GST). However Madgwicks has also paid \$12,479.44 in disbursements that is has not been reimbursed and presently owes Auscript \$11,972.98 for transcripts which have been ordered and received but are yet to be paid for.



Madgwicks has indicated to me unless something is done about the fee situation they may not be able to continue acting for me.

36. I do not have access to any funds to pay my legal expenses. A true copy of a letter from my accountant Lou Steffanetti dated 31 May 2022 confirming my lack of funds is exhibited at **VFT-5** at page 52.
37. Annexure A to my July affidavit identifies properties owned by entities associated with me that are earning rent. That entirety of this rental income is being paid towards mortgage interest payments, as referred to paragraph 5 of my October affidavit. There is a shortfall on my mortgage payments of approximately \$8,500 per month, and I have no funds left over for legal fees or living expenses.

	<b>Rental Income</b>	<b>Interest Expenses</b>	<b>Net position</b>
<b>Rental income received</b>	\$99,089.98		\$99,089.98
<b>Mortgage payments owed to Judo Bank</b>		-\$98,600.00	-\$98,600.00
<b>Mortgage payments owed to ANZ</b>		-\$9,000	-\$9,000
		<b>Deficit each month</b>	<b>-\$8,510.02</b>

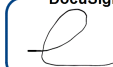
38. The funds in the NAB accounts that I referred to at paragraph 4 of my October affidavit have all been applied towards legal fees and interest payments on mortgages to Judo Bank. Save for the account for 286 Carlisle Street Pty Ltd which currently holds \$2,005.06, all NAB accounts have had a nil account balance since January 2022. NAB has refused to release the funds in the 286 Carlisle Street Pty Ltd account without Westpac's consent.
39. Save for what is being used to service the interest payments, I have no funds in my CBA or ANZ accounts.

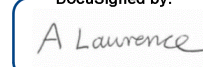
#### **Sale of 5 Bulkara Street Wagstaffe NSW 2257**

40. NAB has appointed Deloitte as receiver over 5 Bulkara Street Wagstaffe NSW 2257 (**5 Bulkara St**) and 5 Bulkara St is currently listed for sale.

41. There are a number of entities which claim an interest in 5 Bulkara St:
- (a) A first registered mortgage in favour of NAB;
  - (b) A guarantee provided in respect of Facility for Forum Group Pty Ltd (Receivers and managers appointed) in favour of NAB;
  - (c) An equitable mortgage (caveat registered) in favour of Aksara Holdings Pty Ltd **(Aksara)**; and
  - (d) A proprietary claim made by Westpac which is the subject of the dispute in this proceeding.
42. On 3 June 2022 my solicitors wrote to Dentons, the solicitors for the receivers, to say that once NAB's registered mortgage was discharged the remaining proceeds should be applied to discharge Aksara's debt, with the balance (if any) to be paid into the controlled monies account pending further Court orders. The solicitors for the liquidators of 5 Bulkara Pty Ltd and Westpac, as well as Konfir Kabo of Aksara were copied into this correspondence.
- A true copy of the email from Madgwicks to Dentons dated 3 June 2022 and the attached letter is exhibited at **VFT-5** at pages 53 to 55.
43. On 8 June MinterEllison wrote to my solicitors to say that Aksara claims an equitable interest only and Westpac contends its (disputed) proprietary interest pre-dates any equitable interest claimed by Aksara.
- A true copy of the email from MinterEllison to Madgwicks dated 8 June 2022 and the attached letter is exhibited at **VFT-5** at pages 56 to 58.
44. On 8 June 2022 Dentons wrote to my solicitors to say it was not incumbent on the receivers to decide between competing claims to any surplus and, absent agreement between all claimants to any surplus the receivers intend to pay any surplus into Court.
45. A true copy of the email from Dentons to Madgwicks dated 8 June 2022 is exhibited at **VFT-5** at page 59.

**The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.**

DocuSigned by:  
  
175491C4B299484...

DocuSigned by:  
  
B06A22BB61D3418...

Sworn / Affirmed by the deponent  
at Melbourne  
in the state of Victoria  
on 17 June 2022  
Before me:

DocuSigned by:  
*A Lawrence*  
B06A22BB61D3418...

DocuSigned by:  
*[Signature]*  
175491C4B299484...

Signature of deponent

DocuSigned by:  
Alexander Lawrence  
17 Floor, 140 William St,  
Melbourne VIC 3000  
AU Australia  
Legal Practitioner  
within the meaning of the  
Legal Profession  
(Uniform Law (Victoria))

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW).
2. I saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I has confirmed the person's identity based on the following identification document presented to me: Drivers Licence

## Exhibit certificate

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 616 of 2021


**Westpac Banking Corporations ABN 33 007 457 141**

Applicant

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others according to the  
Schedule


Respondents

This is the exhibit marked “**VFT-5**” now produced and shown to Vincenzo Frank Tesoriero at the time of swearing his affidavit on 17 June 2022 before me:

DocuSigned by:  
  
B06A22BB61D3418...

---

Alexandra Lawrence  
Solicitor

DocuSigned by:  
  
Alexandra Lawrence  
17 Flinders, 140 William St,  
Melbourne VIC 3000  
An Australian  
Legal Practitioner  
with the meaning of the  
Legal Practitioners  
Uniform Law (Victoria)

# Exhibit certificate

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 616 of 2021

**Westpac Banking Corporations ABN 33 007 457 141**

Applicant

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others according to the  
Schedule

Respondents

This is the exhibit marked "**VFT-5**" now produced and shown to Vincenzo Frank Tesoriero at the time of swearing his affidavit on 17 June 2022 before me:

---

Alexandra Lawrence  
Solicitor



Federal Court of Australia  
District Registry: New South Wales  
Division: General

No: NSD616/2021

**WESTPAC BANKING CORPORATION ABN 33 007 457 141**  
Applicant

**FORUM FINANCE PTY LIMITED** and others named in the schedule  
Respondent

### **ORDER**

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 02 July 2021

**WHERE MADE:** Sydney

#### **THE COURT ORDERS THAT:**

1. The applicant have leave to file:
  - (a) the Interlocutory Application dated 2 July 2021;
  - (b) the affidavit of Caitlin Maria Murray dated 2 July 2021; and
  - (c) the affidavit of Nicholas Antony O'Brien dated 1 July 2021.
2. Prayers 1 to 8 of the Interlocutory Application be returnable *instanter*.
3. Pursuant to r 1.39 of the *Federal Court Rules 2011* (Cth) (**FCR**) the time for service of the Interlocutory Application and the supporting affidavits is abridged to 6:00pm on 2 July 2021 with service to be effected on the third respondent:
  - (a) by sending an email to the email address [r.panetta@panetta.com.au](mailto:r.panetta@panetta.com.au) by 5pm on 2 July 2021; and
  - (b) as soon as practicable thereafter at 23 Margaret Street, Rozelle NSW 2039.



4. A freezing order be made against Vincenzo Frank Tesoriero pursuant to s 23 of the *Federal Court of Australia Act 1976 (Cth) (Act)* and FCR 7.34, in the form of Annexure A to these orders.
5. The interlocutory application be listed for further hearing before Justice Lee at 9:30am on 9 July 2021.
6. Vincenzo Frank Tesoriero be joined as the third respondent.
7. The applicant has leave to file and serve an amended originating application by 9.30am on 9 July 2021.
8. Leave to enter these orders forthwith.
9. Costs reserved.
10. Liberty to the third respondent to apply to vary these orders by telephone to the Associate to Justice Lee prior to 9 July 2021.

Date that entry is stamped: 2 July 2021

*Sia Lagos*  
Registrar



**ANNEXURE A – FREEZING ORDER**

**PENAL NOTICE – FREEZING ORDER**

**TO: VINCENZO FRANK TESORIERO**

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO VINCENZO FRANK TESORIERO**

This is a *'freezing order'* made against you on 2 July 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) (a) The application for this order is made returnable immediately.
- (b) The time for service of the application and supporting affidavits is abridged and service is to be effected by 6.00pm on 2 July 2021 with service to be effected on you:
- (i) by sending an email to the email address [r.panetta@panetta.com.au](mailto:r.panetta@panetta.com.au) by 5pm on 2 July 2021
- (ii) as soon as practicable thereafter at 23 Margaret Street, Rozelle NSW 2039.
- (2) Subject to the next paragraph, this order has effect up to and including 5pm on 9 July 2021 (the *'Return Date'*). On the Return Date at 9:30am there will be a further hearing in respect of this order before Justice Lee.





- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
  - (a) ‘*applicant*’, if there is more than one applicant, includes all the applicants;
  - (b) ‘*you*’, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (c) ‘*third party*’ means a person other than you and the applicant;
  - (d) ‘*unencumbered value*’ means value free of mortgages, charges, liens or other encumbrances.
  - (e) ‘*Relevant Amount*’ means the amount of AUD254,219,440.23.
- (5)
  - (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
  - (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

#### **FREEZING OF ASSETS**

- (6)
  - (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia (‘Australian assets’) up to the unencumbered value of AUD\$254,219,440.23. (the *Relevant Amount*).
  - (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
  - (a) your assets include:
    - (iii) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (iv) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
    - (v) the following assets in particular:
      - (A) your shares in each of the following companies:



- a. 23 Margaret Street Pty Limited ACN 623 715 373;
  - b. 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
  - c. 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
  - d. 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
  - e. 14 James Street Pty Limited ACN 638 449 206;
  - f. Canner Investments Pty Limited ACN 624 176 049;
  - g. Tesoriero Investment Group Pty Limited ACN 161 088 115;
  - h. 123 High Street Taradale Pty Limited ACN 639 872 512;
  - i. 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
  - j. 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
  - k. 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;
  - l. 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
  - m. 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
  - n. 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
  - o. 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
  - p. Forum Group Financial Services Pty Limited ACN 623 033 705;
  - q. 26 Edmonstone Road Pty Limited ACN 622 944 129;
  - r. 5 Bulkara Street Pty Limited ACN 630 982 160; and
  - s. 6 Bulkara Street Pty Limited ACN 639 734 473.
- (b) the value of your assets is the value of the interest you have individually in your assets.

### **PROVISION OF INFORMATION**

- (8) Subject to paragraph 9, you must:
- (a) at or before **5pm** on **8 July 2021** (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
  - (b) by **5pm** on **8 July 2021**, swear and serve on the applicant an affidavit setting out the above information.



- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
  - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
  - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

#### **EXCEPTIONS TO THIS ORDER**

- (10) This order does not prohibit:
- (a) you paying up to \$2,500 a week on your ordinary living expenses;
  - (b) paying \$25,000 on your reasonable legal expenses;
  - (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
  - (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.
- (11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable



file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.

- (12) (a) This order will cease to have effect if you:
- (i) pay the sum of \$254,219,440.23 into Court; or
  - (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
  - (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.
- (b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.
- (c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

#### **COSTS**

- (13) The costs of this application are reserved to the Court hearing the application on the Return Date.

#### **PERSONS OTHER THAN YOU AND THE APPLICANT**

##### **(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

##### **(15) Bank withdrawals by you**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

##### **(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
- (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and



- (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
- (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

**(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.



## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon you copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than you and the respondents which have been incurred as a result of this order, including the costs of finding out whether that person holds any of your assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding except for the purposes of any police, regulatory authority or prudential disclosure.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against you or your assets.



## SCHEDULE B

### AFFIDAVITS RELIED ON

<b>Name of deponent</b>	<b>Date affidavit made</b>
(1) Caitlin Maria Murray	2 July 2021 (2 affidavits)
(2) Nicholas Antony O'Brien	1 July 2021
(3) Geoffrey Keith Anderson	28 June 2021
(4) Nicholas Anthony O'Brien	27 June 2021
(5) Caitlin Maria Murray	28 June 2021 (2 affidavits)

### NAME AND ADDRESS OF APPLICANT'S LAWYERS

The applicant's lawyers are:

MinterEllison  
Governor Macquarie Tower  
Level 40, 1 Farrer Place  
Sydney NSW 2000

Attention: Caitlin Murray  
[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com); T +61 2 9921 8514; M +61 422 977 971; +61 2 9921  
8123 ref: CMM:1353397



**Schedule**

No: NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Applicant	Westpac Banking Corporation ABN 33 007 457 141
First Respondent	Forum Finance Pty Limited ACN 153 301 172
Second Respondent	Basile Papadimitriou
Third Respondent	Vincenzo Frank Tesoriero





Federal Court of Australia  
District Registry: New South Wales  
Division: General

No: NSD616/2021

**WESTPAC BANKING CORPORATION ABN 33 007 457 141**

Applicant

**FORUM FINANCE PTY LIMITED** and others named in the schedule  
Respondent

### ORDER

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 09 July 2021

**WHERE MADE:** Sydney

#### **THE COURT ORDERS THAT:**

##### Winding up of the first respondent

1. Pursuant to s 461(1)(k) of the *Corporations Act 2001* (Cth) (**Act**), the first respondent be wound up on the basis that the Court is of the opinion that it is just and equitable that the first respondent be wound up.
2. Pursuant to s 472(1) of the Act, Jason Preston and Jason Ireland of McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000, are appointed jointly and severally as liquidators of the first respondent (**Liquidators**).
3. Compliance with r 5.6 of the *Federal Court (Corporations) Rules 2000* (Cth) be dispensed with.
4. The Liquidators have liberty to apply for directions in relation to the conduct of the liquidation.
5. The Liquidators have access to all documents of the first respondent seized in accordance with the search orders made against the first respondent by order 7 of the orders made by Justice Lee on 28 June 2021.



Freezing orders

6. The freezing order made against the first respondent by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 28 June 2021 (the **2 July Orders**) be extended until 5pm (AEST) on 16 July 2021.
7. The freezing order made against the second respondent by order 5 of the 2 July Orders be extended until further order.
8. The freezing order made against the third respondent by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 2 July 2021 be varied in the form of Annexure A and be extended and apply until further order.

Orders sought by the Receivers

9. The freezing order made by Justice Lee on 28 June 2021 in the form of Annexure A be varied by adding:

“(10) This order does not prohibit:

...

- (d) without limiting subparagraphs (b) and (c), dealing with the bank account in the name of Forum Group Pty Ltd with BSB 082-080 Account Number 12-178-2934 held with National Australia Bank Ltd by discharging business expenses of Forum Group Pty Ltd bona fide and properly incurred not limited to obligations bona fide and properly owing to Octet Finance Pty Ltd ACN 124 477 916.

10. The freezing order made by Justice Lee on 28 June 2021 in the form of annexure B be varied by adding:

“(10) This order does not prohibit:

...



- (e) without limiting subparagraphs (b) and (c), dealing with the bank account in the name of Forum Group Pty Ltd with BSB 082-080 Account Number 12-178-2934 held with National Australia Bank Ltd by discharging business expenses of Forum Group Pty Ltd bona fide and properly incurred not limited to obligations bona fide and properly owing to Octet Finance Pty Ltd ACN 124 477 916.

#### Search Orders

- 11. The time for compliance by the Independent Computer Experts with order 14 of the 2 July Orders be extended insofar as it applies for the Sydney Premises as follows:
  - (a) the Independent Computer Expert provide an interim report to the Independent Solicitor of whether any Listed Things (as defined in the search orders in the 28 June Orders) were or had been located on any of the electronic copies by 5pm on 12 July 2021;
  - (b) the Independent Computer Expert provide a final report to the Independent Solicitor of whether any Listed Things were or had been located on any of the electronic copies (but not including the Our Kloud Servers) by 5pm on 19 July 2021;
  - (c) the Independent Computer Expert provide a further report to the Independent Solicitor of whether any Listed Things were or had been located on the Our Kloud Servers as soon as practicable; and
  - (d) return as soon as practicable to the Independent Solicitor all of the electronic copies.

#### Access to documents

- 12. Upon the applicant by its counsel giving the usual undertaking as to damages, until further order, the first and second respondents are restrained from deleting or altering (other than in the ordinary course of business) any data held for or on behalf of the first respondent which is stored on servers hosted by Our Kloud Pty Ltd (ACN 603 675 529).



13. The first and second respondents have first access to any documents delivered to the Court from the Brisbane search until 5pm (AEST) on 13 July 2021.
14. Any application by any person to prevent access by the applicant to any hard copy documents delivered to the Court as a result of any of the search orders in these proceedings is to be made and notified to the Associate to Lee J by 4pm on 13 July 2021.
15. The applicant is to have access from 5pm (AEST) on 13 July 2021 to any hard copy documents delivered to the Court as a result of any of the search orders in these proceedings that is not the subject of any application made in accordance with Order 14.

Other

16. These orders are to be entered forthwith.
17. The second and third respondents file notice of appearance by no later than 5pm Monday 12 July 2021.
18. The applicant file and serve any application to further amend its originating application by 26 July 2021.
19. The applicant serve the statement of claim it would file if leave were granted to amend the originating application by 26 July 2021.
20. The matter otherwise be relisted for further case management on a date to be fixed as soon as practicable after 2 August 2021 before the docket judge.
21. The parties have liberty to apply on notice to the other parties.

Date that entry is stamped: 9 July 2021

*Sia Lagos*  
Registrar



**ANNEXURE A – FREEZING ORDER**

**PENAL NOTICE – FREEZING ORDER**

**TO: VINCENZO FRANK TESORIERO**

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO VINCENZO FRANK TESORIERO**

This is a ‘*freezing order*’ made against you on 2 July 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order and varied on 9 July 2021 by Justice Lee at a hearing with notice.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) [Deleted]
- (2) Subject to the next paragraph, this order has effect until further order of the Court.
- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
  - (a) ‘*applicant*’, if there is more than one applicant, includes all the applicants;
  - (b) ‘*you*’, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (c) ‘*third party*’ means a person other than you and the applicant;
  - (d) ‘*unencumbered value*’ means value free of mortgages, charges, liens or other encumbrances.
  - (e) ‘*Relevant Amount*’ means the amount of AUD\$254,219,440.23.



- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia ('Australian assets') up to the unencumbered value of AUD\$254,219,440.23. (the *Relevant Amount*).
  - (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
    - (iii) the following assets in particular:
      - (A) your shares in each of the following companies:
        - a. 23 Margaret Street Pty Limited ACN 623 715 373;
        - b. 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
        - c. 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
        - d. 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
        - e. 14 James Street Pty Limited ACN 638 449 206;
        - f. Canner Investments Pty Limited ACN 624 176 049;
        - g. Tesoriero Investment Group Pty Limited ACN 161 088 115;
        - h. 123 High Street Taradale Pty Limited ACN 639 872 512;
        - i. 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
        - j. 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
        - k. 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;



- l. 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
  - m. 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
  - n. 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
  - o. 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
  - p. Forum Group Financial Services Pty Limited ACN 623 033 705;
  - q. 26 Edmonstone Road Pty Limited ACN 622 944 129;
  - r. 5 Bulkara Street Pty Limited ACN 630 982 160; and
  - s. 6 Bulkara Street Pty Limited ACN 639 734 473.
- (b) the value of your assets is the value of the interest you have individually in your assets.

#### PROVISION OF INFORMATION

- (8) Subject to paragraph 9, you must:
- (a) at or before **5pm** on **14 July 2021** (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
  - (b) by **5pm** on **14 July 2021**, swear and serve on the applicant an affidavit setting out the above information.
- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and



- (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
- (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

### EXCEPTIONS TO THIS ORDER

(10) This order does not prohibit:

- (a) you paying up to \$5,000 a week on your ordinary living expenses;
- (b) paying \$30,000 per month (up to the sum of \$350,000 unless varied by subsequent order) on your reasonable legal expenses;
- (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
- (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.

(10A) This order does not prohibit:

- (a) you from directing Australia and New Zealand Banking Group Limited in respect of the bank account in the name of 65 Nelson St Enterprises Pty Ltd (CAN 612 614 632) as trustee of the 65 Nelson Street Enterprises Trust (ABN 74 545 512 288) (**65 Nelson St Co**) to make payments in respect of bona fide expenses:
  - (i) for weekly wage payments for employees employed by and working in the business operated by 65 Nelson St Co;
  - (ii) lease payments for premises occupied by the business operated by 65 Nelson St Co;
  - (iii) operating expenses incurred by the business operated by 65 Nelson St Co;
- (b) you from directing any financial institution that holds bank accounts for any of the following entities:
  - (i) 23 Margaret Street Pty Limited ACN 623 715 373;
  - (ii) 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
  - (iii) 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
  - (iv) 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
  - (v) 14 James Street Pty Limited ACN 638 449 206;
  - (vi) Forum Group Financial Services Pty Ltd ACN 623 033 705;





- (vii) Canner Investments Pty Limited ACN 624 176 049;
- (viii) 123 High Street Taradale Pty Limited ACN 639 872 512;
- (ix) 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
- (x) 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
- (xi) 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;
- (xii) 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
- (xiii) 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
- (xiv) 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
- (xv) 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
- (xvi) 26 Edmonstone Road Pty Limited ACN 622 944 129;
- (xvii) 5 Bulkara Street Pty Limited ACN 630 982 160; and
- (xviii) 6 Bulkara Street Pty Limited ACN 639 734 473,

to make payments in respect of bona fide expenses of the following types in relation to properties owned by the entity:

- (xix) repayments of registered mortgages that were in existence before 2 July 2021;
- (xx) land tax;
- (xxi) insurance premiums;
- (xxii) council rates;
- (xxiii) water.

(11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.

(12) (a) This order will cease to have effect if you:

- (i) pay the sum of \$254,219,440.23 into Court; or
- (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
- (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.

(b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.

(c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.



## **COSTS**

- (13) The costs of this application are reserved to the Court hearing the application on the Return Date.

## **PERSONS OTHER THAN YOU AND THE APPLICANT**

### **(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

### **(15) Bank withdrawals by you**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

### **(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
- (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

### **(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.



## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon you copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than you and the respondents which have been incurred as a result of this order, including the costs of finding out whether that person holds any of your assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding except for the purposes of any police, regulatory authority or prudential disclosure.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against you or your assets.



## SCHEDULE B

### AFFIDAVITS RELIED ON

<b>Name of deponent</b>	<b>Date affidavit made</b>
(1) Caitlin Maria Murray	2 July 2021 (2 affidavits)
(2) Nicholas Antony O'Brien	1 July 2021
(3) Geoffrey Keith Anderson	28 June 2021
(4) Nicholas Anthony O'Brien	27 June 2021
(5) Caitlin Maria Murray	28 June 2021 (2 affidavits)

### NAME AND ADDRESS OF APPLICANT'S LAWYERS

The applicant's lawyers are:

MinterEllison  
Governor Macquarie Tower  
Level 40, 1 Farrer Place  
Sydney NSW 2000

Attention: Caitlin Murray  
[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com); T +61 2 9921 8514 ; M +61 422 977 971 ; +61 2 9921  
8123 ref: CMM:1353397



**Schedule**

No: NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Second Respondent      BASILE PAPADIMITRIOU  
Third Respondent        VINCENZO FRANK TESORIERO



Federal Court of Australia  
District Registry: New South Wales  
Division: General

**NSD616/2021**

**WESTPAC BANKING CORPORATION ABN 33 007 457 141** and another named in  
Schedule 1  
Applicants

**FORUM FINANCE PTY LIMITED ACN 153 301 172** and others named in Schedule 1  
Respondents

**NSD642/2021**

**SOCIETE GENERALE ABN 71 092 516 286**  
Applicant

**FORUM FINANCE PTY LIMITED ACN 153 301 172** and others named in Schedule 2  
Respondents

**NSD681/2021**

**SMBC LEASING AND FINANCE, INC. SYDNEY BRANCH ARBN 602 309 366**  
Applicant

**FORUM ENVIRO (AUST) PTY LTD** and another named in Schedule 3  
Respondents

### **ORDER**

**JUDGE:** JUSTICE LEE  
**DATE OF ORDER:** 12 November 2021  
**WHERE MADE:** Sydney



**THE COURT ORDERS THAT:**

**In the Westpac Proceeding (NSD616/2021)**

Winding up of the PL Entities

1. Pursuant to s 461(1)(k) or s 459A of the *Corporations Act 2001* (Cth) (**Corporations Act**) the following respondents be wound up:
  - (a) the fourth respondent, Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705;
  - (b) the sixth respondent, Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840; and
  - (c) the seventh respondent, Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364,(together referred to as the **PL Entities**).
2. Pursuant to s 472(1) of the *Corporations Act*, Jason Preston and Jason Ireland of McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000, be appointed jointly and severally as liquidators of each of the PL Entities.
3. Pursuant to s 467(3) of the *Corporations Act*, compliance with s 465A of the *Corporations Act* be dispensed with.
4. The requirements of rules 5.6 and 5.11 of the *Federal Court (Corporations) Rules 2000* (Cth) be dispensed with.
5. The costs of and incidental to the application to wind up the PL Entities be costs in the respective liquidations of each of the PL Entities.

Request for further and better particulars of second further amended statement of claim

6. By 4pm on 3 December 2021, the third respondent, Vincenzo Frank Tesoriero (**Mr Tesoriero**), is to serve any request for further and better particulars of the second



further amended statement of claim filed 5 November 2021 (**Second Further Amended Statement of Claim**).

7. By 4pm on 31 January 2022, Westpac Banking Corporation and Westpac New Zealand Limited, the applicants in NSD616/2021 (**Westpac**) are to serve their response to any request for further and better particulars of the Second Further Amended Statement of Claim served on behalf of Mr Tesoriero.

#### Freezing Orders

8. Without admissions, the freezing order made against the third respondent, Mr Tesoriero, by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 2 July 2021 (as varied on 9 July 2021 and 27 August 2021) be varied in the form **Annexed** to these orders and be extended and apply until further order (**Tesoriero Freezing Order**).

#### Order concerning Eric Constantinidis

9. The time by which the forty-fourth respondent, Eric Constantinidis, is to file a defence to the Second Further Amended Statement of Claim is extended to 5pm 17 December 2021.

#### Orders concerning interlocutory applications

10. Any application to strike out any part of the Second Further Amended Statement of Claim by Mr Tesoriero, or any other respondent, is to be filed and served by 14 February 2021.
11. In relation to any application to strike out any part of the Second Further Amended Statement of Claim:
  - (a) Mr Tesoriero, and any other respondent, is to file and serve any evidence and written submissions in support of such application by 4pm 14 February 2022;
  - (b) Westpac is to file and serve any written submissions in response by 4pm 25 February 2022; and





- (c) Mr Tesoriero, and any other respondent, is to file and serve any submissions in reply by 4pm 3 March 2022.
12. In relation to the Tesoriero Freezing Order; the freezing order against 286 Carlisle Street Pty Ltd (**286 Carlisle**) by order 1 of the orders made by Lee J on 20 October 2021; and the freezing orders against Tesoriero Investment Group Pty Ltd (**TIG**) by order 2 of the orders made by Lee J on 20 October 2021 (together the **Freezing Orders**):
- (a) Westpac are to file and serve any written submissions in support of any application to extend the Freezing Orders and any further evidence on which they rely by 4pm 14 February 2022;
- (b) Mr Tesoriero, 286 Carlisle and TIG are to file and serve any submissions in response by 4pm 25 February 2022; and
- (c) Westpac is to file and serve any submissions in reply by 4pm 3 March 2022.
13. Any interlocutory application in relation to the Freezing Orders or to strike out the Second Further Statement of Claim is listed for hearing before Justice Lee on 9 and 10 March 2022, with such hearing to take place in person.
14. The parties are to file and serve a joint Court Book containing the documents on which they intend to rely at the interlocutory hearing by 4pm 4 March 2022.

#### **In the SMBC Proceeding (NSD681/2021)**

##### Leave to proceed against respondents in external administration

15. The applicant in proceeding NSD681/2021, SMBC Leasing and Finance, Inc. ARBN 602 309 366 (**SMBC**) has leave under s 471B of the Corporations Act to proceed against:
- (a) the fourth respondent, Forum Group Financial Services Pty Ltd (in provisional liquidation) (ACN 623 033 705);
- (b) the fifth respondent, Forum Group Pty Ltd (in liquidation) (ACN 153 336 997);



- (c) the sixth respondent, Forum Finance Pty Ltd (in liquidation) (ACN 153 301 172);
- (d) the seventh respondent, The Forum Group of Companies Pty Ltd (in liquidation) (ACN 151 964 626);
- (e) the eighth respondent, Forum Fleet Pty Ltd (in liquidation) (ACN 155 440 994);
- (f) the ninth respondent, Imagetec Financial Services Pty Ltd (in liquidation) (ACN 111 978 182);
- (g) the tenth respondent, Imagetec Solutions Pty Ltd (in liquidation) (ACN 074 715 718);
- (h) the eleventh respondent, Intrashield Pty Ltd (in liquidation) (ACN 133 426 534);
- (i) the twelfth respondent, Spartan Consulting Group Pty Ltd (in liquidation) (ACN 168 989 544);
- (j) the thirteenth respondent, Iugis Pty Ltd (in liquidation) (ACN 632 882 243);
- (k) the fourteenth respondent, Iugis Waste Solutions Pty Ltd (in liquidation) (ACN 647 212 299);
- (l) the twentieth respondent, 26 Edmonstone Road Pty Ltd (in liquidation) (ACN 622 944 129);
- (m) the twenty-first respondent, 5 Bulkara Street Pty Ltd (in liquidation) (ACN 630 982 160); and
- (n) the twenty-second respondent, 6 Bulkara Street Pty Ltd (in liquidation) (ACN 639 734 473),

(together referred to as the **Externally Administered Respondent Entities**).



16. The Externally Administered Respondent Entities be excused from the requirement to file a defence in the proceedings.

Leave to serve outside of Australia

17. SMBC has leave pursuant to rule 10.43(2) of the *Federal Court Rules 2011* (Cth) (**FCR**) to serve the further amended originating application and the amended statement of claim in the form provided to the Court on 12 November 2021 (**SMBC Amended OA and SOC**) on:

- (a) the seventeenth respondent, Iugis Hellas IKE;
- (b) the eighteenth respondent, Iugis Energy SA; and
- (c) the nineteenth respondent, Mazcon Investments Hellas IKE,

in the Hellenic Republic in accordance with the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at The Hague on 15 November 1965 by the Court Bailiff of the Court in Athens pursuant to Article 134 of the *Greek Civil Procedural Code* at the following addresses:

- (d) the seventeenth respondent, Iugis Hellas IKE, at Giannitson 90, 54627 Thessaloniki, Greece;
- (e) the eighteenth respondent, Iugis Energy SA, at Building square 48A, 57022 Sindos, Thessaloniki, Greece;
- (f) the nineteenth respondent, Mazcon Investments Hellas IKE, at 17 Ionos Dragoumi, 54625 Thessaloniki, Greece.

18. SMBC has leave pursuant to rule 10.43(2) of the FCR to serve the SMBC Amended OA and SOC on:

- (a) the fifteenth respondent, Iugis Holdings Limited (UK Company No. 11123437); and
- (b) the sixteenth respondent, Iugis (UK) Limited (UK Company No. 10745974),



in the United Kingdom in accordance with the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at The Hague on 15 November 1965 by sending a copy of the originating process as issued by this Court by international registered post with return receipt to:

- (a) the fifteenth respondent, Iugis Holdings Limited (UK Company No. 11123437) at 64 New Cavendish Street, London, United Kingdom, W1G 8TB; and
- (b) the sixteenth respondent, Iugis (UK) Limited (UK Company No. 10745974) at 64 New Cavendish Street, London, United Kingdom, W1G 8TB.

**In all proceedings**

Timetable

- 19. The applicants in each of the proceedings are to file and serve any evidence on which they rely by 5pm 4 February 2022.

General

Leave to enter these orders forthwith.

Date that entry is stamped: 12 November 2021

*Sia Lagos*  
Registrar



## Schedule 1

No. NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141  
Second Applicant Westpac New Zealand Limited (company registration number company number 1763882)

### Respondents

First Respondent: Forum Finance Pty Limited (in liquidation) ACN 153 301 172  
Second Respondent: Basile Papadimitriou  
Third Respondent: Vincenzo Frank Tesoriero  
Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705  
Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997  
Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840  
Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364  
Eighth Respondent: 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662  
Ninth Respondent: 14 James Street Pty Ltd (in liquidation) ACN 638 449 206  
Tenth Respondent: 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129  
Eleventh Respondent: 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160  
Twelfth Respondent: 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473  
Thirteenth Respondent: 23 Margaret Street Pty Ltd ACN 623 715 373



Fourteenth Respondent:	1160 Glen Huntly Road Pty Ltd ACN 639 447 984
Fifteenth Respondent:	14 Kirwin Road Morwell Pty Ltd ACN 641 402 093
Sixteenth Respondent:	Canner Investments Pty Ltd ACN 624 176 049
Seventeenth Respondent:	123 High Street Taradale Pty Ltd ACN 639 872 512
Eighteenth Respondent:	160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921
Nineteenth Respondent:	31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887
Twentieth Respondent:	4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352
Twenty-First Respondent:	55 Nolan Street Maryborough Pty Ltd ACN 641 392 912
Twenty-Second Respondent:	89 Betka Road Mallacoota Pty Ltd ACN 641 393 179
Twenty-Third Respondent:	9 Gregory Street Ouyen Pty Ltd ACN 641 392 707
Twenty-Fourth Respondent:	9 Main Street Derrinallum Pty Ltd ACN 639 872 736
Twenty-Fifth Respondent:	286 Carlisle Street Pty Limited ACN 610 042 343
Twenty-Sixth Respondent:	275 High Street Golden Square Pty Ltd ACN 639 870 545
Twenty-Seventh Respondent:	Mazcon Investments Hellas IKE
Twenty-Eighth Respondent:	Palante Pty Ltd ACN 135 344 151
Twenty-Ninth Respondent:	Anastasios Giamouridis
Thirtieth Respondent	The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626
Thirty-First Respondent	Iugis Pty Ltd (in liquidation) ACN 632 882 243
Thirty-Second Respondent	Iugis (UK) Limited
Thirty-Third Respondent	Iugis Holdings Limited
Thirty-Fourth Respondent	Iugis Global Financial Services Limited
Thirty-Fifth Respondent	Iugis Finance Limited
Thirty-Sixth Respondent	Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544
Thirty-Seventh Respondent	Intrashield Pty Ltd (in liquidation) ACN 133 426 534
Thirty-Eighth Respondent	Tesoriero Investment Group Pty Ltd ACN 161 088 115
Thirty-Ninth Respondent	Mangusta (Vic) Pty Ltd ACN 631 520 682
Fortieth Respondent	193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237
Forty-First Respondent	8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626
Forty-Second Respondent	Iugis Hellas IKE



Forty-Third Respondent	Iugis Energy SA
Forty-Fourth Respondent	Eric Constantinidis
Forty-Fifth Respondent	Giovanni (John) Tesoriero
Forty-Sixth Respondent	Moussa (Tony) Bouchahine
Forty-Seventh Respondent	Louisa Maria Agostino
Forty-Eighth Respondent	D&D Group O.E
Forty-Ninth Respondent	Aromatika Fyta Tsai Olympou Theion Ike



**Schedule 2**

No: NSD642/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Second Respondent	Basile Papadimitriou (also known as Bill Papas)
Third Respondent	Forum Group Financial Services Pty Ltd (provisional liquidators appointed)





**Schedule 3**

No: NSD681/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Second Respondent                      Basile Papadimitriou (also known as Bill Papas)



**ANNEXURE – FREEZING ORDER**

**PENAL NOTICE – FREEZING ORDER**

**TO: VINCENZO FRANK TESORIERO**

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO VINCENZO FRANK TESORIERO**

This is a *'freezing order'* made against you on 2 July 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order. This freezing orders was varied on 9 July 2021, 27 August 2021 and 12 November 2021 by Justice Lee at hearings with notice to you.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) [Deleted]
- (2) Subject to the next paragraph, in accordance with the order 8 of the orders made by Justice Lee on 12 November 2021, this order has effect until further order of the Court.
- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
  - (a) *'applicant'*, if there is more than one applicant, includes all the applicants;
  - (b) *'you'*, where there is more than one of you, includes all of you and includes you if you are a corporation;



- (c) *'third party'* means a person other than you and the applicant;
  - (d) *'unencumbered value'* means value free of mortgages, charges, liens or other encumbrances.
  - (e) *'Relevant Amount'* means the amount of AUD\$253,766,555.76 and NZD\$44,097,969.
- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

#### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia ('Australian assets') up to the unencumbered value of AUD\$253,766,555.76 and NZD\$44,097,969 (the *Relevant Amount*).
- (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (c) If the unencumbered value of your Australian assets is less than the Relevant Amount, and you have assets outside Australia (**Worldwide Assets**):
- (i) You must not dispose of, deal with or diminish the value of any of your Australian assets or your Worldwide Assets up to the unencumbered value of the Relevant Amount; and
  - (ii) You may dispose of, deal with or diminish the value of any of your Worldwide Assets, so long as the unencumbered value of all of your Australian assets and Worldwide Assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and



- (iii) the following assets in particular:
- (A) your shares in each of the following companies:
- a. 23 Margaret Street Pty Limited ACN 623 715 373;
  - b. 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
  - c. 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
  - d. 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
  - e. 14 James Street Pty Limited ACN 638 449 206;
  - f. Canner Investments Pty Limited ACN 624 176 049;
  - g. Tesoriero Investment Group Pty Limited ACN 161 088 115;
  - h. 123 High Street Taradale Pty Limited ACN 639 872 512;
  - i. 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
  - j. 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
  - k. 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;
  - l. 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
  - m. 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
  - n. 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
  - o. 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
  - p. Forum Group Financial Services Pty Limited ACN 623 033 705;
  - q. 26 Edmonstone Road Pty Limited ACN 622 944 129;
  - r. 5 Bulkara Street Pty Limited ACN 630 982 160;
  - s. 6 Bulkara Street Pty Limited ACN 639 734 473;
  - t. Pankarn Pty Ltd ACN 104 616 051;
  - u. 275 High Street Golden Square Pty Ltd ACN 639 870 545;
  - v. 22 High Street Rushworth Pty Ltd ACN 641 392 903;
  - w. 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626;
  - x. Vintes Qld Pty. Ltd. ACN 624 585 922;
  - y. 65 Nelson Street Enterprises Pty. Ltd. ACN 612 614 632;
  - z. 193 Carlisle Street Enterprises Pty. Ltd. ACN 612 615 237;
  - aa. Vintes No 4 Pty Ltd ACN 639 726 524;
  - bb. BV Holdings VT Pty Ltd ACN 639 891 624;
  - cc. BV Holdings TD Pty Ltd ACN 639 895 257;



- dd. BV Holdings GS Pty Ltd ACN 640 218 864;
- ee. Vintes Qld No 3 Pty Ltd ACN 640 879 152;
- ff. BV Holdings DB Pty Ltd ACN 641 393 151;
- gg. BV Holdings RW Pty Ltd ACN 641 393 197;
- hh. BV Holdings MB Pty Ltd ACN 641 393 240;
- ii. BV Holdings LB Pty Ltd ACN 641 393 268;
- jj. BV Holdings MC Pty Ltd ACN 641 393 277;
- kk. BV Holdings MW Pty Ltd ACN 641 393 286;
- ll. BV Holdings DN Pty Ltd ACN 639 895 239;
- mm. 308 Carlisle Street Holdings Pty. Ltd. ACN 613 047 439;
- nn. 286 Carlisle Street Pty Ltd ACN 610 042 343;
- oo. Thrivi Group Pty Ltd ACN 625 491 858;
- pp. Mangusta (Vic) Pty. Ltd. ACN 631 520 682;
- qq. San Pel One Pty LTD ACN 651 919 265; and
- rr. San Pel Two Pty Ltd ACN 651 927 356;

(B) the following vehicles and vessels:

- a. Vessel "XOXO" Cayman Islands Official Number 734587;
- b. 2018 Porsche Cayenne with VIN WPiZZZ9YZKDA90623
- c. 2014 Alfa Romeo;
- d. 2020 Mini Cooper S with VIN WMWXX920802M95982;
- e. 2008 Ducati 1098R with registration DUCR;
- f. 2020 BMW S1000 with registration EOZ12;
- g. 1957 Chevrolet Bel Air;
- h. 2019 BRP Can-Am Ryker 600 registration RYKER;

- (b) the value of your assets is the value of the interest you have individually in your assets.

### PROVISION OF INFORMATION

(8) Subject to paragraph 9, you must:

- (a) at or before **5pm on 14 July 2021** (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages,



- charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
- (b) by **5pm on 14 July 2021**, swear and serve on the applicant an affidavit setting out the above information
  - (c) by **5pm on 3 September 2021** (or within such further time as the Court may allow) to the best of your ability, swear and serve on the applicants an affidavit setting out all your assets outside of Australia (**Worldwide Assets**), giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the Worldwide Assets.
- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
  - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
  - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

#### **EXCEPTIONS TO THIS ORDER**

- (10) This order does not prohibit:
- (a) you paying up to \$5,000 a week on your ordinary living expenses;



- (b) paying up to the sum of \$450,000 until 10 March 2022 on your reasonable legal expenses;
  - (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
  - (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.
- (10A) This order does not prohibit:
- (a) you from directing Australia and New Zealand Banking Group Limited in respect of the bank account in the name of 65 Nelson St Enterprises Pty Ltd (ACN 612 614 632) as trustee of the 65 Nelson Street Enterprises Trust (ABN 74 545 512 288) (**65 Nelson St Co**) to make payments in respect of bona fide expenses:
    - (i) for weekly wage payments for employees employed by and working in the business operated by 65 Nelson St Co;
    - (ii) lease payments for premises occupied by the business operated by 65 Nelson St Co;
    - (iii) operating expenses incurred by the business operated by 65 Nelson St Co;
  - (b) you from directing any financial institution that holds bank accounts for any of the following entities:
    - (i) 23 Margaret Street Pty Limited ACN 623 715 373;
    - (ii) 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
    - (iii) 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
    - (iv) 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
    - (v) 14 James Street Pty Limited ACN 638 449 206;
    - (vi) Forum Group Financial Services Pty Ltd ACN 623 033 705;
    - (vii) Canner Investments Pty Limited ACN 624 176 049;
    - (viii) 123 High Street Taradale Pty Limited ACN 639 872 512;
    - (ix) 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
    - (x) 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
    - (xi) 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;



- (xii) 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
- (xiii) 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
- (xiv) 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
- (xv) 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
- (xvi) 26 Edmonstone Road Pty Limited ACN 622 944 129;
- (xvii) 5 Bulkara Street Pty Limited ACN 630 982 160; and
- (xviii) 6 Bulkara Street Pty Limited ACN 639 734 473,

to make payments in respect of bona fide expenses of the following types in relation to properties owned by the entity:

- (xix) repayments of registered mortgages that were in existence before 2 July 2021;
- (xx) land tax;
- (xxi) insurance premiums;
- (xxii) council rates;
- (xxiii) water.

(11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.

(12) (a) This order will cease to have effect if you:

- (i) pay the sum of AUD\$253,766,555.76 and NZD\$44,097,969 into Court; or
- (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
- (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.

(b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.

(c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

## **COSTS**

(13) The costs of this application are reserved to the Court hearing the application on the Return Date.





## **PERSONS OTHER THAN YOU AND THE APPLICANT**

### **(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

### **(15) Bank withdrawals by you**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

### **(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
  - (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

### **(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.



## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon you copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than you and the respondents which have been incurred as a result of this order, including the costs of finding out whether that person holds any of your assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding except for the purposes of any police, regulatory authority or prudential disclosure.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against you or your assets.



## SCHEDULE B

### AFFIDAVITS RELIED ON

#### Name of deponent

- (1) Geoffrey Keith Anderson
- (2) Nicholas Anthony O'Brien

- (3) Caitlin Maria Murray

#### Date affidavit made

28 June 2021; 8 July 2021

27 June 2021; 1 July 2021

28 June 2021; 2 July 2021;  
7 July 2021; 8 July 2021; 12  
July 2021; 14 July 2021; 15  
July 2021; 25 August 2021

### NAME AND ADDRESS OF APPLICANTS' LAWYERS

The Applicants' lawyers are:

MinterEllison  
Governor Macquarie Tower  
Level 40, 1 Farrer Place  
Sydney NSW 2000

Attention: Caitlin Murray

[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com) ; T +61 2 9921 8514 ; M +61 422 977 971 ; +61  
2 9921 8123 ref: CMM:1353397

Funds in Court  
Supreme Court of Victoria  
Level 5, 469 La Trobe Street  
Melbourne Victoria 3000  
Post: 210 William Street, Melbourne 3000  
T: 1300 039 390 F: 1300 039 388  
E: requests@fundsincourt.vic.gov.au  
W: www.fundsincourt.vic.gov.au



04 March 2022

Your Ref: NT.BA.206734  
Our Ref: 34137

NICHOLAS JAMES LAWYERS  
PO Box 200  
ESSENDON VIC 3040

By email to: [brittany@njlawyers.com.au](mailto:brittany@njlawyers.com.au)

Dear Solicitors,

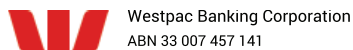
A Certificate of Receipt pursuant to the Supreme Court Rules appears below.

**CERTIFICATE OF RECEIPT**

Type of Payment into Court: **TRUSTEE ACT - CF1**  
Date of last Receipt: **03/03/2022**  
Amount Received: **\$759,619.00**  
Common Fund No: **1**  
Account No: **86453-**  
Invested in the Name of: **1160 Glen Huntly Road Pty Ltd**  
Eligible for Payment-Out: **UPON FURTHER ORDER**

A handwritten signature in blue ink, appearing to be "JK".

**LEGAL ADMINISTRATION TEAM**



Printed:17/05/2022 09:47:56 EST

## BUSINESS ONE FLEXI 033003 667565

Branch Name: 520 COLLINS STREET  
Current Balance: \$ 1,340,866.65  
Available Funds: \$ 1,340,866.65

### Transactions

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Date	Description	Withdrawals	Deposits	Running Balance
16/05/2022	DEPOSIT 3022104 COURT ORDER FUNDS		\$ 1,340,866.65	\$ 1,340,866.65

#### Things you should know

1. Running balance means the balance of a customer's account, based on the deposits and withdrawals we've recorded on the account at a particular point in time.
2. This page is current as at 17/05/2022 09:55:43 AEST. This is not an official statement and is subject to change.

**Allens**

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia

T +61 2 9230 4000  
F +61 2 9230 5333  
www.allens.com.au

GPO Box 50  
Sydney NSW 2001 Australia

ABN 47 702 595 758

Allens < Linklaters

23 May 2022

Madgwicks Lawyers  
Level 6, 140 William Street  
Melbourne VIC 3000  
Attention: Sazz Nasimi/Alexandra Lawrence

**By email**

Dear Colleagues

**Sale proceeds of 6 Bulkara Street, Wagstaffe NSW**

We refer to the recent correspondence between the parties regarding the treatment of proceeds of the sale of the 6 Bulkara Street property and in particular your letter dated 18 May 2022 (**Letter**).

We are instructed to respond as follows:

- 1 In response to paragraph 3 of the Letter, the Receivers reject any suggestion that they have breached their agreement to consult with your client prior to executing the contract for sale regarding the 14 James Street properties (**14 James**). The Schedule to this letter lists the 35 pieces of correspondence between our respective offices relating to the sale of 14 James and/or matters related to such sale such as the removal of items which remained in 14A James Street. This correspondence includes, without limitation:
  - (a) 6 pieces of correspondence regarding your client's attempts to frustrate the Receivers' power of sale;
  - (b) 2 requests for your client to provide the Receivers with any information or contact details of any prospective purchasers to assist with the sale of 14 James;
  - (c) The provision of the valuation which the Receivers obtained of 14 James;
  - (d) A letter on 16 March 2022 which provided detail as to:
    - (i) The engagement of a selling agent and valuer;
    - (ii) The marketing recommendation received from the selling agent and valuer; and
    - (iii) The indicative timeline of the proposed EOI campaign;
  - (e) A letter on 28 April 2022 which:
    - (i) reiterated the sales and marketing campaign was due to close on 4 May 2022; and
    - (ii) informed your client of the number of individual enquires, issued contracts, inspections and interested parties.
- 2 Notwithstanding that extensive correspondence, your client has not engaged with the Receivers in relation to the sale (other than in relation to the contents of 14A James and access to the premises).

**Our Ref** 121031672-007:121031672

KBPS 520196449v2 121031672 23.5.2022

Allens is an independent partnership operating in alliance with Linklaters LLP.

- 3 In response to paragraph 3(c) of your Letter, the Receivers reject any assertion that they did not take all reasonable care to sell 14 James for not less than market value or for the best price reasonably obtainable. By way of example:
- (a) The Receivers have incurred substantial costs in preparing 14 James for sale, including attending to the removal of: (i) a significant number of items which remained in the 14A James Street property at the time the Receivers were appointed; and (ii) timber, bricks, sheets of metal, pallets and vehicles which had been placed both within and outside the 14A James Street property preventing the Receivers' access to the property;
  - (b) The Receivers ran a 4.5 week sales and marketing campaign. As detailed in our letter of 28 April 2022, that campaign has resulted in a large volume of parties requesting copies of the information memorandum and contract and conducting inspections of the properties;
  - (c) The Receivers obtained a valuation which valued 14 James at \$5,430,000 if sold in one-line and \$6,035,000 if sold individually; and
  - (d) The Receivers accepted the highest offer (\$6,600,000) which was 21.5% and 9.4% above each respective valuation scenario.
- 4 In response to paragraph 4 of the Letter, the amount of \$9,808,169.94 is held solely on behalf of the Receivers in their capacity as Receivers of the 6 Bulkara Street property (as was made clear in our letter of 18 May 2022). As required by the Orders, separate controlled monies accounts must be held on behalf of the Receivers in their differing capacities (i.e. as Receivers of the 26 Edmonstone Road property, as Receivers of the 5 Bulkara Street property, as Receivers of the 6 Bulkara Street property and Receivers of the XOXO Yacht), meaning that any 'pooling' of such funds in a singular controlled monies account is not permissible.
- 5 In response to the remaining matters raised in the Letter:
- (a) Your client's proposal does not appear to us to reflect the priority of claims which would apply in the event the proprietary claims against 5 Bulkara Street Pty Ltd (In Liquidation) are successful. For example, it is not clear to us that the claims of Aksara (which has not advanced any monies to 5 Bulkara Street Pty Ltd (in Liquidation) but has taken a guarantee) could defeat valid proprietary claims. We do not anticipate that the parties making the proprietary claims would consent to your client's proposal;
  - (b) The Orders require the Receivers to hold the proceeds of the sale of the 6 Bulkara Street property (after the deduction of various costs) in a controlled monies account on behalf of the Receivers in their capacity as Receivers of the 6 Bulkara Street property. This equally applies to the proceeds of the sale of the other property captured by the Order. To that end, the proposals set out in your letters of 13 May and 18 May, suggest a course of action which would result in a breach of the Orders;
  - (c) Each property is owned by a different legal entity, which has its own creditors and liabilities. In the present context, the proceeds received by one registered proprietor, which itself has creditors, cannot be used to satisfy the liabilities of a different registered proprietor;
  - (d) The Letter suggests that your client's proposal would not prejudice the creditors the 5 Bulkara Street Pty Limited. However, it would prejudice the creditors of 6 Bulkara Street Pty Ltd (In Liquidation) and 26 Edmonstone Road Pty Ltd (In Liquidation) if their assets were used to satisfy unrelated third party liabilities; and
  - (e) The debts of 5 Bulkara Street Pty Ltd (In Liquidation) exceed its assets. In those circumstances, we do not see any benefit in delaying its sale.

6 For the reasons outlined above, the Receivers do not agree to your client's proposal.

Yours faithfully



**Chris Prestwich**  
Partner  
Allens  
Chris.Prestwich@allens.com.au  
T +61 2 9230 4496

**Kirsty Prinsloo**  
Managing Associate  
Allens  
Kirsty.Prinsloo@allens.com.au  
T +61 2 9230 4735

CC: MinterEllison, Caitlin Murray  
Dentons, David Sharpe



Pacific Blue

Tax Services Pty Ltd

P. 03 8862 4646 F. 03 9824 8881

31 May 2022

Madgwicks Lawyers  
Attention: Sazz Nasimi  
Level 6, 140 William Street  
MELBOURNE VIC 3000

Dear Mr Nasimi

**Westpac Banking Corporation & Anor v Forum Finance Pty Ltd (in liq) & Ors  
Federal Court of Australia Proceedings No. NSD616/2021**

I refer to the above matter.

I am the accountant for Mr Vincenzo Tesoriero and his associated entities. I have been asked by Madgwicks to provide a statement as to Mr Tesoriero's ability to access funds for the purpose of funding his legal defence.

I can state that all funds presently being derived by Mr Tesoriero, via his associated entities are being applied to various bank debts that either he or his associated entities currently have.

No surplus moneys are currently available from which Mr Tesoriero can either fund his personal expenses or his legal defence.

Mr Tesoriero is currently meeting his personal expenses from loans being made to him from friends and family. Further, I do wish to raise that I am also currently owed money for works undertaken for Mr Tesoriero and his associated entities in the vicinity of \$18,000.00.

I am informed that I will be requested to do further works leading up to the trial of this matter. I am unwilling to do such works unless all past invoices rendered by me have been paid in full.

Yours sincerely,



**Luigi Stefanetti.**  
Director

## Gemma Jakobovic

---

**From:** Alexandra Lawrence  
**Sent:** Friday, 3 June 2022 12:45 PM  
**To:** Kang, Justin; Canny, Elizabeth; Strack, Tamara  
**Cc:** Sazz Nasimi; Melissa Passarelli; McTaggart, Caitlin; Prinsloo, Kirsty; Prestwich, Chris; Forum (Allens); Caitlin Murray; Andrew Clarke; Konfir Kabo  
**Subject:** 5 Bulkara Street, Wagstaffe NSW 2257 [MADG-CURRENT\_MATTERS.FID668660]  
**Attachments:** 220602 Letter from Madgwicks to Dentons(4827789.4).pdf

Dear Colleagues,

Please see the letter **attached**.

Kind regards,

**Alexandra Lawrence**  
Associate

MADGWICKS  
LAWYERS

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T: +61 3 9242 4720 E: [Alexandra.Lawrence@madgwicks.com.au](mailto:Alexandra.Lawrence@madgwicks.com.au)

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Justin Kang  
Dentons  
77 Castlereagh Street  
Sydney NSW 2000

Date: 3 June 2022  
File No: 047678  
Author: Alexandra Lawrence  
Partner: Sazz Nasimi

By email: [Justin.kang@dentons.com](mailto:Justin.kang@dentons.com)

Dear Mr Kang

**5 Bulkara Street, Wagstaffe NSW 2257 (“the Property”)**

We refer to our previous correspondence confirming that our client no longer seeks to restrain the sale of the Property. That said, we write this letter seeking confirmation of a number of matters in respect of the imminent sale of the Property.

**Details of sale**

Please confirm the following details of the proposed sale:

- (a) the proposed sale price;
- (b) the identity of the purchaser; and
- (c) the settlement date.

**Application of proceeds**

Other than NAB, there are a number of entities that claim an interest in the proceeds from the sale of the Property, including Aksara Holdings Pty Ltd (**Aksara**) pursuant to an equitable mortgage, and Westpac Banking Corporation (**Westpac**) in respect of a proprietary claim, which our client disputes and which is the subject of Federal Court Proceeding NSD616/2021 (**Proceeding**).

Unlike, Westpac’s claim, we do not understand there to be any dispute as to the existence of Aksara’s equitable mortgage, which currently secures an amount of approximately \$5.5 million.

Once NAB’s registered mortgage has been discharged, our client considers that it is appropriate to apply the remaining proceeds from the sale of the Property to discharge Aksara’s equitable mortgage. To the extent that there are any remaining proceeds, our client considers that they should be paid into the existing controlled monies account controlled by our office and Westpac’s solicitors pending further Court orders.

We note that Westpac has asserted that its alleged proprietary interest takes priority over Aksara’s equitable mortgage. Aksara’s equitable mortgage is not in issue in the Proceeding, and Westpac



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W: [madgwicks.com.au](http://madgwicks.com.au)



has not articulated any basis for its asserted priority. We are not aware of any foundation for such a claim.

Please confirm that the proceeds of the sale of the Property will be applied as set out above.

The solicitors for Westpac, the solicitors for the liquidators of 5 Bulkara St Pty Ltd (in liquidation), and Mr Kabo of Aksara have been copied into this correspondence.

Should you have any queries, please do not hesitate to contact our office.

Yours faithfully

**MADGWICKS**



Sazz Nasimi  
**Partner**

**T:** 03 9242 4741  
**E:** Sazz.Nasimi@madgwicks.com.au



Alexandra Lawrence  
**Associate**

**T:** 03 9242 4720  
**E:** Alexandra.Lawrence@madgwicks.com.au

**Copy to:**

**McTaggart, Caitlin** Caitlin.McTaggart@allens.com.au;  
**Prinsloo, Kirsty** Kirsty.Prinsloo@allens.com.au;  
**Prestwich, Chris** Chris.Prestwich@allens.com.au ;  
**Murray, Caitlin** Caitlin.Murray@minterellison.com;  
**Clarke, Andrew** Andrew.Clarke@minterellison.com;  
**Kabo, Konfir** Konfir.kabo@gmail.com.

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## Gemma Jakobovic

---

**From:** Claire Latham <Claire.Latham@minterellison.com>  
**Sent:** Wednesday, 8 June 2022 11:25 AM  
**To:** Alexandra Lawrence; Sazz Nasimi; Melissa Passarelli; konfir.kabo@gmail.com; justin.kang@dentons.com; elizabeth.canny@dentons.com; tamara.strack@dentons.com; Prestwich, Chris; Prinsloo, Kirsty; caitlin.mctaggart@allens.com.au; forumallens@allens.com.au  
**Cc:** Caitlin Murray; PROJECT OLYMPUS  
**Subject:** 5 Bulkara Street, Wagstaffe NSW 2257  
**Attachments:** Letter to Madgwicks 8 Jun 2022.PDF

Dear Colleagues

Please see **attached** our letter of today's date.

Kind regards

---

**Claire Latham**

Senior Associate

T +61 2 9921 4280 | M +61 420 759 930

claire.latham@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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Sensitive: Legal

8 June 2022

Sazz Nasimi  
Madgwicks Lawyers  
Level 6  
140 William Street  
Melbourne VIC 3000

Dear Colleagues

## **5 Bulkara Street, Wagstaffe NSW 2257 (Property)**

We refer to your letter to Dentons dated 3 June 2022 in relation to the sale of the Property, to which we were copied.

Our clients do not agree with, or consent to, your client's proposal that, once NAB's registered mortgage over the Property has been discharged, the remaining proceeds (**Proceeds**) be applied to discharge the equitable interest asserted by Aksara Holdings Pty Limited (**Aksara**).

In this regard:

1. Aksara's claimed interest in the Property is an equitable interest only.
2. As pleaded by our clients in the Federal Court of Australia proceedings (**Proceedings**) commenced against Forum Finance Pty Limited (In Liquidation) (**Forum Finance**) and others, our clients contend that Forum Finance fraudulently received a significant sum of funds from our clients.
3. Our clients have identified that the proceeds stolen from it can be traced into the purchase of the Property and to repayments made with respect to the registered mortgage over the Property, thereby creating a proprietary interest in the Property.
4. Our clients have identified funds traced to the Property prior to the creation of Aksara's claimed equitable interest. Our clients contend that their proprietary interest in the Property pre-dates any equitable interest claimed by Aksara.
5. It is well established that, in the circumstances of two competing equitable interests, the first in time must prevail.

In those circumstances, our client does not agree that it is appropriate to apply the Proceeds to discharge Aksara's claimed equitable mortgage and does not consent to any such distribution. Our clients maintain that the Proceeds should be paid into Court (or into a controlled moneys account held by the Liquidators) pending the determination of our clients' claims in the Proceedings.

Our clients reserve their position on the question of costs of any need to seek a determination as to the priority position as between our clients and Aksara.

We have copied Konfir Kabo of Aksara and the solicitors for NAB and the liquidators of 5 Bulkara Street Pty Limited (in liquidation) to this correspondence.

Yours faithfully  
**MinterEllison**

*Minter Ellison*

Contact: Claire Latham  
claire.latham@minterellison.com  
Partner: Caitlin Murray  
OUR REF: 1353397

**Copy to:** Konfir Kabo [konfir.kabo@gmail.com](mailto:konfir.kabo@gmail.com)  
Justin Kang [justin.kang@dentons.com](mailto:justin.kang@dentons.com)  
Chris Prestwich [chris.prestwick@allens.com.au](mailto:chris.prestwick@allens.com.au)  
Kirsty Prinsloo [kirsty.prinsloo@allens.com.au](mailto:kirsty.prinsloo@allens.com.au)

## Gemma Jakobovic

---

**From:** Kang, Justin <justin.kang@dentons.com>  
**Sent:** Wednesday, 8 June 2022 2:45 PM  
**To:** Claire Latham; Alexandra Lawrence; Sazz Nasimi; Melissa Passarelli; konfir.kabo@gmail.com; Prestwich, Chris; Prinsloo, Kirsty; caitlin.mctaggart@allens.com.au; forumallens@allens.com.au  
**Cc:** Caitlin Murray; PROJECT OLYMPUS; Strack, Tamara; Canny, Elizabeth; Sharpe, David; Daher, Liliane; Geary, Matthew  
**Subject:** 5 Bulkara Street, Wagstaffe NSW 2257 [DENTONS-Documents.FID10656073]  
**Attachments:** 220602 Letter from Madgwicks to Dentons(4827789.4).pdf; Letter to Madgwicks 8 Jun 2022.PDF

Dear Colleagues

We refer to the **attached** letters from Madgwicks dated 3 June 2022 and Minter Ellison dated 8 June 2022.

By way of response:

- our clients do not propose to provide details of any prospective sale and we will advise once any exchange of contracts has occurred;
- it is not incumbent on our clients to decide between competing claims to any surplus from the sale;
- therefore, absent agreement between all claimants to any surplus, our clients intend to pay any surplus into Court.

Regards

 大成 DENTONS

**Justin Kang**

Partner

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This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/07/2022 10:00:56 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172  
& ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 12/07/2022 10:10:56 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form 59

Rule 29.02(1)

**Affidavit**

No. 616 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another named in the Schedule

Applicants

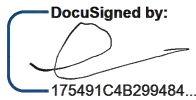
**Forum Finance Pty Ltd ACN 153 301 172 (In Liquidation)** and others named in the Schedule

Respondents

Sixth Affidavit of: **Vincenzo Frank Tesoriero**  
 Address: 64-66 Berkley St, Hawthorn VIC 3122  
 Occupation: Director  
 Date: 12 July 2022

**Contents**

Document number	Details	Paragraph	Page
1	Sixth Affidavit of Vincenzo Frank Tesoriero sworn on 12 July 2022	2	2-18
2	Exhibit VFT-6 being a paginated bundle of documents	4	1-366

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Filed on behalf of (name & role of party) Vincenzo Frank Tesoriero, Third Respondent  
 Prepared by (name of person/lawyer) Sazz Nasimi  
 Law firm (if applicable) Madgwicks Lawyers  
 Tel 03 9242 4780 Fax 03 9242 4777  
 Email [sazz.nasimi@madgwicks.com.au](mailto:sazz.nasimi@madgwicks.com.au)  
**Address for service** Level 6, 140 William Street, Melbourne VIC 3000  
 (include state and postcode)

[Version 3 form approved 02/05/2019]

I, Vincenzo Frank Tesoriero, director, of 64-66 Berkeley St, Hawthorn VIC 3122 hereby make oath and say:

1. I am the Third Respondent in the proceedings.
2. I make this affidavit from my own knowledge save where otherwise indicated. Where I depose to matters that I have been informed of by others, I believe those matters to be true and correct.
3. I make this affidavit by way of further disclosure and by way of compliance with order 2 of the 1 July 2022 orders made in these proceedings by the Honourable Justice Lee.
4. Now produced and shown to me marked “**VTF-6**” is a bundle of documents exhibited to this affidavit (**Exhibit Bundle**). In this affidavit, I refer to the documents in the Exhibit Bundle as VFT-6 at pages [page number].
5. In addition to VFT-6, I also refer to the previous affidavits I have sworn in these proceedings:
  - (a) my affidavit sworn on 21 July 2021 (**my July affidavit**);
  - (b) my affidavit sworn on 3 September 2021 (**my September affidavit**);
  - (c) my affidavit sworn on 19 October 2021 (**my October affidavit**);
  - (d) my affidavit sworn on 8 November 2021 (**my November affidavit**);
  - (e) my affidavit sworn on 17 June 2022 (**my June affidavit**).
6. I refer to the affidavit of Caitlin Murray dated 30 June 2022 served (unsealed) on my solicitors at 9:24 pm on 30 June 2022, being the night before this matter was last in Court. The Murray affidavit exhibited several bank statements from Judo Bank and the ANZ without referring to or explaining the significance of these documents. Accordingly, I was unable to give instructions to my solicitors about these documents as I myself was unclear on what the controversy was with respect to these bank statements.
7. The following day, being 1 July 2022 Mr Giles SC in open court, raised for the first time, a number of queries regarding the bank statements. These queries had never been raised with me or my solicitors prior to the 1 July 2022 hearing and had they been raised I could have provided a very simple explanation to the Applicants without the need to trouble His Honour.
8. In any event, I have sought to address the Applicants’ concerns and suspicions, through this affidavit.
9. I have attached four annexures to this affidavit which are marked “A”, “B” and “C” respectively. **Annexure A** is a table in the same form as the table submitted in my July


affidavit which has been updated to reflect as matters stand presently. **Annexure B** highlights the rents received from the various properties and the interest and principal repayments made for each and **Annexure C** lists all the National Australia Bank (**NAB**) accounts that, to the best of my knowledge, I have with that bank. I intend to refer to these annexures throughout my affidavit.


### **Kirwin Account**

10. In relation to the Kirwin Account I can indicate that the Applicants are mistaken in their belief that the rents being paid into the bank account in the name of 14 Kirwin Road Morwell Pty Ltd ATF 14 Kirwin Road Morwell Unit Trust (**Kirwin Account**), came from properties located in Oakleigh Victoria. I am unsure as to how the Applicant came to this conclusion but I can categorically state to the Court that the Applicant is wrong.
11. The Kirwin Account is an account into which the rents from all the service station properties are paid once they have been collected by the managing agent/ property manager, Buxton (Oakleigh) Commercial & Industrial Pty Ltd (**Buxton**). So far as the word "Oakleigh" is stated in the description of the payments, I assume that that is a reference to the payment made by Buxton via their Oakleigh branch.
12. The rent paid into the Kirwin Account varies each month for two main reasons as detailed further below in this my affidavit. First, each property incurs expenses such as council and water rates, insurance and other like expenses at different times of the year. Those expenses are taken out of the rents received by Buxton before the balance is remitted into the Kirwin Account. Second, each property is the subject of an annual rental increase which occurs at a different point in the year for each property.

### **Rental Income**

13. As deposed in my June and July affidavits, a number of properties owned by various entities I have an interest in are currently receiving rental income. The entirety of this rental income (net) is applied each month to pre-existing mortgage obligations and other property-related expenses and there is no remaining rental income through which I may fund my legal fees.
14. The property expenses vary slightly for each month based on the type of expense specific to each property. To highlight this, I have by way of example summarised the expenses for the various properties, for the periods April 2022 to June 2022 in Table 1 below. Table 1 is to be read in conjunction with the Buxton end of financial year statements, true copies of which are exhibited at VFT-6 at pages 1 to 25 and stipulate some further expenses incurred in maintaining the various properties.

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**TABLE 1 – PROPERTY EXPENSES APRIL 2022–JUNE 2022**

	<b>April</b>	<b>May</b>	<b>June</b>
2-4 Cowslip Street, Violet Town VIC 3669	Insurance: \$1,506.04 Water rates: \$457.25 GST: \$86.19 Management fee: \$855.89 Transaction fee: \$6.00	Nil (fees for April and May paid in April)	GST: \$44.74 Management fee: \$444.39 Transaction fee: \$3.00
Lot 9, 269-275 High Street, Golden Square VIC 3555	GST: \$88.02 Management fee: \$874.18 Transaction fee: \$6.00	Nil (fees for April and May paid in April)	GST: \$44.01 Management fees: \$437.09 Transaction fee: \$3.00
124 High Street, Taradale VIC 3447	GST: \$8.50 Management fee: \$81.95 Transaction fee: \$3.00	GST: \$8.20 Management fee: \$81.95	GST: \$8.20 Management fee: \$84.41 Transaction fee: \$3.00
9-15 Main Street, Derrinallum VIC 3325	GST: \$18.38 Management fees: \$180.76 Transaction fee: \$3.00	Water rates: \$119.69 GST: \$18.51 Management fees: \$182.12 Transaction fee: \$3.00	GST: \$18.51 Management fees: \$182.12 Transaction fee: \$3.00
55 Nolan Street, Maryborough VIC 3465	GST: \$16.83 Management fees: \$165.28 Transaction fee: \$3.00	Insurance premiums: \$3,702.73 GST: \$17.37 Management fees: \$170.73 Transaction fee: \$3.00	GST: \$17.37 Management fees: \$170.73 Transaction fee: \$3.00

31 Ellerman Road, Dimboola VIC 3414	GST: \$14.76 Management fees: \$144.62 Transaction fee: \$3.00	Insurance premiums: \$3,602.94 GST: \$15.24 Management fees: \$149.39 Transaction fee: \$3.00	GST: \$15.24 Management fees: \$149.39 Transaction fee: \$3.00
160 Murray Valley Highway, Lake Boga VIC 3584	GST: \$25.13 Management fees: \$245.34 Transaction fee: \$6.00	GST: \$25.64 Management fees: \$253.43 Transaction fee: \$3.00	GST: \$25.64 Management fees: \$253.43 Transaction fee: \$3.00
9 Gregory St, Ouyen VIC 3490	GST: \$12.30 Management fees: \$120.00 Transaction fee: \$3.00	GST: \$12.30 Management fees: \$120.00 Transaction fee: \$3.00	GST: \$12.70 Management fees: \$123.96 Transaction fee: \$3.00
14 Kirwin Road, Marwell VIC 3840	GST: \$34.36 Management fee: \$337.66 Transaction fee: \$6.00	Water rates: \$449.34 (fees for April and May paid in April)	GST: \$17.18 Management fee: \$168.83 Transaction fee: \$3.00
89 Betka Road, Mallacoota VIC 3892	GST:\$29.58 Management fees: \$289.82 Transaction fee: \$6.00	Nil (fees for April and May paid in April)	GST: \$14.92 Management fees: \$146.22 Transaction fee: \$3.00

15. Similarly, the mortgage repayments vary each month based upon the variable interest rates. True copies of the bank statements evidencing the rental income and mortgage repayments from March 2022-June 2022 are exhibited to the Caitlin Murray dated 30 June 2022.

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## Arrangements for receiving rents and applying rents to liabilities

### Service Station Properties

16. At the time of deposing my July affidavit, the rents received from the tenants of the Service Station properties referred to in the table at “**Annexure B**”, were paid into approximately 10 different bank accounts which were held with the NAB which were all disclosed in my October affidavit. Table 2 below lists those NAB accounts (indicating the corresponding account number where I am able to identify it):

TABLE 2 – NAB BANK ACCOUNTS	
Account No.	Account Owner
Ending 6249	9 MAIN STREET DERRINALLUM PTY LTD ATF 9 MAIN STREET DERRINALLUM UNIT TRUST
Ending 0047	275 HIGH STREET GOLDEN SQUARE PTY LTD ATF 275 HIGHSTREET GOLDEN SQUARE UNIT TRU
Ending 4112	123 HIGH STREET TARADALE PTY LTD ATF 123 HIGH STREET TARADALE UNIT TRUST
Ending 8540	4 COWSLIP STREET VIOLET TOWN PTY LTD ATF 4 COWSLIP STREET VIOLET TOWN UNIT TRUST
Ending 9310	89 BETKA ROAD MALLACOOTA PTY LTD ATF 89 BETKA ROAD MALLACOOTA UNIT TRU
Ending 5778	1160 GLEN HUNTLY ROAD PTY LTD AS TRUSTEE FOR 1160 GLEN HUNTLY ROAD UNIT TRUST
Ending 1984	9 GREGORY STREET OUYEN PTY LTD ATF 9 GREGORY STREET OUYEN UNIT TRUST
Ending 9078	14 KIRWIN ROAD MORWELL PTY LTD ATF 14 KIRWIN ROAD MORWELL UNIT TRUST
	55 NOLAN STREET MARYBOROUGH PTY LRD AS TRUSTEE FOR 55 NOLAN STREET MARYBOROUGH UNIT TRUST
	31 ELLERMAN STREET DIMBOOLA PTY LTD AS TRUSTEE FOR

THE 31 ELLERMAN ST DIMBOOLA UNIT TRUST
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17. At the time the freezing order was put in place in July 2021, the NAB froze these accounts. Because of the freezing order, the only way that NAB would permit me to make loan repayments from those accounts was to:
- (a) fill out and sign a real-time gross settlement (**RTGS**) form with the exact amount I wanted to withdraw and what account this should be transferred to;
  - (b) provide the RTGS forms to my solicitors to forward to NAB's solicitors;
  - (c) wait a minimum of two business days for processing; and
  - (d) pay a \$35 processing fee for each transaction multiplied by the number of accounts.
18. I found this process to be highly inefficient, cumbersome, and costly. Further, the time taken by the NAB to process the RTGS payments varied in the extreme. On some occasions, it took the NAB a few days to process the payments, but on other occasions, I was waiting a few weeks. The delays and uncertainty caused by the NAB were straining my relationship with other financiers and some even placed me in breach of my loan covenants. Notwithstanding this, I persevered with the NAB and their arrangement until November 2021.
19. In or around November 2021, I engaged Buxton (Oakleigh) Commercial & Industrial Pty Ltd (**Buxton**) to act as the managing agents of the various Service Station Properties and to collect the rents paid on each of those properties. Accordingly, I directed each tenant to pay their respective rents to Buxton. Prior to the freezing orders, I had been utilising the inhouse accounts people at Forum to act as quasi-property managers for the various Service Station Properties. However, those arrangements ceased upon the Forum entities being placed into liquidation, hence the need for a skilled property manager.
20. Upon receipt of the rents, Buxton:
- (a) deducts its management fees; and
  - (b) pays any property expenses that may have arisen. These expenses include items such as council rates, water rates, insurance, and other payments of a similar nature.
21. The remaining money is then paid by Buxton into the Kirwin Account.
22. Thus, the net rents paid into the Kirwin Account vary from month to month based on what expenses had to be defrayed for the properties in that given month.




23. Further, each lease has a provision for consumer price index (**CPI**) or fixed rental increases which commence on the yearly anniversary of the lease and each lease has a different anniversary date. This is a further reason contributing to the fluctuations in the amounts being deposited into the Kirwin Account. Table 3 below summarises the monthly rent payable on each lease when Buxton commenced management in December 2021 and any changes to date. I do not have the documents indicating the rental amount received prior to December 2021 on hand, but believe the rental increases should only occur by CPI once per year.

<b>TABLE 3 – RENT PAYABLE ON SERVICE STATION LEASES</b>			
<b>Property</b>	<b>Date of increase</b>	<b>Rent as of December 2021 (first month rent was paid to Buxton)</b>	<b>Subsequent rent</b>
2-4 Cowslip Street, Violet Town VIC 3669	June 2022	\$23,729.48	\$2,4441.36
Lot 9, 269-275 High Street, Golden Square VIC 3555	N/A- no increase since engagement by Buxton	\$24,039.99	\$24,039.99
124 High Street, Taradale VIC 3447	June 2022	\$4,507.50	\$4,642.73
9-15 Main Street, Derrinallum VIC 3325	May 2022	\$9,724.91* *Note slightly inconsistent rent payments by tenant from October 2021-April 2022	\$10,016.67
55 Nolan Street,	May 2022	\$9,090.40	\$9,390.38

Maryborough VIC 3465			
31 Ellerman Road, Dimboola VIC 3414	May 2022	\$7,954.10	\$8,216.58
160 Murray Valley Highway, Lake Boga VIC 3584	May 2022	\$13,492.57	\$13,938.86
9 Gregory St, Ouyen VIC 3490	May 2022	\$6,600.00	\$6,817.80
14 Kirwin Road, Marwell VIC 3840	N/A- no increase since engagement by Buxton	\$9,285.45	\$9,285.45
89 Betka Road, Mallacoota VIC 3892	June 2022	\$7,970.01	\$8,041.74

True copies of the end of financial year statements from Buxton evidencing the rental income and any expenses which have been paid, concerning the various Service Stations Properties are exhibited to **VFT-6** at pages 1 to 25.

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CBA Properties

24. Regarding the CBA Properties referred to in "**Annexure B**", the rents for Units 305 and 306, 308 Carlisle Street Balaclava were, prior to the freezing orders, paid into an account in the name of my parents. This continues to be the case and approximately \$6,728.00 per month is paid into their account.
25. The funding for the acquisition of the Carlisle Street properties was only made possible by virtue of my parent's borrowing against their properties. Accordingly, the purchase price was a mixture of moneys loaned by the CBA and secured against my father's properties and equity drawn down from my father's properties. My father only agreed to this based on my belief, which was instilled into me by Bill Papas, that Forum was soon going to list on the Australian Securities Exchange (ASX). I had envisaged that I would repay my parents in one lump sum upon Forum being floated. However, as we all know the listing of Forum did not occur.
26. The rents for 305 and 306, 308 Carlisle Street Balaclava are servicing the interest that the bank is charging for the moneys that it advanced for the acquisition of those properties. As those properties were funded by utilising my father's properties as collateral, and those properties were cross-collateralised with other loans that my father has with the CBA, it was agreed between my father and I that the rents received from 308 Carlisle Street will be used to meet the interest obligations that my father had to the CBA.
27. The rents received from 305 and 306, 308 Carlisle Street services only the interest portions of my father's loan from CBA for the acquisition of that property. No payments are made towards the principal debt.

Changes in Rent Received Since the July affidavit

28. There has been a significant change in circumstances since my July affidavit. These changes are evident from a review of **Annexure A**. The key aspects of the changes, which have impacted the rents received, are:
- (a) the amount of approximately \$7,000 per month, being the rent from 1160 Glen Huntly Road is no longer received as the property has been sold as a mortgagee sale;
  - (b) similarly, the July affidavit included the rent of \$13,000 per month from the property at 2-4 Atherton Road. I believe that receivers have since sold this property;
  - (c) the July affidavit included the properties at 14 James Street Clayton Victoria. I believe that receivers have since proceeded to sell these properties;

- (d) the July affidavit included the rent of \$20,000 per month for 26 Edmonstone Road, Bowen Hills Qld. The receivers have, since I swore my July affidavit, sold that property;
  - (e) the July affidavit unintentionally included rent of \$9,000 from 22 High Street Rushmore Vic. I have never owned or received rents from this property; and
  - (f) the rents on the Service Station Properties have increased since I swore my July Affidavit.
29. Due to a number of properties being sold, my associated entities are collectively receiving less rent than they did in July 2021. As a result, I now have less rent than I did 12 months ago to service my current debts and in particular, the principal and interest payments on those debts.
30. Furthermore, my July affidavit only set out the interest payments that were being made for the various properties. There was however no mention of the principal payment obligations. The table at **Annexure B** sets out the amount owed for both principal and interest.
31. My loans with Judo Bank and ANZ have variable interest rates, and interest rates have increased since swearing my July affidavit. In particular, the interest rates increased when the reserve bank increased its interest rates on 7 June 2022 and 5 July 2022.

#### **Alleged discrepancies in my July affidavit**

32. The freezing order dated 2 July 2021 ordered that I disclose all of my assets in Australia, to the best of my ability. I complied with this order to the best of my ability. I now provide the following further information:

#### 22 High Street Rushworth Property

33. I am the sole director and shareholder of the company 22 High Street Rushworth Pty Ltd. This company was initially set up to purchase a property situated at 22 High Street Rushworth VIC (**Rushworth Property**). A true copy of the Australian Securities and Investment Organisation Extract for 22 High Street Rushworth Pty Ltd is exhibited to VFT-6 at pages 26 to 36.
34. On 20 September 2019, I signed a contract to purchase the Rushworth Property from Inglwd Pty Ltd. I subsequently nominated 22 High Street Rushworth Pty Ltd as the purchaser. Settlement was initially due on 1 February 2021 and was subsequently extended to 30 June 2021. I then requested that the settlement date be extended once again. A true copy of the Contract of Sale is exhibited to VTF-6 at pages 37 to 299.


35. At the time of swearing my July affidavit I was still optimistic that I would be able to purchase the property and included it in my asset list, along with the expected rental.
36. On 14 October 2021, I received a notice of rescission as I was unable to complete the settlement due to the freezing orders. A true copy of the Notice of Rescission is exhibited to VFT-6 at page 300.
37. As such, I did not purchase the property and, from a title search, I believe it was subsequently sold to Rushworth Property Holdings Pty Ltd. I have no interest in Rushworth Property Holdings Pty Ltd. A true copy of the title search for the Rushworth Property is exhibited at VFT-6 at pages 301 to 302.
38. It has now been brought to my attention by Madgwicks that my July affidavit incorrectly stated that this property had been purchased by me. This error has resulted in an overstatement of my assets and my rental income. I apologise for any confusion caused by this.


Interest in Mangusta XOXO yacht

39. Paragraph 8 of the freezing orders dated 2 July 2021 expressly stated that I was required to inform the applicant of my assets "in Australia". At the time, the Mangusta XOXO yacht was registered and moored overseas. I raised whether I needed to disclose this asset with my previous solicitors, Fortis Law, and they confirmed it was not necessary that I disclose it.
40. On 27 August 2021, the freezing order was varied to include a requirement that I disclose my worldwide assets. I then disclosed my interest in the Mangusta XOXO yacht in my September affidavit in accordance with the orders.

Natalia Oakleigh Property

41. At the date I swore my July affidavit, I had recently learned that the purchaser who I had nominated to purchase the Natalia Oakleigh Property would not complete. As my assets were frozen, I did not have the financial capacity to purchase the Natalia Oakleigh Property, so I believed I had therefore lost all interest in this property including my deposit. As such, I did not believe there was any interest to disclose in my July affidavit.
42. I had no intention of hiding my interest in the Natalia Oakleigh Property and instructed my previous solicitors, Fortis Law, to inform MinterEllison of my interest as soon as I found a potential new nominee who was willing to partially refund my deposit. I believe that my lawyers did notify the Applicants of my interest in this property but unfortunately, I cannot provide a precise date as to when this first occurred. That said, the Applicant must accept that it knew of my interest in the Natalia Oakleigh Property from at least 17

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August 2021. True copies of the correspondence sent between Fortis Law and Minter Ellison dated 17 August 2021 are exhibited at VFT-6 at 303 to 304.

43. Unfortunately, despite requests Fortis Law has repeatedly failed to provide my complete file to me which includes the letter attached to the first email in the chain A true copy of the letter to Minter Ellison is exhibited to VFT-6 at pages 305 to 306. Fortis and I are presently in a dispute on the issue of legal fees. The Fortis Law bill, for approximately three months of work, was \$233,660.52. I feel that these fees are exorbitant and accordingly I have asked for them to be taxed. I suspect that Fortis is not cooperating with me because of my stance on the issue of their legal fees.
44. All details of my interest in the partial refund of the Natalia Oakleigh deposit were fully disclosed in my October affidavit.

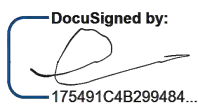
#### NAB Accounts

45. Once the freezing order was made on 2 July 2021, NAB froze access to all of my accounts and revoked my access to the online banking facilities through which I had operated and had access to information about my NAB accounts. As such, I was no longer able to view what accounts I had with NAB and what the account balances were.
46. On 16 July 2021, I called Doug Moore, the Associate Director of Business Services at NAB to discuss this issue (I was connected with him as my point of contact to deal with this issue). After the phone call, I sent him an email asking if I could link my solicitors up with the NAB's solicitors so this could be resolved. A true copy of that email dated 16 July 2021 is exhibited to VFT-6 at pages 307 to 308.
47. At the time of swearing my July affidavit I did not have access to my NAB accounts. I, therefore, included all NAB accounts that I could recall to the best of my ability.
48. In or about late September or early October 2021 the NAB reinstated my online access for the purpose of enabling me to see the information relating to my NAB accounts. My transactional rights remained suspended. As a result of this reinstatement, I was once again able to see account balances and past transactions. As a result of this I was able to provide a more detailed disclosure of my NAB accounts in my October affidavit.
49. I acknowledge that I had previously stated that there may be about 30 NAB accounts. However, that statement was made, at a time when I did not have online visibility of my accounts.
50. On 6 July 2022, Madgwicks wrote to Dentons (NAB's solicitors) with a table identifying what I thought were my accounts with the NAB, seeking confirmation that the information in the table was correct. A true copy of that email is exhibited to VFT-6 at pages 309 to 311.

51. On 11 July 2022 Dentons responded to Madgwicks confirming the table was correct except that accounts #4060, #6975 and #7866 had been closed and there was \$60.28 in account #4060 which I had been unaware of.
52. I now annex a table marked as “**Annexure C**” which identifies all the accounts I have with NAB, and their current balances,. All of these accounts were disclosed in my October affidavit.

Vehicles and other items

53. As noted in my October affidavit, a number of the vehicles ‘discovered’ by the Applicant actually belong to my family members.
54. In relation to the 2019 BRP Can-Am Ryker 600 motorbike, the non-disclosure of this vehicle was simply an oversight. I suspect that this was because the motorbike was the furthest thing on my mind at that time and also because I hadn’t used it for a very long time. At the time of my original disclosure affidavit, the motorbike was stored at a friend’s farm in Red Hill and had been there for some time.
55. Furthermore, I note that I have an interest in a number of items that were located at 5 and 6 Bulkara Street Wagstaffe. I have repeatedly asked the Receivers to return these items to me; however, the receivers have refused to do so. I have, through my lawyers, put the receivers on notice of my legal rights relating to these items. However, I am prevented from agitating this issue any further by virtue of not having access to funds as a result of the freezing order. These items include furniture, blankets, cushions, fish, items of clothing such as shoes and socks, two jet skis registered in the name of Bill Papas, and a campervan trailer.
56. Save for the jet skis and the campervan, the remaining items over which I claim an interest are, at least in my view, household items. These items on their own have very little value but collectively they are worth a lot. I don’t believe that I was ever required to disclose household items such as furniture, clothes and shoes etc. Hence, they were not disclosed. I am disclosing them now because I believe that the Receivers have unlawfully and improperly dealt with some of my belongings and are refusing to provide me with access to the remaining items. This issue has been the subject of extensive correspondence between my solicitors and the Receivers.
57. In any event, on 27 June 2022 Allens, acting for the Receivers, informed Madgwicks that some of the items over which I claim an interest have been sold as part of the sale of the 5 Bulkara property despite the Receivers being on notice of my interest. To date I remain unaware of what items have been sold, to whom they have been sold and the location of

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the remaining items. A true copy of the correspondence sent by Allens to Madgwicks dated 27 June 2022 is exhibited to VFT-6 at page 312.

58. Allens has provided Madgwicks with three different lists of my personal items located at the Bulkara Street properties. I have not been permitted to inspect these items. Accordingly, by virtue of the discrepancies in the Receivers' lists and not knowing the present condition of the items, I cannot place a value on them. True copies of the three Reciever's lists are exhibited to VFT-6 at pages 313 to 341.
59. So far as the jet skis and the campervan are concerned, these are items presently registered in Mr Papas's name. I had previously informed my lawyers, Fortis Law, of my interest in these items, however, as they were not registered to me, I was informed that I could not make a claim to them. However, very recently I broached the subject again with my current lawyers and they stated that registration does not prove ownership and thus I needed to disclose these items.
60. My interest in the jet skis and the campervan arise out of a loan that I had given Mr Papas via the entity 286 Carlisle Street Pty Ltd. Some time in or around late February 2021, Mr Papas contacted me and said that he needed some money quickly for a short period of time (12 month period). I don't recall the exact conversation but remember that it had something to do with an overseas investment. This was not unusual as I too had, from time to time, asked Bill to lend me some money which I would then repay.
61. Accordingly I transferred, via electronic transfer, a sum of \$200,000 to him. The loan to Bill was to be for a period of 12 months. However, a short time after I transferred the \$200,000, I discussed with him the possibility of partial repayment by way of a contra payment or offset. We agreed between ourselves that the jet skis were worth about \$50,000 and the campervan the same. This discussion was in person at Bathurst where we were both racing on the amateur circuit. Thus, an agreement was reached whereby I will deem \$100,000 from the \$200,000 loaned to Bill as being repaid. In return, the jet skis and the campervan would now be mine. Bill was to do the formal paperwork, ie the registration transfers in the upcoming weeks. However, that did not occur as soon thereafter the present issues arose.

**Café operated by 65 Nelson Street Enterprises Trust (Café)**

62. I disclosed my interest in the café in my July affidavit. I now provide an update on the present turnover of the business.
63. The café struggled significantly during the Melbourne Covid-19 lockdowns of 2020 and 2021 and the business is yet to recover. As of the date of swearing this affidavit, the business is effectively breaking even.

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True copies of the bank statements for the business from March-June 2022 are exhibited at VFT-6 at pages 342 to 353.

64. The café's gross revenue for the following months is stated below:

	Revenue	Expenditure	Total
<b>March</b>	\$65,272.76	\$59,535.14	+\$5,737.62
<b>April</b>	\$56,537.88	\$55,224.22	+\$1,313.66
<b>May</b>	\$51,236.99	\$40,367.58	+\$10,869.41
<b>June</b>	\$56,589.61	\$62,366.83	-\$5,777.22

I have redacted the names of the employees from the bank statements.

65. As of 30 June 2022, there was \$16,423.16 in the café's bank account. All of these funds must remain in the café's bank account to ensure it has sufficient funds to pay debts as they fall due and payable. These debts include creditors of the business (ie. suppliers and the landlord for rent) and also the employees' wages.
66. The café owns the usual assets you would expect in a café: eg coffee machines, kitchen equipment, tables and chairs. I have not had these items formally valued but I do not anticipate that they would be worth significant amounts. In any event, these items are required to keep the café functioning. I would estimate these items to have a nil value unless sold as a going concern, in which case it would estimate them as being worth between \$5,000 and \$10,000.

### Aksara Debt

67. On 8 July 2022, Aksara Holdings Pty Ltd issued 3 letters of demand for a total \$6,301,529.24 addressed to the guarantors of its loans which included me personally, a number of my associated entities and the liquidators of 5 Bulkara Street Pty Ltd and 14 James Street Pty Ltd. True copies of the three demands dated 8 July 2022 are exhibited to VFT-6 at pages 354 to 365.
68. In the first letter of demand, Aksara demands the payment of \$80,126.32 pursuant to a Deed of Loan secured over 4 Cowslip Street Violet Town, 9 Main Street Derrinallum, 275 High Street Golden Square, 123 High Street Taradale Pty Ltd, 5 Bulkara St Wagstaffe and personally guaranteed by me.
69. In the second letter of demand, Aksara demands the payment of \$2,433,930.27 pursuant to a Deed of Loan secured over 31 Ellerman Street Dimboola, 14 Kirwin Road Morwell, 160 Murray Valley Hwy Lake Boga, 55 Nolan Street Maryborough, 89 Betka Road Mallacoota, 5 Bulkara Street Wagstaffe and personally guaranteed by me.

70. In the third letter of demand, Aksara demands the payment of \$450,211.40 pursuant to a Deed of Loan secured over 9 Gregory Street Ouyen and the James Street properties and personally guaranteed by me.

### **Loans From Friends And Family**

71. In order to fund a number of property acquisitions prior to July 2021, including the purchase of 23 Margaret Street Rozelle NSW, my father took out loans secured by mortgages over a number of properties in his name, including some he had owned for decades. Additionally, both my parents took out a loan secured by a mortgage over their personal residence in order to advance my funds. I believe these properties were:


- (a) 20 Bell Street, Ripponlea, VIC;
- (b) 22 Bell Street, Ripponlea, VIC;
- (c) Units 1-4, 150-152 Brighton Road, Ripponlea, VIC;
- (d) 286 Carlile Street, Balaclava, VIC;
- (e) 308 Carlisle Street Balacalava VIC
- (f) 30 Nelson Street. Balaclava, VIC (my parents' personal residence); and
- (g) Units 5-6 Brighton Road, Ripponlea, VIC.

72. To the best of my recollection, my parents have loaned me between \$10-\$15 million between 2017 and 2021. My parents were able to do this by mortgaging their personal properties.

73. I agreed to pay my father back for these loans, and I vaguely recall signing some papers documenting the loans with him. I believe that these documents are in the possession of my accountant who is on leave until 12 July 2022. I will seek to obtain these documents from my accountant immediately upon his return. Like my lawyers, my accountant has not been paid for significant works that he has undertaken for me in this matter. I am hopeful that he will be able to further assist me in providing me with details of these loans notwithstanding my outstanding accounts with him. Upon obtaining this information from my accountant I propose to file a further supplementary affidavit at the earliest available opportunity addressing this issue.

74. Due to the freezing orders, I have been unable to pay back these loans and, as a consequence, my parents have been unable to afford their own loan repayments.

75. My parents have supported me extensively, both emotionally and financially, over the course of the past 12-18 months. That said, my father has indicated that he is unable to

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support me any further and that his resources have also been stretched to the maximum.

76. Consequently, I am informed by my father and I believe that CBA has appointed receivers over the properties listed at para 72(a)-(f) above and Perpetual Corporate Trust Limited (ACN 000 341 533) has commenced proceedings against my father demanding repayment of the loan secured over the properties at para 72(g).
77. On 7 July 2022. I was copied into an email from Darren Mitchell at the Commonwealth Bank stating my parents' home loan liabilities were:
- (a) \$2,518,662.44 (arrears \$140,959)
  - (b) \$640,758.78 (arrears \$35,876).

A true copy of the email correspondence sent by Darren Mitchell dated 7 July 2022 is exhibited to VFT-6 at page 366.

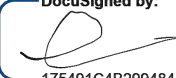
78. As a result, my parents are in danger of losing their own home as well as all of my father's investment properties. Trying to find the funds to at least save my elderly parents' residence is my family's main priority, and they do not have the funds to cover my legal fees.
79. My family's money went into Forum. It also went towards the acquisition of various other properties. Some of the other properties were also acquired with money from Forum. For this reason, in order to identify the source of funds applied to these various entities, it is important to my case that an independent forensic accountant properly identifies the source and application of funds emanating from both me personally and the Tesoriero family into Forum and other properties, and also the application of funds used to acquire properties having regard to the source of those funds emanating from either the Forum group or the Tesoriero family group.
80. I have attended to this affidavit in the time available since 1 July 2022. Whilst I am confident all of the information in here is correct, I undertake to bring any omissions to the Court's attention as and when it comes to my attention.

**The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.**


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Sworn / Affirmed by the deponent  
at Melbourne  
in the state of Victoria  
on 12<sup>th</sup> day of July 2022  
Before me:

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Signature of deponent

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DS  
Melissa Pasarelli  
80 Floor, 140 William St, Melbourne, Vic, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)


As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW).
2. I saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I has confirmed the person's identity based on the following identification document presented to me: Drivers Licence

## Annexure A

## Key Ultimate Holdings Entities Legend

Entity Name	Type	Nature of interest or control held by Vincenzo Tesoriero (beneficiary, shareholder, trustee, appointor)
1. Tesoriero Investment Group Pty Ltd (ACN 161 088 115) as trustee for the Tesoriero Investment Trust (' <b>TIT TRUST</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Co-Appointor</li> <li>• Director of Trustee</li> <li>• Default Beneficiary</li> </ul>
2. Vincenzo Tesoriero as trustee for Tesoriero Enterprises Trust (' <b>TET TRUST</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Trustee</li> <li>• Appointor</li> <li>• Default Beneficiary</li> </ul>
3. 65 Nelson Street Enterprises Pty Ltd (ACN 612 614 632) as trustee for 65 Nelson St Enterprises Trust (' <b>65 NELSON TRUST</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Appointor</li> <li>• Director of Trustee</li> <li>• Default Beneficiary</li> </ul>
4. 23 Margaret Street Pty Ltd (ACN 623 715 373) as trustee for the 23 Margaret Street Trust (' <b>Margaret St Trust</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Appointor</li> <li>• Director of Trustee</li> <li>• Default Beneficiary</li> </ul>
5. Vintes QLD No 3 Pty Ltd as trustee for the MAZ Trust No 3 (' <b>MAZ 3 TRUST</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Appointor</li> <li>• Director of Trustee</li> </ul>
6. Vintes No 4 Pty Ltd ACN 639 726 524 as trustee MAZ Trust No 4 (' <b>MAZ 4 TRUST</b> ')	Discretionary Trust	<ul style="list-style-type: none"> <li>• Appointor</li> <li>• Director of Trustee</li> </ul>

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	Property Address	Legal Owner	Extent of Interest or control (refer to Key Entities Legend)	Liability (approx.)	Value (approx.)	Location	Monthly mortgage repayments (principle & interest) (approx)	Rental Income (approx.)	Bank account where Interest Expenses Paid
	<b>Various</b>								
1.	Property: 305/308 Carlisle St, Balaclava VIC 3185 being land contained in folio identifier:	308 Carlisle Street Holdings Pty Ltd as trustee for the 308 Carlisle Street Holdings Unit Trust (' <b>308 Trust</b> ')	100% of the Units on issue in the 308 Trust are held by the TIT Trust.	Cross collateralised loan of \$1,627,400 to Commonwealth Bank (CBA) with an arrears amount of \$80,820	\$2,000,000	Australia	\$6,987.00 per month	\$3,250.00 per month	CBA
2.	306/308 Carlisle St, Balaclava VIC 3185 being land contained in folio identifier:	308 Trust	100% of the Units on issue in the 308 Trust are held by the TIT Trust.			Australia		\$3,478.00 per month	CBA
3.	12 Hartington St, Elsternwick VIC 3185 being land contained in folio identifier: receiver appointed	Canner Investments Pty Ltd (' <b>Canner</b> ')	100% of the shares on issue in Canner are held by the TET Trust.	\$1.1m owing to CBA	\$1,500,000	Australia	Loan expired receiver appointed	N/A	CBA

4.	5 Bulkara Street, Wagstaffe NSW 2257 being land contained in folio identifier:  Contract of sale entered into by receivers	5 Bulkara Street Pty Ltd as trustee for the 5 Bulkara Street Unit Trust (' <b>5BK Trust</b> ')	50% of the Units on issue in the 5BK Trust are held by the TIT Trust.	\$4,000,000 to National Australia Bank (NAB)	\$6,000,000	Australia	In default sale Contract of entered into by receivers	N/A	NAB
5.	6 Bulkara Street, Wagstaffe NSW 2257 being land contained in folio identifier:  Property has been sold by receivers	6 Bulkara street Pty Ltd as trustee for the 6 Bulkara Street Unit Trust (' <b>6BK Trust</b> ')	50% of the Units on issue in the 5BK Trust are held by the TIT Trust.	Property sold by receivers	Property sold by receivers	Australia	N/A	N/A	N/A
6.	64-66 Berkeley Street, Hawthorn VIC 3122 being land contained in folio identifier:	64-66 Berkley Street Hawthorn Pty Ltd as trustee for the 64-66 Berkley St Hawthorn Unit Trust (' <b>Berkley St Trust</b> ')	50% of the Units on issue in the Berkley Trust are held by the TIT Trust.	\$6,756,150 to Judo Bank (JUDO)	\$8,000,000	Australia	\$58,600	N/A	Judo
7.	23 Margaret St, Rozelle NSW being land contained in folio identifier:  Property has been sold	23 Margaret St Trust	Refer to Key Ultimate Holding Entities Legend.	Property has been sold	Property has been sold	Australia	Property has been sold	N/A	N/A

8.	26 Edmonstone Rd, Bowen Hills QLD being land contained in folio identifier:	26 Edmonstone Rd Pty Ltd as trustee for the 26 Edmonstone Road Unit Trust (' <b>26 Edmonstone Rd Trust</b> ')	50% of the Units on issue in the 26 Edmonstone Trust are held by the TIT Trust.	\$2,100,000 owing to La Trobe Financial (La Trobe)	\$3,000,000	Australia	\$9,000 per month	\$20,000 per month	NAB
9.	2-4 Atherton Road, Oakleigh VIC 3166 being land contained in folio identifier: <b>Property sold by receivers</b>	Forum Group of Financial Services Pty Ltd (' <b>FGFS</b> ')	50% of the shares on issue in FGFS are held by Vincenzo Francesco Tesoriero	Property sold by receivers	N/A	Australia	N/A	N/A	N/A
10.	1160 Glen Huntly Road, Glen Huntly VIC 3163 being land contained in folio identifier:  Property sold by mortgagee sale	1160 Glen Huntly Pty Ltd as trustee for the 1160 Glen Huntly Road Unit Trust (' <b>Glen Huntly Rd Trust</b> ').	100% of the Units on issue in the Glen Huntly Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust	Property sold by mortgagee sale	N/A	Australia	N/A	N/A	N/A



11.	<p><b>James St Properties</b></p> <p>8 Olive Street, Clayton South VIC 3169 being land contained in folio identifier: Contract of sale entered into by receivers</p>	<p>14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust ('<b>James St Trust</b>')</p>	<p>100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by MAZ 3 Trust</p>	<p>Cross collateralised loan of \$3,000,000 to NAB</p>	<p>\$4,600,000</p>	<p>Australia</p>	<p>N/A</p>	<p>N/A</p>	<p>NAB</p>
12.	<p>10 James Street, Clayton South VIC 3169 being land contained in folio identifier: Contract of sale entered into by receivers</p>	<p>14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust ('<b>James St Trust</b>')</p>	<p>100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust</p>			<p>Australia</p>	<p>N/A</p>	<p>N/A</p>	<p>NAB</p>
13.	<p>12 James Street, Clayton South VIC 3169 being land contained in folio identifier: Contract of sale entered into by receivers</p>	<p>14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust ('<b>James St Trust</b>')</p>	<p>100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust</p>			<p>Australia</p>	<p>N/A</p>	<p>N/A</p>	<p>NAB</p>

		<b>Trust')</b>	Trust; and (b) 50% by the MAZ 3 Trust
14.	14 James Street, Clayton South VIC 3169 being land contained in folio identifier: Contract of sale entered into by receivers	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust ( <b>James St Trust')</b>	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust
15.	16 James Street, Clayton South VIC 3169 being land contained in folio identifier: Contract of sale entered into by receivers	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust	100% of the Units on issue in the James St Trust are held as follows:

		Australia	N/A
		Australia	N/A

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		Trust ( <b>James St Trust</b> )	(a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust						
16.	18 James Street, Clayton South VIC 3169 being land contained in folio identifier: Contract of sale entered into by receivers	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust ( <b>James St Trust</b> )	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust		Australia		N/A	NAB	
17.	Lot 1, 9 Parsons Street, Clayton South VIC 3169 being land contained in folio identifier: Contract of sale entered into by receivers	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust ( <b>James St Trust</b> )	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust		Australia		N/A	NAB	
18.	Lot 2, 9 Parsons Street, Clayton South VIC 3169 being land contained in folio identifier: Contract of sale entered into by receivers	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust		Australia		N/A	NAB	

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		(James St Trust')	Trust; and (b) 50% by the MAZ 3 Trust				
19.	Lot 3, 9 Parsons Street, Clayton South VIC 3169 being land contained in folio identifier: Contract of sale entered into by receivers	14 James Street Pty Ltd as trustee for the 14 James Street Unit Trust ('James St Trust')	100% of the Units on issue in the James St Trust are held as follows: (a) 50% by the TIT Trust; and (b) 50% by the MAZ 3 Trust	Australia	N/A	NAB	
	<b>Petrol Stations</b>						
20.	2-4 Cowslip Street, Violet Town VIC 3669 being land contained in folio identifier:	4 Cowslip Street Violet Town Pty Ltd as trustee for the 4 Cowslip Street Violet Town Unit Trust ('4 Cowslip St Trust')	100% of the Units on issue in the 4 Cowslip St Trust are held by BV Holdings VT Pty Ltd as trustee for the BV Holdings VT Unit Trust ('VT Holdings Trust')	Australia	\$24,441.36 per month	\$14,600 per month	Judo
			\$2,126,000 owing to JUDO. There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA Holdings Pty Ltd (AKSARA)				
21.	Lot 9, 269-275 High Street, Golden Square VIC 3555 being land contained in folio identifier:	275 High Street Golden Square Pty Ltd as trustee for	100% of the Units on issue in the 275 High St Trust are held by BV Holdings GS Pty Ltd as trustee for the	Australia	\$24,039.99 per month	\$14,300 per month	Judo
			\$2,095,000 owing to JUDO There is also a second facility that is cross				

		the 275 High Street Golden Square Trust ('275 High St Trust')	BV Holdings GS Unit Trust ('GS Holdings Trust') The GS Holdings Trust is owned 100% by the TIT Trust	collateralised amongst the petrol station properties owing to AKSARA						
22.	124 High Street, Taradale VIC 3447 being land contained in folio identifier:	123 High Street Taradale Pty Ltd as trustee for the 123 High St Taradale Unit Trust ('123 High St Trust')	100% of the Units on issue in the 123 High St Trust are held by BV Holdings TD Pty Ltd as trustee for the BV Holdings TD Unit Trust ('TD Holdings Trust') The TD Holdings Trust is owned 100% by the TIT Trust	\$342,300 owing to JUDO. There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$560k	Australia	\$2,400 per month	\$4,642.7 3 per month	Judo	
23.	9-15 Main Street, Derrinallum VIC 3325 being land contained in folio identifier:	9 Main Street Derrinallum Pty Ltd as trustee for the 9 Main Street Derrinallum Unit Trust ('9 Main St Trust')	100% of the Units on issue in the 9 Main St Trust are held by BV Holdings DN Pty Ltd as trustee for the BV Holdings DN Unit Trust ('DN Holdings Trust') The DN Holdings Trust is owned	\$762,000 owing to JUDO. There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	1,250,000	Australia	\$10,016.67 per month	\$5,300 per month	Judo	

25.	55 Nolan Street, Maryborough VIC 3465 being land contained in folio identifier:	55 Nolan Street Maryborough hPty Ltd as trustee for the 55 Nolan Street Maryborough hUnit Trust (' <b>55 Nolan St Trust</b> ')	100% of the Units on issue in the 55 Nolan St Trust are held by BV Holdings MB Pty Ltd as trustee for the BV Holdings MB Unit Trust (' <b>MB Holdings Trust</b> ')  The MB Holdings Trust is owned 100% by the TIT Trust	\$720,000 owing to ANZ  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$1,200,000	Australia	\$9,390.38 per month	\$2066.70 per month	ANZ
26.	31 Ellerman Road, Dimboola VIC 3414 being land contained in folio identifier:	31 Ellerman Street Dimboola Pty Ltd as trustee for the 31 Ellerman St Dimboola Unit Trust (' <b>31 Ellerman St Trust</b> ')	100% of the Units on issue in the 31 Ellerman St Trust are held by BV Holdings DB Pty Ltd as trustee for the BV Holdings DB Unit Trust (' <b>DB Holdings Trust</b> ')  The DB Holdings Trust is owned 100% by the TIT Trust	\$630,000 owing to ANZ  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$1,050,000	Australia	\$8,216.58 per month	\$1,817.64 per month	ANZ

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27.	160 Murray Valley Highway, Lake Boga VIC 3584 being land contained in folio identifier:	160 Murray Valley Hwy Lake Boga Pty Ltd as trustee for the 160 Murray Valley Hwy Lake BOGGA Unit Trust (' <b>160 Murray Valley Trust</b> ')	100% of the Units on issue in the 160 Murray Valley Trust are held by BV Holdings LB Pty Ltd as trustee for the BV Holdings LB Unit Trust (' <b>LB Holdings Trust</b> ')  The LB Holdings Trust is owned 100% by the TIT Trust	\$1,068,750 owing to ANZ  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$1,800,000	Australia	\$13,938.86 per month	\$3,031.78 per month	ANZ
28.	9 Gregory St, Ouyen VIC 3490 being land contained in folio identifier:	9 Gregory Street Ouyen Pty Ltd as trustee for the 9 Gregory Street Ouyen Unit Trust (' <b>9 Gregory St Trust</b> ')	100% of the Units on issue in the 9 Gregory St Trust are held by BV Holdings OY Pty Ltd as trustee for the BV Holdings OY Unit Trust (' <b>OY Holdings Trust</b> ')  The OY Holdings Trust is owned 100% by the TIT Trust	\$540,000 owing to ANZ  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$900,000	Australia	\$6,817.80 per month	\$1,746.71 per month	ANZ

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29.	14 Kirwin Road, Marwell VIC 3840 being land contained in folio identifier:	14 Kirwin Road Morewell Pty Ltd as trustee for the 14 Kirwin Road Moreville Unit Trust (' <b>14 Kirwin Rd Trust</b> ')	100% of the Units on issue in the 14 Kirwin Rd Trust are held by BV Holdings MW Pty Ltd as trustee for the BV Holdings MW Unit Trust (' <b>MW Holdings Trust</b> ')  The MW Holdings Trust is owned 100% by the TIT Trust	\$684,000 owing to ANZ  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$1,140,000	Australia	\$9,285.45 per month	\$1,888.96 per month	ANZ
30.	89 Betka Road, Mallacoota VIC 3892 being land contained in folio identifier:	89 Betka Road Mallacoota Pty Ltd as trustee for the 89 Bekka Road Mallacoota Unit Trust (' <b>89 Betka Rd Trust</b> ')	100% of the Units on issue in the 89 Betka Rd Trust are held by BV Holdings MC Pty Ltd as trustee for the BV Holdings MC Unit Trust (' <b>MC Holdings Trust</b> ')  The MC Holdings Trust is owned 100% by the TIT Trust	\$700,000 owing to JUDO  There is also a second facility that is cross collateralised amongst the petrol station properties owing to AKSARA	\$1,200,000	Australia	\$8,041.74 per month	\$4,800.00 per month	Judo
	<b>Leasehold</b>								
31.	Lease at 65 Nelson St Enterprises Trust (operates café business)	65 NELSON TRUST	Refer to Key Legend re extent of interest.				\$6,500 per month		ANZ



## Bank Accounts

	Bank	Account Number	BS B	Legal Owner
1.	ANZ	460998561	013214	65 Nelson Trust
2.	NAB	926496249	082080	9 Main St Trust
3.	NAB	448010047	082080	275 High St Trust
4.	NAB	975544112	082080	123 High St Trust
5.	NAB	421958540	082080	4 Cowslip St Trust
6.	NAB	777179310	082080	89 Betka Rd Trust
7.	NAB	328159963	082080	Berkley St Trust
9.	NAB	317881512	082080	286 Carlisle Street Pty Ltd
10.	NAB	777331984	082080	9 Gregory Street Trust
11.	NAB	916282511	082080	TBC
12.	NAB	913604060	082080	TBC
13.	NAB	178684593	082080	TBC
14.	NAB	205665778	082080	1160 Glen Huntly Trust
15.	NAB	777426975	082080	TBC
16.	NAB	777487866	082080	TBC

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17.	NAB	777549078	082080	Kirwin Road Trust
18.	NAB	205819116	082080	TBC
19.	NAB	204569119	082080	TBC
20.	NAB	708900012	082080	TBC
21.	ANZ	476344095	013405	14 Kirwin Rd Trust
22.	ANZ	320262552	013405	55 Nolan St Trust
23.	ANZ	320266238	013405	31 Ellerman St Trust
24.	ANZ	320268137	013405	9 Gregory St Trust
25.	ANZ	320271117	013405	160 Murray Valley Trust
26.	ANZ	427920295	013456	Vincenzo Tesoriero
27.	CBA	30013264675	-	Canner
28.	CBA	301013480794	-	286 Carlisle St Pty Ltd
29.	CBA	310410572179	-	TIT

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## List of Motor Vehicles


MAKE	MODEL	VIN/REGO	VALUE	ENCUMBRANCE
Porsche	2018 Cayenne	TBC	\$150,000	\$172,235.18 to Volkswagen Financial Service.
Alfa Romeo	2014 4C	TBC	\$60,000	Final demand for payout received.
Mini	2020 Cooper S	TBC	\$60,000	TBC
Ducati	2008 1098R	TBC	\$20,000	TBC
BMW	2020 S1000	TBC	\$15,000	TBC
Chevrolet	1957 Bel Air	TBC	\$100,000	TBC
Ryker 600	2019 BRP Can-AM	Ryker	TBC	TBC
Jet skis x2 located at 5 Bulkara	TBC	TBC	TBC	TBC
Campervan x1 located at 5 Bulkara	TBC	TBC	TBC	TBC

## List Companies where shares are held

Name of Company Shares are Held in	Acting as trustee	Amount and Type of Shares	Beneficially Owned	Value of Shares (approx.)
308 CARLISLE STREET HOLDINGS PTY LTD	YES	1 ORD	YES	NOMINAL
286 CARLISLE STREET PTY LTD	NO	1 ORD	YES	NOMINAL
23 MARGARET STREET PTY LTD	YES	100 ORD	YES	NOMINAL
MAGNUSTA (VIC) PTY LTD	YES	2 ORD	YES	NOMINAL
26 EDMONSTONE ROAD PTY LTD (IN LIQUIDATION)	YES	1 ORD	YES	NOMINAL
VINTES QLD PTY LTD	YES	1 ORD	YES	NOMINAL
CANNER INVESTMENT PTY LTD	NO	2 ORD	NO	\$400,000
65 NELSON STREET ENTERPRISES PTY LTD	YES	1 ORD	YES	NOMINAL
TESORIEROINVESTMENT GROUP PTY LTD	YES	1 ORD	YES	NOMINAL
193 CARLISLE STREET ENTERPRISES PTY LTD	YES	100 ORD	YES	NOMINAL
5 BULKARA STREET PTY LTD (IN LIQUIDATION)	YES	1 ORD	YES	NOMINAL
VINTES NO 4 PTY LTD	YES	2 ORD	YES	NOMINAL
BV HOLDINGS VT PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS TD PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS GS PTY LTD	YES	100 ORD	YES	NOMINAL
BV HOLDINGS DB PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS RW PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS MB PTY LTD	YES	100 ORD	NO	NOMINAL

BV HOLDINGS LB PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS MC PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS MW PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS OY PTY LTD	YES	100 ORD	NO	NOMINAL
BV HOLDINGS DN PTY LTD	YES	100 ORD	NO	NOMINAL
1160 GLEN HUNTLY ROAD PTY LTD	YES	50 ORD	YES	NOMINAL
14 JAMES ST PTY LTD (IN LIQUIDATION)	YES	50 ORD	NO	NOMINAL
VINTES QLD NO 3 PTY LTD	YES	100 ORD	NO	NOMINAL
89 BETKA ROAD MALLACOOTA PTY LTD	YES	100 ORD	NO	NOMINAL
6 BULKARA STREET PTY LTD (IN LIQUIDATION)	YES	1 ORD	YES	NOMINAL
9 MAIN STREET DERRINALLUM PTY LTD	YES	100 ORD	YES	NOMINAL
123 HIGH STREET TARADALE PTY LTD	YES	100 ORD	YES	NOMINAL
4 COWSLIP STREET VIOLET TOWN PTY LTD	YES	100 ORD	YES	NOMINAL
9 GREGORY STREET OUYEN PTY LTD	YES	100 ORD	YES	NOMINAL
160 MURRAY VALLEY HWY LAKE BOGA PTY LTD	YES	100 ORD	YES	NOMINAL
55 NOLAN STREET MARYBOROUGH PTY LTD	YES	100 ORD	YES	NOMINAL
22 HIGH STREET RUSHWORTH PTY LTD	YES	100 ORD	YES	NOMINAL
31 ELLERMAN STREET DIMBOOLA PTY LTD	YES	100 ORD	YES	NOMINAL
275 HIGH STREET GOLDEN SQUARE PTY LTD	YES	100 ORD	YES	NOMINAL
14 KIRWIN ROAD MOREWELL PTY LTD	YES	100 ORD	YES	NOMINAL

64-66 BERKLEY STREET HAWTHRON PTY LTD	YES	50 ORD	YES	NOMINAL
8-12 NATALIA AVE OAKLEIGH PTY LTD	YES	100 ORD	YES	NOMINAL
SAN PEL ONE PTY LTD	NO	100 ORD	NO	NOMINAL
SAN PEL TWO PTY LTD	NO	100 ORD	NO	NOMINAL
FORUM GROUP FINANCIAL SERVICES PTY LTD (IN LIQUIDATION)	NO	1 ORD	NO	NOMINAL

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## Annexure B

**April 2022**

Property	Gross Rental (April 2022)	Rental income after property expenses (April 2022)	Facility/Account Number	Interest + principal repayments (April 2022)	Bank to which interest is paid
<b>Service Station Properties</b>					
2-4 Cowslip St Violet Town VIC 3669	\$47,074.02*	\$24,209.56	J300002020	\$8,000.00	Judo Bank
Lot 9, 269-275 High Street Golden Square VIC 3555	\$48,079.98*	\$24,116.10	V300002024	\$6,600.00	Judo Bank
123 High Street Taradale VIC 3447	\$4,507.50	\$4,414.05	J300002022	\$1,300.00	Judo Bank
9-15 Main Street, Derrinallum VIC 3325	\$9,942.00	\$9,739.86	V300002023	\$1,100.00	Judo Bank
89 Betka Road, Mallacoota VIC 3892	\$15,940.02*	\$7,807.31	J300002019	\$2,900.00	Judo Bank
			V300002021	\$2,400.00	Judo Bank
			J3000002467	\$2,600.00	Judo Bank
			V300002468	\$2,200.00	Judo Bank

64-66 Berkeley Street Hawthorn VIC 3160	Nil	Nil	J300003572	\$33,600.00	Judo Bank
			V30003571	\$25,600.00	Judo Bank
55 Nolan Street Maryborough VIC 3454	\$9,090.40	\$8,905.29	013-405 6868- 67417	\$2,074.69	ANZ
31 Ellerman Road, Dimboola VIC 3414	\$7,954.10	\$7,791.72	013-405 6868- 66916	\$1,815.35	ANZ
160 Murray Valley Highway, Lake Boga VIC 3584	\$13,493.57	\$1,203.62	013-405 6868- 67409	\$3,079.61	ANZ
9 Gregory Street Ouyen VIC 3490	\$6,600.00	\$6,464.70	013-405 6881- 13061	\$1,419.47	ANZ
14 Kirwin Road, Morwell VIC 3840	\$18,570.90*	\$9,096.44	013-405 3202- 66238	\$1,970.95	ANZ
<b>CBA Properties</b>					
Unit 305/308 Carlisle Street Balaclava VIC	\$3,250.00	\$3,250.00 (expenses TBC)		\$6,987.00 (per CBAs email of 7 July 2022)	CBA
Unit 306/308 Carlisle Street Balaclava VIC	\$3,478.00	\$3,478.00 (expenses TBC)		Presently \$80,820 in arrears CBA not currently accepting payments.	
12 Hartington St Elsternwick VIC	Nil	Nil		Loan in default- receivers appointed 25 March 2022	CBA

\*Rental paid for two months at the same time but did not allow for CPI increases and other expenses. Therefore, there is a slight shortfall in the rental.



**May 2022**

Property	Gross Rental (May 2022)	Rental income after property expenses (May 2022)	Facility/Account Number	Interest + principal repayments (May 2022)	Bank to which interest is paid
<b>Service Station Properties</b>					
2-4 Cowslip St Violet Town VIC 3669	Nil*	\$22,439.81	J300002020	\$8,000.00	Judo Bank
Lot 9, 269-275 High Street Golden Square VIC 3555	Nil*	\$23,555.89	V300002024	\$6,600.00	Judo Bank
123 High Street Taradale VIC 3447	\$4,507.50	Nil	J300002022	\$1,300.00	Judo Bank
9-15 Main Street, Derrinallum VIC 3325	\$10,016.67	\$9,813.04	V300002023	\$1,100.00	Judo Bank
89 Betka Road, Mallacoota VIC 3892	Nil*	\$7,807.31	J3000002467	\$2,600.00	Judo Bank
64-66 Berkeley Street Hawthorn VIC 3160	Nil	Nil	V300002468	\$2,200.00	Judo Bank
			J300003572	\$33,000.00	Judo Bank
			V30003571	\$25,600.00	Judo Bank

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55 Nolan Street Maryborough VIC 3454	\$9,390.38	\$5,496.55	013-405 6868- 67417	\$1,611.12	ANZ
31 Ellerman Road, Dimboola VIC 3414	\$8,216.58	\$4,446.01	013-405 6868- 66916	\$1,409.74	ANZ
160 Murray Valley Highway, Lake Boga VIC 3584	\$13,938.86	\$8,132.15	013-405 6868- 67409	\$2,391.51	ANZ
9 Gregory Street Ouyen VIC 3490	\$6,817.80	\$6,678.14	013-405 6881- 13061	\$1,297.85	ANZ
14 Kirwin Road, Morwell VIC 3840	Nil*	\$9,096.44	013-405 3202- 66238	\$1,530.57	ANZ
<b>CBA Properties</b>					
Unit 305/308 Carlisle Street Balaclava VIC	\$3,250.00	\$3,250.00 (expenses TBC)		\$6,987.00 (per CBAs email of 7 July 2022)	CBA
Unit 306/308 Carlisle Street Balaclava VIC	\$3,478.00	\$3,478.00 (expenses TBC)		Presently \$80,820 in arrears CBA not currently accepting payments.	
12 Hartington St Elsternwick VIC	Nil	Nil		Loan in default- receivers appointed 25 March 2022	CBA

\*Rental paid for two months at the same time but did not allow for CPI increases and other expenses. Therefore, there is a slight shortfall in the rental.

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June 2022

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Property	Gross Rental (June 2022)	Rental income after property expenses (June 2022)	Facility/Account Number	Interest + principal repayments (June 2022)	Bank to which interest is paid
<b>Service Station Properties</b>					
2-4 Cowslip St Violet Town VIC 3669	\$24,441.36	\$23,949.23	J300002020	\$8,000.00	Judo Bank
			V300002024	\$6,600.00	Judo Bank
Lot 9, 269-275 High Street Golden Square VIC 3555	\$24,039.99	\$23,555.89	J300002018	\$7,800.00	Judo Bank
			V300002017	\$6,500.00	Judo Bank
124 High Street Taradale VIC 3447	\$4,642.73	\$4,620.78	J300002022	\$1,300.00	Judo Bank
			V300002023	\$1,100.00	Judo Bank
9-15 Main Street, Derrinallum VIC 3325	\$10,016.67	\$5,242.84	J300002019	\$2,900.00	Judo Bank


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				V300002021	\$2,400.00	Judo Bank
89 Betka Road, Mallacoota VIC 3892	\$8,041,74	\$7,877.60		J3000002467	\$2,600.00	Judo Bank
64-66 Berkeley Street Hawthorn VIC 3160	Nil	Nil		V300002468	\$2,200.00	Judo Bank
				J300003572	\$33,000.00	Judo Bank
				V30003571	\$25,600.00	Judo Bank
55 Nolan Street Maryborough VIC 3454	\$9,390.38	\$9,199.28		013-405 6868- 67417	\$2066.70	ANZ
31 Ellerman Road, Dimboola VIC 3414	\$8,216.58	\$8,079.35		013-405 6868- 66916	\$1,817.64	ANZ
160 Murray Valley Highway, Lake Boga VIC 3584	\$13,938.86	\$13,656.79		013-405 6868- 67409	\$3,031.78	ANZ
9 Gregory Street Ouyen VIC 3490	\$6,817.80	\$6,678.14		013-405 6881- 13061	\$1,746.71	ANZ
14 Kirwin Road, Morwell VIC 3840	\$9,285.45	\$9,141.37		013-405 3202- 66238	\$1,888.96	ANZ

CBA Properties


Unit 305/308 Carlisle Street Balaclava VIC	\$3,250.00	\$3,250.00 (expenses TBC)		\$6,987.00 (per CBAs email of 7 July 2022)	CBA
Unit 306/308 Carlisle Street Balaclava VIC	\$3,478.00	\$3,478.00 (expenses TBC)		Presently \$80,820 in arrears CBA not currently accepting payments.	
12 Hartington St Elsternwick VIC	Nil	Nil		Loan in default- receivers appointed 25 March 2022	CBA
<b>Total</b>	\$125,559.56	\$118,729.27		\$117,538.79	

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## Annexure C

Number	Account name	Account Number	BSB	Account balance (\$)
1.	Business Account #0047	448010047	082-080	0
2.	Business Account #1512	317881512	082-080	\$2,040.06
3.	Business Account #1984	777331984	082-080	0
4.	Business Account #2511	916282511	082-080	0
5.	Business Account #4060	913604060	082-080	closed
6.	Business Account #4112	975544112	082-080	\$60.28
7.	Business Account #4593	178684593	082-080	0
8.	Business Account #5778	205665778	082-080	0
9.	Business Account #6249	926496249	082-080	0
10.	Business Account #6975	777426975	082-080	closed
11.	Business Account #7866	777487866	082-080	closed
12.	Business Account #8540	421958540	082-080	0
13.	Business Account #9078	777549078	082-080	0
14.	Business Account #9116	205819116	082-080	0
15.	Business Account #9119	204569119	082-080	0
16.	Business Account #9310	777179310	082-080	0
17.	Business Account #9963	328159963	082-080	0
18.	Business Account #0012	708900012	082-080	0

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## Schedule of Parties

No. NSD616 of 2021

Federal Court of Australia  
 District Registry: New South Wales  
 Division: General

### Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141  
 Second Applicant Westpac New Zealand Limited (company registration number company number 1763882)

### Respondents

First Respondent Forum Finance Pty Limited (in liquidation) ACN 153 301 172  
 Second Respondent Basile Papadimitriou  
 Third Respondent Vincenzo Frank Tesoriero  
 Fourth Respondent Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705  
 Fifth Respondent Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997  
 Sixth Respondent Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840  
 Seventh Respondent Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364  
 Eighth Respondent 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662  
 Ninth Respondent 14 James Street Pty Ltd (in liquidation) ACN 638 449 206  
 Tenth Respondent 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129  
 Eleventh Respondent 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160  
 Twelfth Respondent 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473  
 Thirteenth Respondent 23 Margaret Street Pty Ltd ACN 623 715 373  
 Fourteenth Respondent 1160 Glen Huntly Road Pty Ltd ACN 639 447 984  
 Fifteenth Respondent 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093  
 Sixteenth Respondent Canner Investments Pty Ltd ACN 624 176 049  
 Seventeenth Respondent 123 High Street Taradale Pty Ltd ACN 639 872 512  
 Eighteenth Respondent 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921  
 Nineteenth Respondent 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887  
 Twentieth Respondent 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352  
 Twenty-First Respondent 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912  
 Twenty-Second Respondent 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179

Twenty-Third Respondent	9 Gregory Street Ouyen Pty Ltd ACN 641 392 707
Twenty-Fourth Respondent	9 Main Street Derrinallum Pty Ltd ACN 639 872 736
Twenty-Fifth Respondent	286 Carlisle Street Pty Limited ACN 610 042 343
Twenty-Sixth Respondent	275 High Street Golden Square Pty Ltd ACN 639 870 545
Twenty-Seventh Respondent	Mazcon Investments Hellas IKE
Twenty-Eighth Respondent	Palante Pty Ltd ACN 135 344 151
Twenty-Ninth Respondent	Anastasios Giamouridis
Thirtieth Respondent	The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626
Thirty-First Respondent	Iugis Pty Ltd (in liquidation) ACN 632 882 243
Thirty-Second Respondent	Iugis (UK) Limited
Thirty-Third Respondent	Iugis Holdings Limited
Thirty-Fourth Respondent	Iugis Global Financial Services Limited
Thirty-Fifth Respondent	Iugis Finance Limited
Thirty-Sixth Respondent	Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544 ACN
Thirty-Seventh Respondent	Intrashield Pty Ltd (in liquidation) ACN 133 426 534
Thirty-Eighth Respondent	Tesoriero Investment Group Pty Ltd ACN 161 088 115
Thirty-Ninth Respondent	Mangusta (Vic) Pty Ltd ACN 631 520 682
Fortieth Respondent	193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237
Forty-First Respondent	8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626
Forty-Second Respondent	Iugis Hellas IKE
Forty-Third Respondent	Iugis Energy SA
Forty-Fourth Respondent	Eric Constantinidis
Forty-Fifth Respondent	Giovanni (John) Tesoriero
Forty-Sixth Respondent	Moussa (Tony) Bouchahine
Forty-Seventh Respondent	Louisa Maria Agostino
Forty-Eighth Respondent	D&D Group O.E
Forty-Ninth Respondent	Aromatika Fyta Tsai Olympou Theion Ike



## Exhibit certificate

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 616 of 2021

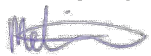
**Westpac Banking Corporations ABN 33 007 457 141**

Applicant


**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others according to the  
Schedule

Respondents

This is the exhibit marked “**VFT-6**” now produced and shown to Vincenzo Frank Tesoriero at the time of swearing his affidavit on 12 July 2022 before me:

DocuSigned by:  
  
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Solicitor

DocuSigned by:  
  
175491C4B299484...

DS  
Melissa Pennarelli  
5th Floor, 140 William St, Melbourne, Vic 3000  
An Australian Legal Practitioner  
with the meaning of the  
Legal Profession Uniform Law (Victoria)

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
 21-23 Atherton Road  
 OAKLEIGH VIC 3166  
 P: 9564 2288 F: 9564 2299  
 ABN:12 244 743 933 ACN:613 507 949

Mallacoota Pty. Ltd.  
 308/838 Collins St  
 Docklands Vic 3008

Ref: MALLACOO  
 Page: 1

Mallacoota Pty. Ltd.  
 Owner Income & Expenditure for July 2021 to June 2022  
 Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
<b>Property: 89 Betka Road Mallacoota Vic 3892</b>													
<b>Balance Brought Forward</b>													
	0.00	0.00	0.00	0.00	0.00	0.00	7810.61	0.00	0.00	0.00	0.00	0.00	0.00
<b>Income</b>													
101	Rent (Includes 5078.37 GST)												
	0.00	0.00	0.00	0.00	0.00	15940.02	0.00	7970.01	7970.01	15940.02	0.00	8041.74	55861.80
166	Outgoings Recovered - Electricity (Includes 6.69 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	73.58	0.00	0.00	0.00	0.00	73.58
168	Outgoings Recoverable - General (Includes 47.99 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	121.55	406.31	0.00	0.00	0.00	527.86
	0.00	0.00	0.00	0.00	0.00	15940.02	0.00	8165.14	8376.32	15940.02	0.00	8041.74	56463.24
<b>Expenditure</b>													
200	EXPENSES (Includes 36.94 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	406.31	0.00	0.00	0.00	406.31
281	Electricity (Includes 6.69 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	73.58	0.00	0.00	0.00	0.00	73.58
332	R & M - General (Includes 11.05 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	121.55	0.00	0.00	0.00	0.00	121.55
419	GST on fees												
	0.00	0.00	0.00	0.00	0.00	29.28	0.30	14.79	14.79	29.58	0.00	14.92	103.66
481	Management Fees												
	0.00	0.00	0.00	0.00	0.00	289.82	0.00	144.91	144.91	289.82	0.00	146.22	1015.68
483	Transaction Fee												
	0.00	0.00	0.00	0.00	0.00	3.00	3.00	3.00	3.00	6.00	0.00	3.00	21.00
	0.00	0.00	0.00	0.00	0.00	322.10	3.30	357.83	569.01	325.40	0.00	164.14	1741.78

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

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ABN:12 244 743 933 ACN:613 507 949

Mallacoota Pty. Ltd.  
308/838 Collins St  
Docklands Vic 3008

Ref: MALLACOO  
Page: 2

Mallacoota Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
Carried Forward	0.00	0.00	0.00	0.00	0.00	7810.61	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Net Income	0.00	0.00	0.00	0.00	0.00	7807.31	7807.31	7807.31	7807.31	15614.62	0.00	7877.60	54721.46

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
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Mallacoota Pty. Ltd.  
308/838 Collins St  
Docklands Vic 3008

Ref: MALLACOO  
Page: 1

Mallacoota Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

Property: 89 Betka Road Mallacoota Vic 3892

			Debit	Credit
<b>Balance Brought Forward</b>				0.00
<b>Income</b>				
101	Rent	(Total includes 5078.37 GST)		55861.80
166	Outgoings Recovered - Electricity	(Total includes 6.69 GST)		73.58
168	Outgoings Recoverable - General	(Total includes 47.99 GST)		527.86
	<b>Total Income</b>	(Includes 5133.05 GST)		56463.24
<b>Expenditure</b>				
200	EXPENSES	(Total includes 36.94 GST)	406.31	
281	Electricity	(Total includes 6.69 GST)	73.58	
332	R & M - General	(Total includes 11.05 GST)	121.55	
419	GST on fees		103.66	
481	Management Fees		1015.68	
483	Transaction Fee		21.00	
	<b>Total Expenditure</b>	(Includes 158.34 GST)	1741.78	
<b>Balance Carried Forward</b>			0.00	
<b>Net Income Paid to Owner</b>			54721.46	
			56463.24	56463.24

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
 21-23 Atherton Road  
 OAKLEIGH VIC 3166  
 P: 9564 2288 F: 9564 2299  
 ABN:12 244 743 933 ACN:613 507 949

4 Cowslip St Violet Town Unit Trust  
 308/838 Collins St  
 Docklands Vic 3008

Ref: VIOLET  
 Page: 1

## 4 Cowslip St Violet Town Unit Trust Owner Income & Expenditure for July 2021 to June 2022 Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
<b>Property: 2 Cowslip St Violet Town Vic 3669</b>													
<b>Balance Brought Forward</b>													
	0.00	0.00	0.00	0.00	42.56	512.23	23294.79	0.00	0.00	469.61	0.00	0.00	0.00
<b>Income</b>													
101	Rent (Includes 15165.33 GST)												
	0.00	0.00	0.00	0.00	385.00	47458.96	0.00	23729.48	23729.48	47074.02	0.00	24441.36	166818.30
160	Outgoings Recovered - Insurance (Includes 136.91 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1506.04	0.00	0.00	1506.04
161	Outgoings Recovered - Water Rates (Includes 128.18 GST)												
	0.00	0.00	0.00	468.11	0.00	438.85	0.00	0.00	0.00	502.97	0.00	0.00	1409.93
163	Outgoings Recovered - Council Rates (Includes 1886.60 GST)												
	0.00	0.00	0.00	0.00	469.67	0.00	469.61	469.61	469.61	8.10	0.00	0.00	1886.60
	0.00	0.00	0.00	468.11	854.67	47897.81	469.61	24199.09	24199.09	49091.13	0.00	24441.36	171620.87
<b>Expenditure</b>													
202	Water Rates												
	0.00	0.00	0.00	425.55	0.00	398.95	0.00	0.00	0.00	457.25	0.00	0.00	1281.75
211	Insurance Premiums (Includes 136.91 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1506.04	0.00	0.00	1506.04
419	GST on fees												
	0.00	0.00	0.00	0.00	0.00	86.88	0.30	43.74	43.44	86.19	0.00	44.74	305.29
481	Management Fees												
	0.00	0.00	0.00	0.00	0.00	862.90	0.00	431.45	431.45	855.89	0.00	444.39	3026.08
483	Transaction Fee												
	0.00	0.00	0.00	0.00	0.00	6.00	3.00	6.00	3.00	6.00	0.00	3.00	27.00
	0.00	0.00	0.00	425.55	0.00	1354.73	3.30	481.19	477.89	2911.37	0.00	492.13	6146.16

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
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ABN:12 244 743 933 ACN:613 507 949

4 Cowslip St Violet Town Unit Trust  
308/838 Collins St  
Docklands Vic 3008

Ref: VIOLET  
Page: 2

4 Cowslip St Violet Town Unit Trust  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
Carried Forward	0.00	0.00	0.00	42.56	512.23	23294.79	0.00	0.00	469.61	0.00	0.00	0.00	0.00
Net Income	0.00	0.00	0.00	0.00	385.00	23760.52	23761.10	23717.90	23251.59	46649.37	0.00	23949.23	165474.71

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

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21-23 Atherton Road  
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4 Cowslip St Violet Town Unit Trust  
308/838 Collins St  
Docklands Vic 3008

Ref: VIOLET  
Page: 1

4 Cowslip St Violet Town Unit Trust  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

Property: 2 Cowslip St Violet Town Vic 3669

			Debit	Credit
<b>Balance Brought Forward</b>				0.00
<b>Income</b>				
101	Rent	(Total includes 15165.33 GST)		166818.30
160	Outgoings Recovered - Insurance	(Total includes 136.91 GST)		1506.04
161	Outgoings Recovered - Water Rates	(Total includes 128.18 GST)		1409.93
163	Outgoings Recovered - Council Rates	(Total includes 1886.60 GST)		1886.60
	<b>Total Income</b>	(Includes 17317.02 GST)		<u>171620.87</u>
<b>Expenditure</b>				
202	Water Rates		1281.75	
211	Insurance Premiums	(Total includes 136.91 GST)	1506.04	
419	GST on fees		305.29	
481	Management Fees		3026.08	
483	Transaction Fee		27.00	
	<b>Total Expenditure</b>	(Includes 442.20 GST)	<u>6146.16</u>	
<b>Balance Carried Forward</b>			0.00	
<b>Net Income Paid to Owner</b>			165474.71	
			<u>171620.87</u>	<u>171620.87</u>

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
 21-23 Atherton Road  
 OAKLEIGH VIC 3166  
 P: 9564 2288 F: 9564 2299  
 ABN:12 244 743 933 ACN:613 507 949

The Trustee 9 Main Street Derrinallum Pt  
 308/838 Collins St  
 Docklands Vic 3008

Ref: MAIN9  
 Page: 1

The Trustee 9 Main Street Derrinallum Pty. Ltd.  
 Owner Income & Expenditure for July 2021 to June 2022  
 Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
<b>Property: 9-15 Main St Derrinallum Vic 3325</b>													
<b>Balance Brought Forward</b>													
	0.00	0.00	0.00	18846.89	0.00	18.67	0.00	0.00	6.79	0.00	0.00	11.97	0.00
<b>Income</b>													
101	Rent (Includes 9804.47 GST)												
	0.00	0.00	19209.21	9965.52	9724.91	9724.91	9724.91	9724.91	9799.58	9942.00	10016.67	10016.67	107849.29
161	Outgoings Recovered - Water Rates (Includes 71.25 GST)												
	0.00	0.00	240.61	0.00	205.36	0.00	0.00	74.67	131.43	0.00	131.66	0.00	783.73
	0.00	0.00	19449.82	9965.52	9930.27	9724.91	9724.91	9799.58	9931.01	9942.00	10148.33	10016.67	108633.02
<b>Expenditure</b>													
200	EXPENSES (Includes 431.82 GST)												
	0.00	0.00	0.00	0.00	0.00	4750.00	0.00	0.00	0.00	0.00	0.00	0.00	4750.00
202	Water Rates												
	0.00	0.00	218.74	0.00	186.69	0.00	0.00	67.88	119.48	0.00	119.69	0.00	712.48
211	Insurance Premiums (Includes 416.56 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4582.17	4582.17
336	R & M - Plumbing (Includes 363.79 GST)												
	0.00	0.00	0.00	0.00	0.00	3500.00	0.00	0.00	501.66	0.00	0.00	0.00	4001.66
419	GST on fees												
	0.00	0.00	34.93	18.42	17.98	17.98	17.98	17.98	18.12	18.38	18.51	18.51	198.79
481	Management Fees												
	0.00	0.00	349.26	181.19	176.82	176.82	176.82	176.82	178.17	180.76	182.12	182.12	1960.90
483	Transaction Fee												
	0.00	0.00	0.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	27.00
	0.00	0.00	602.93	202.61	384.49	8447.80	197.80	265.68	820.43	202.14	323.32	4785.80	16233.00



# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
OAKLEIGH VIC 3166  
P: 9564 2288 F: 9564 2299  
ABN:12 244 743 933 ACN:613 507 949

The Trustee 9 Main Street Derrinallum Pt  
308/838 Collins St  
Docklands Vic 3008

Ref: MAIN9  
Page: 2

The Trustee 9 Main Street Derrinallum Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
Carried Forward	0.00	0.00	18846.89	0.00	18.67	0.00	0.00	6.79	0.00	0.00	11.97	0.00	0.00
Net Income	0.00	0.00	0.00	28609.80	9527.11	1295.78	9527.11	9527.11	9117.37	9739.86	9813.04	5242.84	92400.02

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
OAKLEIGH VIC 3166  
P: 9564 2288 F: 9564 2299  
ABN:12 244 743 933 ACN:613 507 949

The Trustee 9 Main Street Derrinallum Pt  
308/838 Collins St  
Docklands Vic 3008

Ref: MAIN9  
Page: 1

The Trustee 9 Main Street Derrinallum Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

Property: 9-15 Main St Derrinallum Vic 3325

			Debit	Credit
<b>Balance Brought Forward</b>				0.00
<b>Income</b>				
101	Rent	(Total includes 9804.47 GST)		107849.29
161	Outgoings Recovered - Water Rates	(Total includes 71.25 GST)		783.73
	<b>Total Income</b>	(Includes 9875.72 GST)		108633.02
<b>Expenditure</b>				
200	EXPENSES	(Total includes 431.82 GST)	4750.00	
202	Water Rates		712.48	
211	Insurance Premiums	(Total includes 416.56 GST)	4582.17	
336	R & M - Plumbing	(Total includes 363.79 GST)	4001.66	
419	GST on fees		198.79	
481	Management Fees		1960.90	
483	Transaction Fee		27.00	
	<b>Total Expenditure</b>	(Includes 1410.96 GST)	16233.00	
<b>Balance Carried Forward</b>			0.00	
<b>Net Income Paid to Owner</b>			92400.02	
			108633.02	108633.02

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
 21-23 Atherton Road  
 OAKLEIGH VIC 3166  
 P: 9564 2288 F: 9564 2299  
 ABN:12 244 743 933 ACN:613 507 949

The Trustee 123 High St Taradale Pty. Lt  
 308/838 Collins St  
 Docklands Vic 3008

Ref: HIGH123  
 Page: 1

The Trustee 123 High St Taradale Pty. Ltd.  
 Owner Income & Expenditure for July 2021 to June 2022  
 Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
<b>Property: 124 High St Taradale Vic 3447</b>													
<b>Balance Brought Forward</b>													
	0.00	0.00	0.00	8834.70	4417.35	0.00	0.00	0.00	0.00	0.00	0.00	74.20	0.00
<b>Income</b>													
101 Rent (Includes 4519.77 GST)	0.00	0.00	9015.00	4507.50	4507.50	4507.50	4507.50	4507.50	4507.50	4507.50	4507.50	4642.73	49717.73
163 Outgoings Recovered - Council Rates (Includes 165.23 GST)	0.00	0.00	0.00	0.00	165.23	0.00	0.00	0.00	0.00	0.00	0.00	0.00	165.23
	0.00	0.00	9015.00	4507.50	4672.73	4507.50	4507.50	4507.50	4507.50	4507.50	4507.50	4642.73	49882.96
<b>Expenditure</b>													
202 Water Rates	0.00	0.00	0.00	0.00	0.00	1686.39	0.00	0.00	0.00	0.00	0.00	0.00	1686.39
211 Insurance Premiums (Includes 394.83 GST)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4343.15	0.00	4343.15
419 GST on fees	0.00	0.00	16.39	8.50	8.80	8.50	8.50	8.50	8.50	8.50	8.20	8.74	93.13
481 Management Fees	0.00	0.00	163.91	81.95	81.95	81.95	81.95	81.95	81.95	81.95	81.95	84.41	903.92
483 Transaction Fee	0.00	0.00	0.00	3.00	6.00	3.00	3.00	3.00	3.00	3.00	0.00	3.00	27.00
	0.00	0.00	180.30	93.45	96.75	1779.84	93.45	93.45	93.45	93.45	4433.30	96.15	7053.59
<b>Carried Forward</b>													
	0.00	0.00	8834.70	4417.35	0.00	0.00	0.00	0.00	0.00	0.00	74.20	0.00	0.00
<b>Net Income</b>													
	0.00	0.00	0.00	8831.40	8993.33	2727.66	4414.05	4414.05	4414.05	4414.05	0.00	4620.78	42829.37

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
OAKLEIGH VIC 3166  
P: 9564 2288 F: 9564 2299  
ABN:12 244 743 933 ACN:613 507 949

The Trustee 123 High St Taradale Pty. Lt  
308/838 Collins St  
Docklands Vic 3008

Ref: HIGH123  
Page: 1

The Trustee 123 High St Taradale Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

Property: 124 High St Taradale Vic 3447

			Debit	Credit
<b>Balance Brought Forward</b>				0.00
<b>Income</b>				
101	Rent	(Total includes 4519.77 GST)		49717.73
163	Outgoings Recovered - Council Rates	(Total includes 165.23 GST)		165.23
	<b>Total Income</b>	(Includes 4685.00 GST)		49882.96
<b>Expenditure</b>				
202	Water Rates		1686.39	
211	Insurance Premiums	(Total includes 394.83 GST)	4343.15	
419	GST on fees		93.13	
481	Management Fees		903.92	
483	Transaction Fee		27.00	
	<b>Total Expenditure</b>	(Includes 487.96 GST)	7053.59	
<b>Balance Carried Forward</b>			0.00	
<b>Net Income Paid to Owner</b>			42829.37	
			49882.96	49882.96

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
 21-23 Atherton Road  
 OAKLEIGH VIC 3166  
 P: 9564 2288 F: 9564 2299  
 ABN:12 244 743 933 ACN:613 507 949

9 Gregory St Ouyen Pty. Ltd.  
 308/838 Collins St  
 Docklands Vic 3008

Ref: GREGOR9  
 Page: 1

9 Gregory St Ouyen Pty. Ltd.  
 Owner Income & Expenditure for July 2021 to June 2022  
 Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
<b>Property: 9 Gregory St Ouyen Vic 3490</b>													
<b>Balance Brought Forward</b>													
	0.00	0.00	0.00	12936.00	2023.70	78.09	4361.19	0.00	0.00	0.00	0.00	0.00	0.00
<b>Income</b>													
101	Rent (Includes 6639.60 GST)												
	0.00	0.00	13200.00	6600.00	6600.00	6600.00	6600.00	6600.00	6600.00	6600.00	6817.80	6817.80	73035.60
143	Sundry Income (Includes 169.43 GST)												
	0.00	0.00	0.00	1863.76	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1863.76
161	Outgoings Recovered - Water Rates (Includes 108.64 GST)												
	0.00	0.00	0.00	27.94	0.00	0.00	53.21	0.00	27.49	0.00	0.00	0.00	108.64
163	Outgoings Recovered - Council Rates (Includes 208.91 GST)												
	0.00	0.00	0.00	1439.04	859.03	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2298.07
	0.00	0.00	13200.00	9930.74	7459.03	6600.00	6653.21	6600.00	6627.49	6600.00	6817.80	6817.80	77306.07
<b>Expenditure</b>													
201	Municipal Rates												
	0.00	0.00	0.00	1308.22	780.94	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2089.16
211	Insurance Premiums (Includes 418.27 GST)												
	0.00	0.00	0.00	4600.94	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4600.94
419	GST on fees												
	0.00	0.00	24.00	12.60	12.60	12.60	12.30	12.30	12.30	12.30	12.70	12.70	136.40
481	Management Fees (Includes -12.00 GST)												
	0.00	0.00	240.00	-12.00	120.00	120.00	120.00	120.00	120.00	120.00	123.96	123.96	1195.92
483	Transaction Fee												
	0.00	0.00	0.00	6.00	6.00	6.00	3.00	3.00	3.00	3.00	3.00	3.00	36.00
	0.00	0.00	264.00	5915.76	919.54	138.60	135.30	135.30	135.30	135.30	139.66	139.66	8058.42

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
OAKLEIGH VIC 3166  
P: 9564 2288 F: 9564 2299  
ABN:12 244 743 933 ACN:613 507 949

9 Gregory St Ouyen Pty. Ltd.  
308/838 Collins St  
Docklands Vic 3008

Ref: GREGOR9  
Page: 2

9 Gregory St Ouyen Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
Carried Forward	0.00	0.00	12936.00	2023.70	78.09	4361.19	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Net Income	0.00	0.00	0.00	14927.28	8485.10	2178.30	10879.10	6464.70	6492.19	6464.70	6678.14	6678.14	69247.65

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
OAKLEIGH VIC 3166  
P: 9564 2288 F: 9564 2299  
ABN:12 244 743 933 ACN:613 507 949

9 Gregory St Ouyen Pty. Ltd.  
308/838 Collins St  
Docklands Vic 3008

Ref: GREGOR9  
Page: 1

9 Gregory St Ouyen Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

Property: 9 Gregory St Ouyen Vic 3490

			Debit	Credit
<b>Balance Brought Forward</b>				0.00
<b>Income</b>				
101	Rent	(Total includes 6639.60 GST)		73035.60
143	Sundry Income	(Total includes 169.43 GST)		1863.76
161	Outgoings Recovered - Water Rates	(Total includes 108.64 GST)		108.64
163	Outgoings Recovered - Council Rates	(Total includes 208.91 GST)		2298.07
	<b>Total Income</b>	(Includes 7126.58 GST)		<u>77306.07</u>
<b>Expenditure</b>				
201	Municipal Rates		2089.16	
211	Insurance Premiums	(Total includes 418.27 GST)	4600.94	
419	GST on fees		136.40	
* 481	Management Fees	(Total includes -12.00 GST)	1195.92	
483	Transaction Fee		36.00	
	<b>Total Expenditure</b>	(Includes 542.67 GST)	<u>8058.42</u>	
<b>Balance Carried Forward</b>			0.00	
<b>Net Income Paid to Owner</b>			69247.65	
			<u>77306.07</u>	<u>77306.07</u>

\* GST shown on these categories is additional to the GST amount shown in 419

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
 21-23 Atherton Road  
 OAKLEIGH VIC 3166  
 P: 9564 2288 F: 9564 2299  
 ABN:12 244 743 933 ACN:613 507 949

14 Kirwin Road Morwell Pty. Ltd  
 308/838 Collins St  
 Docklands Vic 3008

Ref: MORWELL  
 Page: 1

14 Kirwin Road Morwell Pty. Ltd  
 Owner Income & Expenditure for July 2021 to June 2022  
 Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
<b>Property: 14 Kirwin Road Morwell Vic 3840</b>													
Balance Brought Forward													
	0.00	0.00	0.00	0.00	0.00	0.00	18244.20	0.00	44.93	0.00	0.00	44.93	0.00
Income													
101	Rent (Includes 5908.91 GST)												
	0.00	0.00	0.00	0.00	0.00	18570.90	0.00	9285.45	9285.45	18570.90	0.00	9285.45	64998.15
161	Outgoings Recovered - Water Rates (Includes 134.58 GST)												
	0.00	0.00	0.00	0.00	0.00	491.92	0.00	494.27	0.00	0.00	494.27	0.00	1480.46
	0.00	0.00	0.00	0.00	0.00	19062.82	0.00	9779.72	9285.45	18570.90	494.27	9285.45	66478.61
Expenditure													
202	Water Rates												
	0.00	0.00	0.00	0.00	0.00	447.20	0.00	449.34	0.00	0.00	449.34	0.00	1345.88
419	GST on fees												
	0.00	0.00	0.00	0.00	0.00	33.76	0.30	17.18	17.18	34.36	0.00	17.18	119.96
481	Management Fees												
	0.00	0.00	0.00	0.00	0.00	337.66	0.00	168.83	168.83	337.66	0.00	168.83	1181.81
483	Transaction Fee												
	0.00	0.00	0.00	0.00	0.00	0.00	3.00	3.00	3.00	6.00	0.00	3.00	18.00
	0.00	0.00	0.00	0.00	0.00	818.62	3.30	638.35	189.01	378.02	449.34	189.01	2665.65
Carried Forward													
	0.00	0.00	0.00	0.00	0.00	18244.20	0.00	44.93	0.00	0.00	44.93	0.00	0.00
Net Income													
	0.00	0.00	0.00	0.00	0.00	0.00	18240.90	9096.44	9141.37	18192.88	0.00	9141.37	63812.96



# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
OAKLEIGH VIC 3166  
P: 9564 2288 F: 9564 2299  
ABN:12 244 743 933 ACN:613 507 949

14 Kirwin Road Morwell Pty. Ltd  
308/838 Collins St  
Docklands Vic 3008

Ref: MORWELL  
Page: 1

14 Kirwin Road Morwell Pty. Ltd  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

Property: 14 Kirwin Road Morwell Vic 3840

			Debit	Credit
<b>Balance Brought Forward</b>				0.00
<b>Income</b>				
101	Rent	(Total includes 5908.91 GST)		64998.15
161	Outgoings Recovered - Water Rates	(Total includes 134.58 GST)		1480.46
	<b>Total Income</b>	(Includes 6043.49 GST)		66478.61
<b>Expenditure</b>				
202	Water Rates		1345.88	
419	GST on fees		119.96	
481	Management Fees		1181.81	
483	Transaction Fee		18.00	
	<b>Total Expenditure</b>	(Includes 119.96 GST)	2665.65	
<b>Balance Carried Forward</b>			0.00	
<b>Net Income Paid to Owner</b>			63812.96	
			66478.61	66478.61

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
 21-23 Atherton Road  
 OAKLEIGH VIC 3166  
 P: 9564 2288 F: 9564 2299  
 ABN:12 244 743 933 ACN:613 507 949

31 Ellerman St Dimboola Pty. Ltd.  
 308/838 Collins St  
 Docklands Vic 3008

Ref: ELLERMAN31  
 Page: 1

31 Ellerman St Dimboola Pty. Ltd.  
 Owner Income & Expenditure for July 2021 to June 2022  
 Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
<b>Property: 31 Ellerman Road Dimboola Vic 3414</b>													
<b>Balance Brought Forward</b>													
	0.00	0.00	0.00	15590.04	8381.76	0.00	7795.02	0.00	0.00	0.00	0.00	30.40	0.00
<b>Income</b>													
101 Rent (Includes 8001.82 GST)	0.00	0.00	15908.20	7954.10	7954.10	7954.10	7954.10	7954.10	7954.10	7954.10	8216.58	8216.58	88020.06
161 Outgoings Recovered - Water Rates (Includes 120.50 GST)	0.00	0.00	0.00	0.00	0.00	0.00	54.22	0.00	35.88	0.00	30.40	0.00	120.50
	0.00	0.00	15908.20	7954.10	7954.10	7954.10	8008.32	7954.10	7989.98	7954.10	8246.98	8216.58	88140.56
<b>Expenditure</b>													
211 Insurance Premiums (Includes 327.54 GST)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3602.94	0.00	3602.94
419 GST on fees	0.00	0.00	28.92	14.76	15.06	14.46	14.76	14.76	14.76	14.76	15.24	15.24	162.72
481 Management Fees	0.00	0.00	289.24	144.62	144.62	144.62	144.62	144.62	144.62	144.62	149.39	149.39	1600.36
483 Transaction Fee	0.00	0.00	0.00	3.00	6.00	0.00	3.00	3.00	3.00	3.00	3.00	3.00	27.00
	0.00	0.00	318.16	162.38	165.68	159.08	162.38	162.38	162.38	162.38	3770.57	167.63	5393.02
<b>Carried Forward</b>													
	0.00	0.00	15590.04	8381.76	0.00	7795.02	0.00	0.00	0.00	0.00	30.40	0.00	0.00
<b>Net Income</b>													
	0.00	0.00	0.00	15000.00	16170.18	0.00	15640.96	7791.72	7827.60	7791.72	4446.01	8079.35	82747.54

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
OAKLEIGH VIC 3166  
P: 9564 2288 F: 9564 2299  
ABN:12 244 743 933 ACN:613 507 949

31 Ellerman St Dimboola Pty. Ltd.  
308/838 Collins St  
Docklands Vic 3008

Ref: ELLERMAN31  
Page: 1

31 Ellerman St Dimboola Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

Property: 31 Ellerman Road Dimboola Vic 3414

			Debit	Credit
<b>Balance Brought Forward</b>				0.00
<b>Income</b>				
101	Rent	(Total includes 8001.82 GST)		88020.06
161	Outgoings Recovered - Water Rates	(Total includes 120.50 GST)		120.50
	<b>Total Income</b>	(Includes 8122.32 GST)		88140.56
<b>Expenditure</b>				
211	Insurance Premiums	(Total includes 327.54 GST)	3602.94	
419	GST on fees		162.72	
481	Management Fees		1600.36	
483	Transaction Fee		27.00	
	<b>Total Expenditure</b>	(Includes 490.26 GST)	5393.02	
<b>Balance Carried Forward</b>			0.00	
<b>Net Income Paid to Owner</b>			82747.54	
			88140.56	88140.56

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
 21-23 Atherton Road  
 OAKLEIGH VIC 3166  
 P: 9564 2288 F: 9564 2299  
 ABN:12 244 743 933 ACN:613 507 949

55 Nolan St Maryborough Pty. Ltd.  
 308/838 Collins St  
 Docklands Vic 3008

Ref: NOLAN55  
 Page: 1

55 Nolan St Maryborough Pty. Ltd.  
 Owner Income & Expenditure for July 2021 to June 2022  
 Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
<b>Property: 55 Nolan St Maryborough Vic 3465</b>													
<b>Balance Brought Forward</b>													
	0.00	0.00	0.00	17817.18	8908.59	8908.59	8908.59	0.00	0.00	0.00	0.00	0.00	0.00
<b>Income</b>													
101	Rent (Includes 9144.94 GST)												
	0.00	0.00	18180.80	9090.40	9090.40	9090.40	9090.40	9090.40	9090.40	9090.40	9390.38	9390.38	100594.36
161	Outgoings Recovered - Water Rates (Includes 45.59 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	45.59	0.00	0.00	0.00	45.59
163	Outgoings Recovered - Council Rates (Includes 807.16 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	807.16	0.00	0.00	0.00	0.00	807.16
	0.00	0.00	18180.80	9090.40	9090.40	9090.40	9090.40	9897.56	9135.99	9090.40	9390.38	9390.38	101447.11
<b>Expenditure</b>													
211	Insurance Premiums (Includes 336.61 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3702.73	0.00	3702.73
419	GST on fees												
	0.00	0.00	33.06	16.83	16.83	16.83	16.83	17.13	16.83	16.83	17.37	17.37	185.91
481	Management Fees												
	0.00	0.00	330.56	165.28	165.28	165.28	165.28	165.28	165.28	165.28	170.73	170.73	1828.98
483	Transaction Fee												
	0.00	0.00	0.00	3.00	3.00	3.00	3.00	6.00	3.00	3.00	3.00	3.00	30.00
	0.00	0.00	363.62	185.11	185.11	185.11	185.11	188.41	185.11	185.11	3893.83	191.10	5747.62
<b>Carried Forward</b>													
	0.00	0.00	17817.18	8908.59	8908.59	8908.59	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Net Income</b>													
	0.00	0.00	0.00	17813.88	8905.29	8905.29	17813.88	9709.15	8950.88	8905.29	5496.55	9199.28	95699.49

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
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P: 9564 2288 F: 9564 2299  
ABN:12 244 743 933 ACN:613 507 949

55 Nolan St Maryborough Pty. Ltd.  
308/838 Collins St  
Docklands Vic 3008

Ref: NOLAN55  
Page: 1

55 Nolan St Maryborough Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

Property: 55 Nolan St Maryborough Vic 3465

			Debit	Credit
<b>Balance Brought Forward</b>				0.00
<b>Income</b>				
101	Rent	(Total includes 9144.94 GST)		100594.36
161	Outgoings Recovered - Water Rates	(Total includes 45.59 GST)		45.59
163	Outgoings Recovered - Council Rates	(Total includes 807.16 GST)		807.16
	<b>Total Income</b>	(Includes 9997.69 GST)		101447.11
<b>Expenditure</b>				
211	Insurance Premiums	(Total includes 336.61 GST)	3702.73	
419	GST on fees		185.91	
481	Management Fees		1828.98	
483	Transaction Fee		30.00	
	<b>Total Expenditure</b>	(Includes 522.52 GST)	5747.62	
<b>Balance Carried Forward</b>			0.00	
<b>Net Income Paid to Owner</b>			95699.49	
			101447.11	101447.11

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
 21-23 Atherton Road  
 OAKLEIGH VIC 3166  
 P: 9564 2288 F: 9564 2299  
 ABN:12 244 743 933 ACN:613 507 949

160 Murray Valley Hwy Lake Boga Pty. Ltd  
 308/838 Collins St  
 Docklands Vic 3008

Ref: MURRAY160  
 Page: 1

160 Murray Valley Hwy Lake Boga Pty. Ltd.  
 Owner Income & Expenditure for July 2021 to June 2022  
 Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
<b>Property: 160 Murray Valley Hwy Lake Boga Vic 3584</b>													
<b>Balance Brought Forward</b>													
	0.00	0.00	0.00	26447.39	13223.70	114.39	13338.09	0.00	0.00	0.00	0.00	0.00	0.00
<b>Income</b>													
101	Rent (Includes 15988.96 GST)												
	0.00	0.00	26987.14	13493.57	13493.57	13493.57	40052.06	13493.57	13493.57	13493.57	13938.86	13938.86	175878.34
161	Outgoings Recovered - Water Rates (Includes 125.26 GST)												
	0.00	0.00	0.00	0.00	62.58	0.00	0.00	0.00	29.62	33.06	0.00	0.00	125.26
163	Outgoings Recovered - Council Rates (Includes 1558.19 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1206.92	0.00	0.00	1206.92
	0.00	0.00	26987.14	13493.57	13556.15	13493.57	40052.06	13493.57	13523.19	14733.55	13938.86	13938.86	177210.52
<b>Expenditure</b>													
211	Insurance Premiums (Includes 502.24 GST)												
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5524.64	0.00	5524.64
419	GST on fees												
	0.00	0.00	49.07	24.83	25.13	24.53	24.83	24.83	24.83	25.13	25.64	25.64	274.46
481	Management Fees												
	0.00	0.00	490.68	245.34	245.34	245.34	245.34	245.34	245.34	245.34	253.43	253.43	2714.92
483	Transaction Fee												
	0.00	0.00	0.00	3.00	6.00	0.00	3.00	3.00	3.00	6.00	3.00	3.00	30.00
	0.00	0.00	539.75	273.17	276.47	269.87	273.17	273.17	273.17	276.47	5806.71	282.07	8544.02
<b>Carried Forward</b>													
	0.00	0.00	26447.39	13223.70	114.39	13338.09	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Net Income</b>													
	0.00	0.00	0.00	26444.09	26388.99	0.00	53116.98	13220.40	13250.02	14457.08	8132.15	13656.79	168666.50

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
OAKLEIGH VIC 3166  
P: 9564 2288 F: 9564 2299  
ABN:12 244 743 933 ACN:613 507 949

160 Murray Valley Hwy Lake Boga Pty. Ltd  
308/838 Collins St  
Docklands Vic 3008

Ref: MURRAY160  
Page: 1

160 Murray Valley Hwy Lake Boga Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

Property: 160 Murray Valley Hwy Lake Boga Vic 3584

			Debit	Credit
<b>Balance Brought Forward</b>				0.00
<b>Income</b>				
101	Rent	(Total includes 15988.96 GST)		175878.34
161	Outgoings Recovered - Water Rates	(Total includes 125.26 GST)		125.26
163	Outgoings Recovered - Council Rates	(Total includes 1558.19 GST)		1206.92
	<b>Total Income</b>	(Includes 17672.41 GST)		177210.52
<b>Expenditure</b>				
211	Insurance Premiums	(Total includes 502.24 GST)	5524.64	
419	GST on fees		274.46	
481	Management Fees		2714.92	
483	Transaction Fee		30.00	
	<b>Total Expenditure</b>	(Includes 776.70 GST)	8544.02	
<b>Balance Carried Forward</b>			0.00	
<b>Net Income Paid to Owner</b>			168666.50	
			177210.52	177210.52

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
 21-23 Atherton Road  
 OAKLEIGH VIC 3166  
 P: 9564 2288 F: 9564 2299  
 ABN:12 244 743 933 ACN:613 507 949

275 High St Golden Square Pty. Ltd.  
 308/838 Collins St  
 Docklands Vic 3008

Ref: GOLDSQ  
 Page: 1

275 High St Golden Square Pty. Ltd.  
 Owner Income & Expenditure for July 2021 to June 2022  
 Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
<b>Property: 269-275 High St Golden Square Vic 3555</b>													
<b>Balance Brought Forward</b>													
	0.00	0.00	0.00	0.00	0.00	858.40	23559.19	0.00	0.00	560.21	0.00	0.00	0.00
<b>Income</b>													
101 Rent (Includes 15340.65 GST)	0.00	0.00	0.00	0.00	467.50	48079.98	0.00	24039.99	24039.99	48079.98	0.00	24039.99	168747.43
161 Outgoings Recovered - Water Rates (Includes 354.93 GST)	0.00	0.00	0.00	0.00	0.00	0.00	2466.89	0.00	1437.39	0.00	0.00	0.00	3904.28
163 Outgoings Recovered - Council Rates (Includes 1717.14 GST)	0.00	0.00	0.00	0.00	9442.40	0.00	0.00	4721.20	4724.99	0.00	0.00	0.00	18888.59
	0.00	0.00	0.00	0.00	9909.90	48079.98	2466.89	28761.19	30202.37	48079.98	0.00	24039.99	191540.30
<b>Expenditure</b>													
201 Municipal Rates	0.00	0.00	0.00	0.00	8584.00	0.00	0.00	4292.00	4295.45	0.00	0.00	0.00	17171.45
202 Water Rates	0.00	0.00	0.00	0.00	0.00	0.00	2242.63	0.00	1306.72	0.00	0.00	0.00	3549.35
419 GST on fees	0.00	0.00	0.00	0.00	0.00	87.72	0.30	44.31	44.01	88.02	0.00	44.01	308.37
481 Management Fees	0.00	0.00	0.00	0.00	0.00	874.18	0.00	437.09	437.09	874.18	0.00	437.09	3059.63
483 Transaction Fee	0.00	0.00	0.00	0.00	0.00	3.00	3.00	6.00	3.00	6.00	0.00	3.00	24.00
	0.00	0.00	0.00	0.00	8584.00	964.90	2245.93	4779.40	6086.27	968.20	0.00	484.10	24112.80
<b>Carried Forward</b>													
	0.00	0.00	0.00	0.00	858.40	23559.19	0.00	0.00	560.21	0.00	0.00	0.00	0.00



# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
OAKLEIGH VIC 3166  
P: 9564 2288 F: 9564 2299  
ABN:12 244 743 933 ACN:613 507 949

275 High St Golden Square Pty. Ltd.  
308/838 Collins St  
Docklands Vic 3008

Ref: GOLDSQ  
Page: 2

275 High St Golden Square Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Tot
Net Income	0.00	0.00	0.00	0.00	467.50	24414.29	23780.15	23981.79	23555.89	47671.99	0.00	23555.89	167427.50

# Buxton (Oakleigh) Commercial & Industrial Pty Ltd

Licensee: John Servinis  
21-23 Atherton Road  
OAKLEIGH VIC 3166  
P: 9564 2288 F: 9564 2299  
ABN:12 244 743 933 ACN:613 507 949

275 High St Golden Square Pty. Ltd.  
308/838 Collins St  
Docklands Vic 3008

Ref: GOLDSQ  
Page: 1

275 High St Golden Square Pty. Ltd.  
Owner Income & Expenditure for July 2021 to June 2022  
Manager: Mary Vass

Property: 269-275 High St Golden Square Vic 3555

			Debit	Credit
<b>Balance Brought Forward</b>				0.00
<b>Income</b>				
101	Rent	(Total includes 15340.65 GST)		168747.43
161	Outgoings Recovered - Water Rates	(Total includes 354.93 GST)		3904.28
163	Outgoings Recovered - Council Rates	(Total includes 1717.14 GST)		18888.59
	<b>Total Income</b>	(Includes 17412.72 GST)		191540.30
<b>Expenditure</b>				
201	Municipal Rates		17171.45	
202	Water Rates		3549.35	
419	GST on fees		308.37	
481	Management Fees		3059.63	
483	Transaction Fee		24.00	
	<b>Total Expenditure</b>	(Includes 308.37 GST)	24112.80	
<b>Balance Carried Forward</b>			0.00	
<b>Net Income Paid to Owner</b>			167427.50	
			191540.30	191540.30



**ASIC Data Extracted 11/07/2022 at 14:47**

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

**- 641 392 903 22 HIGH STREET RUSHWORTH PTY LTD -**

<b>ACN (Australian Company Number):</b> <b>ABN:</b> <b>Current Name:</b> <b>Registered in:</b> <b>Registration Date:</b> <b>Review Date:</b> <b>Company Bounded By:</b>	641 392 903  22 HIGH STREET RUSHWORTH PTY LTD Victoria 02/06/2020 02/06/2023	<b>Document No.</b>
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**- Current Organisation Details -**

<b>Name:</b> <b>Name Start Date:</b> <b>Status:</b> <b>Type:</b> <b>Class:</b> <b>Sub Class:</b>	22 HIGH STREET RUSHWORTH PTY LTD 02/06/2020 Registered Australian Proprietary Company Limited By Shares Proprietary Company
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**- Company Addresses -**

<b><u>Registered Office</u></b> <b>Address:</b> <b>Start Date:</b>	LEVEL 5 141 WALKER STREET NORTH SYDNEY NSW 2060 01/09/2020	7EAZ79644
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<b><u>Principal Place of Business</u></b> <b>Address:</b> <b>Start Date:</b>	LEVEL 5 141 WALKER STREET NORTH SYDNEY NSW 2060 24/08/2020	7EAZ79644
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**- Company Officers -**
**Note:**

A date or address shown as UNKNOWN has not been updated since ASIC took over the records in 1991. For details, order the appropriate historical state or territory documents, available in microfiche or paper format.

\* Check documents listed under ASIC Documents Received for recent changes.

[Director](#)

**Name:** VINCENZO FRANK TESORIERO 1EKH88426  
**Address:** 44 HOWITT ROAD CAULFIELD NORTH VIC 3161  
**Birth Details:** 21/12/1980 MALVERN VIC  
**Appointment Date:** 02/06/2020  
**Cease Date:** //

### Secretary

**Name:** VINCENZO FRANK TESORIERO 1EKH88426  
**Address:** 44 HOWITT ROAD CAULFIELD NORTH VIC 3161  
**Birth Details:** 21/12/1980 MALVERN VIC  
**Appointment Date:** 02/06/2020  
**Cease Date:** //

### Petitioner Court Action

**Name:** 623 033 705 FORUM GROUP FINANCIAL SERVICES PTY LTD 031311413  
**Address:** MCGRATHNICOL LEVEL 12 20 MARTIN PLACE SYDNEY NSW 2000  
**Appointment Date:** 31/03/2022  
**Cease Date:** //  
**Abn:** 45 623 033 705

#### - Court Details Affecting Role -

**Type:** Federal **State:** New South Wales  
**Application No:** NSD 226 **Application Year:** 2022

#### - Share Structure -

### Current

**Class:** ORDINARY 1EKH88426  
**Number of Shares Issued:** 100  
**Total Amount Paid / Taken to be Paid:** \$100.00  
**Total Amount Due and Payable:** \$0.00

---

#### **Note:**

For each class of shares issued by a company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

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**- Share/Interest Holding -**

**Current**

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**- Holding -**

<b>Class:</b>	ORD	<b>Number Held:</b>	100	9EAA35296
<b>Beneficially Owned:</b>	Yes	<b>Fully Paid:</b>	Yes	

**- Members -**

<b>Name:</b>	VINCENZO FRANK TESORIERO
<b>Address:</b>	44 HOWITT ROAD CAULFIELD NORTH VIC 3161
<b>Joint Holding:</b>	No

**- External Administration Documents -**

**There are no external administration documents held for this organisation.**

**- Charges -**

**There are no charges held for this organisation.**

**Notes:**

On 30 January 2012, the Personal Property Securities Register (PPS Register) commenced. At that time ASIC transferred all details of current charges to the PPS Registrar. ASIC can only provide details of satisfied charges prior to that date. Details of current charges, or charge satisfied since 30 January 2012 can be found on the PPS Register, [www.ppsr.gov.au](http://www.ppsr.gov.au). InfoTrack may cap documents for on-file searches to 250.

**- Document List -**

**Notes:**

- \* Documents already listed under Registered Charges are not repeated here.
- \* Data from Documents with no Date Processed are not included in this Extract.
- \* Documents with '0' pages have not yet been imaged and are not available via DOCIMAGE. Imaging takes approximately 2 weeks from date of lodgement.
- \* The document list for a current/historical extract will be limited unless you requested ALL documents for this extract.
- \* In certain circumstances documents may be capped at 250.

<b>Form Type</b>	<b>Date Received</b>	<b>Date Processed</b>	<b>No. Pages</b>	<b>Effective Date</b>	<b>Document No.</b>
519	04/04/2022	11/04/2022	3	31/03/2022	031311413
519G	Notification of Application to Wind Up Company Under S. 459p, 462 or 464				
484	25/08/2020	25/08/2020	2	25/08/2020	7EAZ79644
484	Change to Company Details				
484B	Change of Registered Address				
484C	Change of Principal Place of Business (Address)				

484	10/07/2020	10/07/2020	2	10/07/2020	9EAA35296
484N	Change to Company Details Changes to (Members) Share Holdings				
201	02/06/2020	02/06/2020	3	02/06/2020	1EKH88426
201C	Application For Registration as a Proprietary Company				

**- Company Contact Addresses -**

\*\*\* End of Document \*\*\*

## Risk Data

### Summary

Court Actions:	0
Payment Defaults:	0
ASIC Published Notices:	1
Mercantile Enquiries:	0
Critical ASIC Documents:	1
Credit Score:	0
Credit Enquiries - Last 5 Years:	13
Credit Enquiries - Last 12 Months:	12

## Credit Report

### Court Actions

Plaintiff	Action	Action Amount	Action Date	Nature of claim	Proceeding #	Location
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There are currently no court actions registered.

Court action information is supplied to CreditorWatch by the courts. We rely on the courts to provide up to date and accurate information and therefore CreditorWatch cannot guarantee that all actions are included. This report includes action information from the Magistrates courts in NSW, QLD, SA, VIC, and WA.

### Payment Defaults

Default Posted By	Document Type	Amount Outstanding	Date Added	Payment Due Date	Part Payment Made	Default Settled
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There are currently no defaults registered.

### ASIC Published Notices

Date	Title
13-04-2022	NOTICE OF APPLICATION FOR WINDING UP ORDER

### Registered Mercantile Enquiries

Enquiry Date	Mercantile Agent
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There are no mercantile enquiries registered.



# Credit Score

The score is a statistically based score indicating an entity's credit worthiness. The score ultimately ranks entities based on their riskiness and is designed to assist you in making more informed and consistent credit decisions.

The score is based between 0 and 850 index points with a higher score considered lower risk while lower scores are deemed to be riskier entities. It should be used in partnership with your internal credit procedures and policies.

**Credit Rating Grade:** F

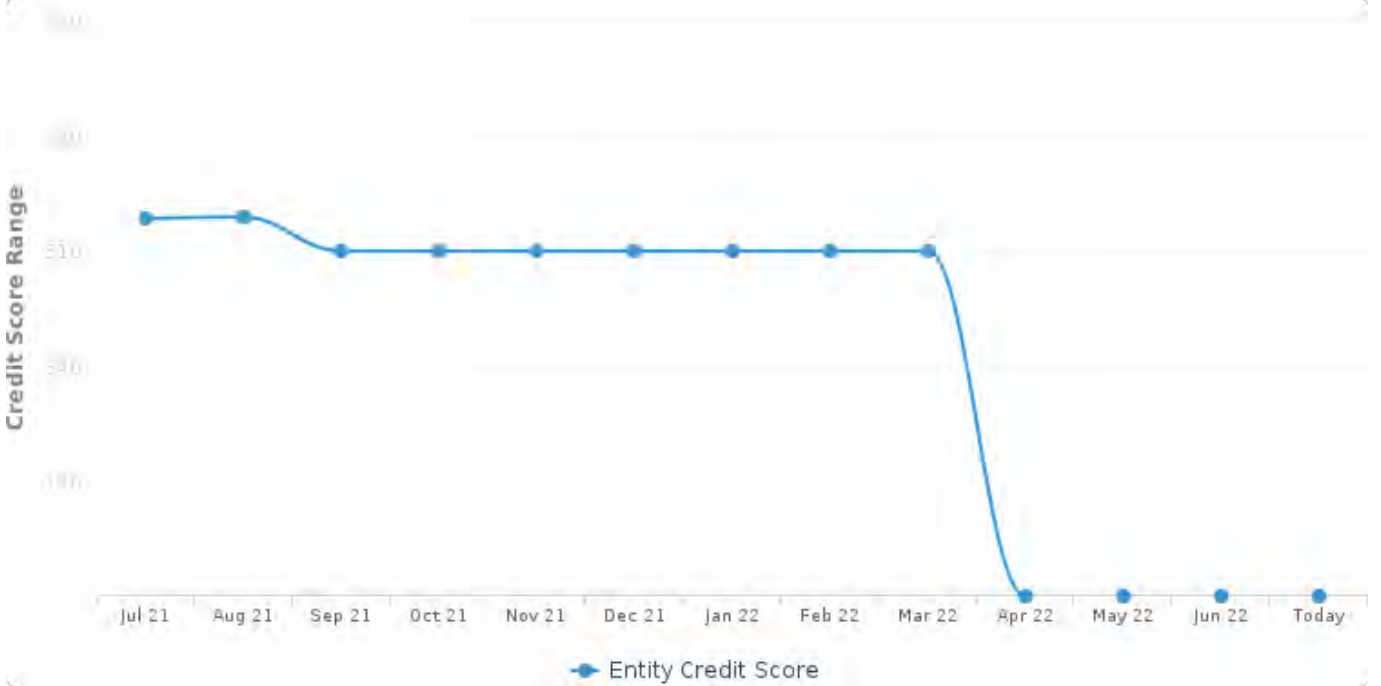
**Risk Level:** Default

**Credit Advice for F rating:** Entity has become insolvent or does not have the ability to trade

Entity has a 100.00% chance of failure within the next 12 months



## Historical Credit Scores



## Recommendations

Credit Rating	Risk Category	Recommendation
A1, A2, A3	Very Low	Entity has a very strong aptitude to meet credit commitments. Extend terms within consideration.
B1, B2	Low	Entity has a strong aptitude to meet credit commitments. Unfavourable economic conditions may lead to a weakened capability to meet financial commitments. Extend terms within consideration.
B3, C1	Neutral	Entity currently has the aptitude to meet credit commitments. Unfavourable business, financial, or economic conditions may impair ability to meet financial commitments. Extend terms and monitor ongoing payment behaviour.
C2	Acceptable	Entity has an adequate aptitude to meet credit commitments. Unfavourable business, financial, or economic conditions will likely impair the capacity or willingness to meet financial commitments. Extend terms, closely monitor ongoing payment behaviour.

## Credit Rating Risk Category Recommendation

C3	Borderline	Entity is vulnerable and the aptitude to meet credit commitments is dependent upon favourable business, financial, and economic conditions. Trade with caution, closely monitor and consider your payment terms.
D1, D2, D3	High	Entity is currently highly vulnerable. COD trading highly recommended.
E	Impaired	Entity is currently highly vulnerable to non-payment and default. Trading eligibility must be considered.
F	Default	Entity has become insolvent or does not have the ability to trade

score v.20150123a

Please note that the score and recommendation should be used in partnership with your company's internal credit procedures and policies. The score should not be used as the sole reason in making a decision about the entity.

## Credit Enquiries

Entity has 13 credit enquiries within the last 5 years.  
Entity has 12 credit enquiries within the last 12 months.

### Credit Enquiries (Last 12 Months)



### Ordered by Industry (Last 12 Months)

Industry	Number of Enquiries
Professional, Scientific and Technical Services (M)	11
Manufacturing (C)	1
<b>TOTAL ENQUIRIES</b>	<b>12</b>

### Ordered by Date (Last 12 Months)

Industry	Date
Professional, Scientific and Technical Services (M)	11-07-2022
Professional, Scientific and Technical Services (M)	24-05-2022

Industry	Date
Professional, Scientific and Technical Services (M)	12-05-2022
Professional, Scientific and Technical Services (M)	03-05-2022
Manufacturing (C)	13-04-2022
Professional, Scientific and Technical Services (M)	31-03-2022
Professional, Scientific and Technical Services (M)	21-03-2022
Professional, Scientific and Technical Services (M)	13-12-2021
Professional, Scientific and Technical Services (M)	05-11-2021
Professional, Scientific and Technical Services (M)	06-08-2021
Professional, Scientific and Technical Services (M)	04-08-2021
Professional, Scientific and Technical Services (M)	14-07-2021

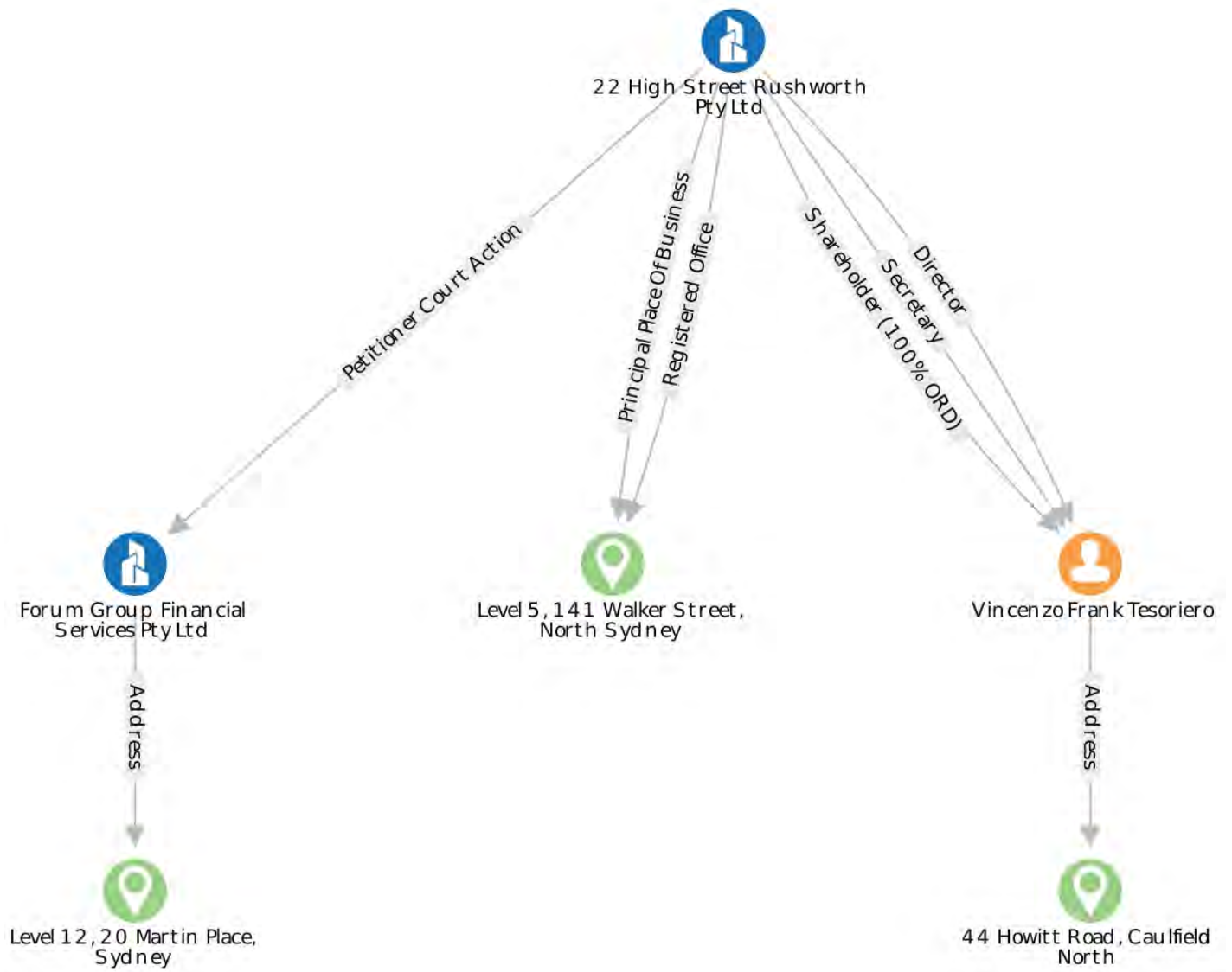
## Historical Timeline

Date	Type	Notes
31-03-2022	ASIC Document	#031311413 Form 519 Notification of Application to Wind Up Company Under S. 459p, 462 or 464
25-08-2020	ASIC Document	#7EAZ79644 Form 484 Change to Company Details Change of Registered Address Change of Principal Place of Business (Address)
10-07-2020	ASIC Document	#9EAA35296 Form 484 Change to Company Details Changes to (Members) Share Holdings
02-06-2020	ASIC Document	#1EKH88426 Form 201 Application For Registration as a Proprietary Company

## Disclaimer

CreditorWatch is committed to ensuring that the information provided is accurate and comprehensive however due to data being received from sources not controlled by CreditorWatch we cannot guarantee that it is complete, verified or free of errors. The information should therefore be used in conjunction with your own investigations and you should not rely solely on this information when making credit or financial decisions. To the extent permitted by law, CreditorWatch will not be held responsible for any errors or omissions therein concerning the information sourced and published in its publications, websites, API or emails.

# REVEAL



InfoTrack shall not be liable to the User in negligence or otherwise in respect of anything done, omitted, modified or done by the User in reliance in whole or in part on the Service including any assistance or demonstration provided to the User by InfoTrack and InfoTrack's liability to the User shall in any event be limited to the amount of the fees charged for the particular service to which such liability relates.

WARNING TO ESTATE AGENTS  
DO NOT USE THIS CONTRACT FOR SALES OF 'OFF THE PLAN' PROPERTIES  
UNLESS IT HAS BEEN PREPARED BY A LEGAL PRACTITIONER

# Contract of Sale of Real Estate\*

Part 1 of the form of contract published by the Law Institute of Victoria Limited and The Real Estate Institute of Victoria Ltd

Property address 22 High Street, Rushworth VIC 3612

The vendor agrees to sell and the purchaser agrees to buy the property, being the land and the goods, for the price and on the terms set out in this contract.

The terms of this contract are contained in the –

- particulars of sale; and
- special conditions, if any; and
- general conditions

in that order of priority.

## SIGNING OF THIS CONTRACT

WARNING: THIS IS A LEGALLY BINDING AGREEMENT. YOU SHOULD READ THIS CONTRACT BEFORE SIGNING IT.

Purchasers should ensure that, prior to signing this contract, they have received –

- a copy of the section 32 statement required to be given by a vendor under section 32 of the *Sale of Land Act 1962* in accordance with Division 2 of Part II of that Act; and
- a copy of the full terms of this contract.

The authority of a person signing –

- under power of attorney; or
- as director of a corporation; or
- as agent authorised in writing by one of the parties –

must be noted beneath the signature.

Any person whose signature is secured by an estate agent acknowledges being given by the agent at the time of signing a copy of the terms of this contract.

SIGNED BY THE PURCHASER:



on 20/09/2019

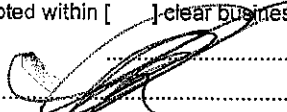
Print name(s) of person(s) signing:

VINCE TESORIERO &/OR NOMINEES

State nature of authority, if applicable:

This offer will lapse unless accepted within [ ] clear business days (3 clear business days if none specified)

SIGNED BY THE VENDOR:



on 20/9/2019

Print name(s) of person(s) signing:

KONER KABO, DIRECTOR

State nature of authority, if applicable:

The DAY OF SALE is the date by which both parties have signed this contract.

## IMPORTANT NOTICE TO PURCHASERS

Cooling-off period (Section 31 of the *Sale of Land Act 1962*)

You may end this contract within 3 clear business days of the day that you sign the contract if none of the exceptions listed below applies to you.

You must either give the vendor or the vendor's agent written notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent to end this contract within this time in accordance with this cooling-off provision.

You are entitled to a refund of all the money you paid EXCEPT for \$100 or 0.2% of the purchase price (whichever is more) if you end the contract in this way.

EXCEPTIONS: The 3-day cooling-off period does not apply if:

- you bought the property at or within 3 clear business days before or after a publicly advertised auction;
- the property is used primarily for industrial or commercial purposes; or
- the property is more than 20 hectares in size and is used primarily for farming; or
- you and the vendor have previously signed a contract for the sale of the same land in substantially the same terms; or
- you are an estate agent or a corporate body.

\*This contract is approved by the Law Institute of Victoria Limited, a professional association within the meaning of the *Legal Profession Act 2004*, under section 53A of the *Estate Agents Act 1980*.

**NOTICE TO PURCHASERS OF PROPERTY OFF-THE-PLAN**

Off-the-plan sales (Section 9AA(1A) of the *Sale of Land Act 1962*)

the contract of sale and the day on which you become the registered proprietor of the lot.

You may negotiate with the vendor about the amount of the deposit moneys payable under the contract of sale, up to 10 per cent of the purchase price.

The value of the lot may change between the day on which you sign the contract of sale of that lot and the day on which you become the registered proprietor.

A substantial period of time may elapse between the day on which you sign

**Particulars of sale**

**Vendor's estate agent**

*FORUM PROPERTY*

Email: *TOOMAN*  
 Tel: Mob: Fax: Ref:

Vendor *0418 319195*

Inglwd Pty Ltd (ACN 622 141 931)  
 Suite 308/838 Collins Street, Docklands VIC 3008

**Vendor's legal practitioner or conveyancer**

Kabo Lawyers  
 Level 23, 360 Collins Street, Melbourne Vic 3000  
 Email: noweld.ali@kabolawyers.com  
 Tel: +61 3 9663 3337 Mob: Fax: +61 3 9663 3334 Ref: NA:190454

**Purchaser**

Name: ..... Vincenzo Frank Tesoriero .....  
 ..... 44 Howwitt Rd, Caulfield North 3186 .....  
 Address: ..... vtesoriero@forumgroup.com.au .....  
 ABN/ACN: .....  
 Email: .....

**Purchaser's legal practitioner or conveyancer**

Name: .. Prakash Patel .....  
 Address: .. Suite 11.03, Level 11, 343 Lt Collins St, Melbourne VIC 3000 .....  
 Email: .. prakash.patel@latep.com.au .....  
 Tel: ..... +61 3 9070 8180 | +61 411 873 159 .....

**Land (general conditions 3 and 9)**

The land is described in the table below –

Certificate of Title reference	being lot	on plan
Volume 08524 Folio 773	1	TP431133N

OR

described in the copy of the Register Search Statement and the document or part document referred to as the diagram location in the Register Search Statement, as attached to the section 32 statement if no title or plan references are recorded in the table above or as described in the section 32 statement if the land is general law land.

Subject always to Special Condition 7.1 the land includes all improvements and fixtures.

**Property address**

The address of the land is: 22 High Street, Rushworth VIC 3612

**Goods sold with the land** (general condition 2.3(f)) (list or attach schedule)

See Special Condition 7.1

**Payment** (general condition 11)

Price \$ 1,350,000.00

Deposit \$ 135,000.00

Balance \$ 1,215,000.00

~~within 7 days from the contract~~ becoming unconditional pursuant to s. 8.6 & 8.7

payable at settlement

**GST** (general condition 13)

The price includes GST (if any) unless the words 'plus GST' appear in this box

Plus GST if Special Conditions 25.1 and/ or 25.3 applies

If this sale is a sale of land on which a 'farming business' is carried on which the parties consider meets requirements of section 38-480 of the GST Act or of a 'going concern' then add the words 'farming business' or 'going concern' in this box

Going concern

If the margin scheme will be used to calculate GST then add the words 'margin scheme' in this box

**Settlement** (general condition 10)

is due on

11/2/2020

unless the land is a lot on an unregistered plan of subdivision, in which case settlement is due on the later of:

- the above date; or
- 14 days after the vendor gives notice in writing to the purchaser of registration of the plan of subdivision.

**Lease** (general condition 1.1)

At settlement the purchaser is entitled to vacant possession of the property unless the words 'subject to lease' appear in this box in which case refer to general condition 1.1.

Subject to lease

If 'subject to lease' then particulars of the lease are :

See Lease attached to Vendor Statement.

**Terms contract** (general condition 23)

If this contract is intended to be a terms contract within the meaning of the Sale of Land Act 1962 then add the words 'terms contract' in this box and refer to general condition 23 and add any further provisions by way of special conditions.

**Loan** (general condition 14)

The following details apply if this contract is subject to a loan being approved.

Lender:

Loan amount

Approval date: 385



This contract does not include any special conditions unless the words 'special conditions' appear in this box

**Special  
conditions**

## Special Conditions

Instructions: It is recommended that when adding special conditions:

- each special condition is numbered;
- the parties initial each page containing special conditions;
- a line is drawn through any blank space remaining on this page; and
- attach additional pages if there is not enough space and number pages accordingly (eg. 5a, 5b, 5c, etc.)

### Special condition 1 – Payment

General condition 11 is replaced with the following:

#### 11. PAYMENT

- 11.1 The purchaser must pay the deposit:
- (a) to the vendor's licensed estate agent; or
  - (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
  - (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.
- 11.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:
- (a) must not exceed 10% of the price; and
  - (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision
- 11.3 The purchaser must pay all money other than the deposit:
- (a) to the vendor, or the vendor's legal practitioner or conveyancer; or
  - (b) in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.
- 11.4 Payments may be made or tendered:
- (a) up to \$1,000 in cash; or
  - (b) by cheque drawn on an authorised deposit taking institution; or
  - (c) by electronic funds transfer to a recipient having the appropriate facilities for receipt.
- However, unless otherwise agreed:
- (d) payment may not be made by credit card, debit card or any other financial transfer system that allows for any chargeback or funds reversal other than for fraud or mistaken payment, and
  - (e) any financial transfer or similar fees or deductions from the funds transferred, other than any fees charged by the recipient's authorised deposit-taking institution, must be paid by the remitter.
- 11.5 At settlement, the purchaser must pay the fees on up to three cheques drawn on an authorised deposit taking institution. If the vendor requests that any additional cheques be drawn on an authorised deposit-taking institution, the vendor must reimburse the purchaser for the fees incurred.
- 11.6 Payment by electronic funds transfer is made when cleared funds are received in the recipient's bank account.
- 11.7 Before the funds are electronically transferred the intended recipient must be notified in writing and given sufficient particulars to readily identify the relevant transaction.
- 11.8 As soon as the funds have been electronically transferred the intended recipient must be provided with the relevant transaction number or reference details.
- 11.9 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any missing or mistaken payment and to recover the missing or mistaken payment.
- 11.10 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate for which an authority under section 9(3) of the *Banking Act 1959 (Cth)* is in force.

### Special condition 2 - Acceptance of title

General condition 12.4 is added:

- 12.4 Where the purchaser is deemed by section 27(7) of the *Sale of Land Act 1962* to have given the deposit release authorisation referred to in section 27(1), the purchaser is also deemed to have accepted title in the absence of any prior express objection to title.

### Special condition 3 – Tax invoice

General condition 13.3 is replaced with the following:

- 13.3 If the vendor makes a taxable supply under this contract (that is not a margin scheme supply) and
- (a) the price includes GST; or
  - (b) the purchaser is obliged to pay an amount for GST in addition to the price (because the price is "plus GST" or under general condition 13.1(a), (b) or (c))

the purchaser is not obliged to pay the GST included in the price, or the additional amount payable for GST, until a tax invoice has been provided.

**Special condition 4 – Adjustments**

General condition 15.3 is added:

- 15.3 The purchaser must provide copies of all certificates and other information used to calculate the adjustments under general condition 15, if requested by the vendor. The Purchaser and Vendor acknowledge and accept that Land Tax will be adjusted from the Day of Sale.

**Special condition 5 – Foreign resident capital gains withholding**

General condition 15A is added:

**15A. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING**

- 15A.1 Words defined or used in Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* have the same meaning in this general condition unless the context requires otherwise.
- 15A.2 Every vendor under this contract is a foreign resident for the purposes of this general condition unless the vendor gives the purchaser a clearance certificate issued by the Commissioner under section 14-220 (1) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The specified period in the clearance certificate must include the actual date of settlement.
- 15A.3 This general condition only applies if the purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* ("the amount") because one or more of the vendors is a foreign resident, the property has or will have a market value not less than the amount set out in section 14-215 of the legislation just after the transaction, and the transaction is not excluded under section 14-215(1) of the legislation.
- 15A.4 The amount is to be deducted from the vendor's entitlement to the contract consideration. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 15A.5 The purchaser must:
- (a) engage a legal practitioner or conveyancer ("representative") to conduct all legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
  - (b) ensure that the representative does so.
- 15A.6 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests and instructions that the representative must:
- (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition if the sale of the property settles;
  - (b) promptly provide the vendor with proof of payment; and
  - (c) otherwise comply, or ensure compliance with, this general condition; despite:
  - (d) any contrary instructions, other than from both the purchaser and the vendor; and
  - (e) any other provision in this contract to the contrary.
- 15A.7 The representative is taken to have complied with the requirements in special condition 15A.6 if:
- (a) the settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd or any other electronic conveyancing system agreed by the parties; and
  - (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 15A.8 Any clearance certificate or document evidencing variation of the amount in accordance with section 14-235(2) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* must be given to the purchaser at least 5 business days before the due date for settlement.
- 15A.9 The vendor must provide the purchaser with such information as the purchaser requires to comply with the purchaser's obligation to pay the amount in accordance with section 14-200 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The information must be provided within 5 business days of request by the purchaser. The vendor warrants that the information the vendor provides is true and correct.
- 15A.10 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.

**Special condition 5A – GST withholding**

[Note: the box should be checked if the property sold is or may be new residential premises or potential residential land, whether or not falling within the parameters of section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*]

General condition 15B is added:

## 15B. GST WITHHOLDING

- 15B.1 Words and expressions defined or used in Subdivision 14-E of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* or in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this general condition unless the context requires otherwise. Words and expressions first used in this general condition and shown in italics and marked with an asterisk are defined or described in at least one of those Acts.
- 15B.2 This general condition 15B applies if the purchaser is required to pay the Commissioner an \*amount in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* because the property is \*new residential premises or \*potential residential land in either case falling within the parameters of that section, and also if the sale attracts the operation of section 14-255 of the legislation. Nothing in this general condition 15B is to be taken as relieving the vendor from compliance with section 14-255.
- 15B.3 The amount is to be deducted from the vendor's entitlement to the contract \*consideration and is then taken to be paid to the vendor, whether or not the vendor provides the purchaser with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 15B.4 The purchaser must
- engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
  - ensure that the representative does so.
- 15B.5 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests relating to the payment of the amount to the commissioner and instructions that the representative must:
- pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition on settlement of the sale of the property;
  - promptly provide the vendor with evidence of payment, including any notification or other document provided by the purchaser to the Commissioner relating to payment; and
  - otherwise comply, or ensure compliance, with this general condition;
- despite:
- any contrary instructions, other than from both the purchaser and the vendor; and
  - any other provision in this contract to the contrary.
- 15B.6 The representative is taken to have complied with the requirements of general condition 15B.5 if:
- settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd or any other electronic conveyancing system agreed by the parties; and
  - the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 15B.7 The purchaser may at settlement give the vendor a bank cheque for the amount in accordance with section 16-30 (3) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*, but only if:
- so agreed by the vendor in writing; and
  - the settlement is not conducted through an electronic settlement system described in general condition 15B.6.
- However, if the purchaser gives the bank cheque in accordance with this general condition 15B.7, the vendor must:
- immediately after settlement provide the bank cheque to the Commissioner to pay the amount in relation to the supply; and
  - give the purchaser a receipt for the bank cheque which identifies the transaction and includes particulars of the bank cheque, at the same time the purchaser gives the vendor the bank cheque.
- 15B.8 The vendor must provide the purchaser with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* at least 14 days before the due date for settlement.
- 15B.9 A party must provide the other party with such information as the other party requires to:
- decide if an amount is required to be paid or the quantum of it, or
  - comply with the purchaser's obligation to pay the amount,
- in accordance with section 14-250 of Schedule 1 of the *Taxation Administration Act 1953 (Cth)*. The information must be provided within 5 business days of a written request. The party providing the information warrants that it is true and correct.
- 15B.10 The vendor warrants that:
- at settlement, the property is not new residential premises or potential residential land in either case falling within the parameters of section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* if the vendor gives the purchaser a written notice under section 14-255 to the effect that the purchaser will not be required to make a payment under section 14-250 in respect of the supply, or fails to give a written notice as required by and within the time specified in section 14-255; and
  - the amount described in a written notice given by the vendor to the purchaser under section

14-255 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) is the correct amount required to be paid under section 14-250 of the legislation.

15B.11 The purchaser is responsible for any penalties or interest payable to the commissioner on account of non-payment or late payment of the amount, except to the extent that:

- (a) the penalties or interest arise from the vendor's failure, including breach of a warranty in general condition 15B.10; or
- (b) the purchaser's reasonable belief that the property is neither new residential premises nor potential residential land requiring the purchaser to pay an amount to the Commissioner in accordance with section 14-250 (1) of Schedule 1 to the *Taxation Administration Act 1953* (Cth)

The vendor is responsible for any penalties or interest payable to the commissioner on account of non-payment or late payment of the amount if either exception applies.

15B.12 This general condition will not merge on settlement.

**Special condition 6 – Service**

General condition 17 is replaced with the following:

**6. SERVICE**

- 6.1 Any document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party.
- 6.2 A document being a cooling off notice under section 31 of the *Sale of Land Act 1962* or a notice under general condition 14.2 (ending the contract if the loan is not approved) may be served on the vendor's legal practitioner, conveyance or estate agent even if the estate agent's authority has formally expired at the time of service.
- 6.3 A document is sufficiently served:
  - (a) personally, or
  - (b) by pre-paid post, or
  - (c) in a manner authorised by law or by the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner, whether or not the person serving or receiving the document is a legal practitioner, or
  - (d) by email.
- 6.4 Any document properly sent by:
  - (a) express post is taken to have been served on the next business day after posting, unless proved otherwise;
  - (b) priority post is taken to have been served on the fourth business day after posting, unless proved otherwise;
  - (c) regular post is taken to have been served on the sixth business day after posting, unless proved otherwise;
  - (d) email is taken to have been served at the time of receipt within the meaning of section 13A of the *Electronic Transactions (Victoria) Act 2000*.
- 6.5 The expression 'document' includes 'demand' and 'notice', and 'service' includes 'give' in this contract.

**Special condition 7 – Notices**

General condition 21 is replaced with the following:

**7. NOTICES**

- 7.1 The vendor is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made before the day of sale and does not relate to periodic outgoings.
- 7.2 The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale and does not relate to periodic outgoings.
- 7.3 The purchaser may enter the property to comply with that responsibility where action is required before settlement.

**Special condition 8 – Electronic conveyancing**

- 8.1 Settlement and lodgment of the instruments necessary to record the purchaser as registered proprietor of the land will be conducted electronically in accordance with the *Electronic Conveyancing National Law*. The parties may subsequently agree in writing that this special condition 8 applies even if the box next to it is not checked. This special condition 8 has priority over any other provision to the extent of any inconsistency.
- 8.2 A party must immediately give written notice if that party reasonably believes that settlement and lodgment can no longer be conducted electronically. Special condition 8 ceases to apply from when such a notice is given.
- 8.3 Each party must:
  - (a) be, or engage a representative who is, a subscriber for the purposes of the *Electronic Conveyancing National Law*,
  - (b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the *Electronic Conveyancing National Law*, and

- (c) conduct the transaction in accordance with the *Electronic Conveyancing National Law*.
- 8.4 The vendor must open the Electronic Workspace ("workspace") as soon as reasonably practicable. The inclusion of a specific date for settlement in a workspace is not of itself a promise to settle on that date. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.
- 8.5 The vendor must nominate a time of the day for locking of the workspace at least 7 days before the due date for settlement.
- 8.6 Settlement occurs when the workspace records that:
  - (a) the exchange of funds or value between financial institutions in accordance with the instructions of the parties has occurred; or
  - (b) if there is no exchange of funds or value, the documents necessary to enable the purchaser to become registered proprietor of the land have been accepted for electronic lodgement.
- 8.7 The parties must do everything reasonably necessary to effect settlement:
  - (a) electronically on the next business day; or
  - (b) at the option of either party, otherwise than electronically as soon as possible – if, after the locking of the workspace at the nominated settlement time, settlement in accordance with special condition 8.6 has not occurred by 4.00 pm, or 6.00 pm if the nominated time for settlement is after 4.00 pm.
- 8.8 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any missing or mistaken payment and to recover the missing or mistaken payment.
- 8.9 The vendor must before settlement:
  - (a) deliver any keys, security devices and codes ("keys") to the estate agent named in the contract,
  - (b) direct the estate agent to give the keys to the purchaser or the purchaser's nominee on notification of settlement by the vendor, the vendor's subscriber or the Electronic Network Operator,
  - (c) deliver all other physical documents and items (other than the goods sold by the contract) to which the purchaser is entitled at settlement, and any keys if not delivered to the estate agent, to the vendor's subscriber or, if there is no vendor's subscriber, confirm in writing to the purchaser that the vendor holds those documents, items and keys at the vendor's address set out in the contract, and give, or direct its subscriber to give, all those documents and items and any such keys to the purchaser or the purchaser's nominee on notification by the Electronic Network Operator of settlement.
- 8.10 The vendor must, at least 7 days before the due date for settlement, provide the original of any document required to be prepared by the vendor in accordance with general condition 6.

## 9. Amendment of General Conditions

The Vendor and Purchaser agree the following General Conditions (GC) are deleted:

- 9.1 GC 5 is deleted
- 9.2 GC 8 is deleted.
- 9.3 GC 10.1(b)(i) is amended by replacing the words "do all things" to "provide all title documents reasonably".
- 9.4 GC 15.2(b)-(d) are deleted;
- 9.5 GC 18 is deleted and replaced by the following:

The purchaser may nominate a substitute or additional transferee, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract. Subject to the following:

- 9.5.1 Any nomination must be completed to the reasonable satisfaction of the Vendor or the Vendor's Legal Practitioner; and
- 9.5.2 The Nomination must occur within fourteen (14) days prior to the settlement date nominate a substituted purchaser ("the Nominee") by delivery to the Vendors Solicitors of:
  - (a) a completed and executed Notice of Nomination in the prescribed form;
  - (b) if the Nominee is or includes a corporation, a guarantee and indemnity executed by the directors and any ultimate holding company (as defined in the *Corporations Act 2001*) of that corporation in the form referred annexed to this Contract; and
  - (c) a copy of the completed and executed Purchaser's declaration in the form approved from time to time by the Commissioner of State Revenue.
- 9.5.3 The Original Purchaser and each of the guarantors must indemnify and keep indemnified the Vendor from and against any claim, penalty or demand in respect of stamp duty or costs arising from the nomination of the Nominee.
- 9.6 GC 20 is deleted and replaced by the following:
  - 9.6.1 In the event the Purchaser is a corporate entity then the person signing on behalf of such company is warranting that he or she is a person authorised to sign on behalf of the company, and further

must execute the form of Guarantee set out in the annexure to this Contract and forming part of this Contract, and immediately procure its execution by the directors of the company.

9.6.2 Any person who is not the Purchaser but executed this Contract for and on behalf of the Purchaser must execute the form of Guarantee set out in the annexure to this Contract and forming part of this Contract.

9.7 GC 24.4 to GC 24.6 is deleted.

9.8 GC 26 is amended by replacing "2%" to "6%".

9.9 GC 28.4(a) is amended by replacing the word "up" with "equal".

#### 10. Vendors Statement

The Purchaser hereby acknowledges that prior to signing this Contract and prior to signing any other documents relating to the sale hereby affected he received a Statement in writing signed by the Vendor pursuant to Section 32 of the *Sale of Land Act, 1962* in the form included in this Contract of Sale.

#### 10A Documents Pertaining to the Sale:

The Purchaser acknowledges and agrees that:

- (a) prior to the Day of Sale, the Vendor has made available documents pertaining to the by way of an electronic dropbox for perusal by the Purchaser (the "Documents Pertaining to the Sale"; and
- (b) the Documents Pertaining to the Sale:
  - (i) shall form part of the documents provided in relation to the sale by the Vendor; and
  - (ii) has been provided by the Vendor in good faith but notwithstanding, the information (including calculations) have not been audited or independently verified; and
- (c) although the Vendor has taken reasonable steps to verify the accuracy of the information contained in the Documents Pertaining to the Sale, the Vendor makes no representation or warranty with respect to the information contained in the Documents Pertaining to the Sale and the Purchaser must conduct its own enquiries and investigations and independently verify the correctness and accuracy of the information; and
- (d) the Purchaser is not entitled to make any claims (including purporting to withhold any portion of the purchase price) or delay or refuse settlement for any reason arising from this Special Condition.

#### 11. Auction Clause

If the property is offered for sale by public auction, then the sale is subject to the vendor's reserve price. The rules for the conduct of the auction shall be as set out in the schedules to the Sale of Land Regulations 2005 or any rules prescribed by regulation which modify or replace those rules.

#### 12. Identity of the land

An omission or mistake in the description, measurements or area of the land does not invalidate the sale and the purchaser cannot make any objection or claim for compensation for any alleged mis-description of the property or any deficiency in its area or measurements; or require the vendor to amend title or pay any cost of amending title.

#### 13. Present Condition

13.1 The Purchaser acknowledges that it has inspected the property; any improvements, structures or buildings; and chattels prior to the day of sale and agrees that it is purchasing and will accept delivery of:

- (a) the Property any improvements, structures or buildings; and chattels in their present condition as at the Day of Sale; and
- (b) chattels, fixtures and improvements that are the property of the Vendor (together the "Fixtures and Goods") pursuant to Special Condition 14.1 in their present condition and state of repair and with any defects (latent or patent or structural) existing at the day of sale.

13.2 The Purchaser agrees that the Vendor is under no liability or obligation to carry out repairs, renovations, alterations or improvements.

13.3 The Purchaser must not make any objection, claim for compensation, delay settlement or payment of the Balance of the Purchase Price or seek to terminate this Contract because of anything in connection with:

- (a) Any of the matters contained in this Special Condition;
- (b) Any loss, damage, defect, dilapidation, infestation or mechanical breakdown which may affect the Property;
- (c) The roof or surface water drainage from the Property being connected to a sewerage service
- (d) The existence or non-existence of an easement or other rights in respect of a service (including air, communication, electricity, garbage, drainage, gas, oil, radio, sewerage, telephone, television or water) for the Property being a joint service or passing through another Property;
- (e) The presence of any latent or patent Contamination (as defined in Special Condition 30.6) in, on or under the Property
- (f) The condition or existence or non-existence of services

**14. Chattels, Fixtures and Improvements**

14.1 At Settlement and upon paying the balance of the Purchase Price, the Purchaser will become the owner of all Fixtures and Goods that:

- (a) are not the property of the Tenant or a third party; and
- (b) are the property of the Vendor.

"Tenant" means any person entitled to occupy the Property or any part thereof pursuant to the Lease as set out in the Vendor Statement.

14.2 The Vendor does not provide any warranty as to the working order or condition of the Fixtures and Goods and is under no liability or obligation to carry out repairs, renovations, alterations or improvements.

14.3 The Tenant's property is expressly excluded from this Contract.

14.4 The Vendor makes no representations as to which (if any) of the fixtures and fittings are the property of the Vendor and which (if any) fixtures or fittings are the property of the Tenant or a third party and the Purchaser represents to the Vendor that the Purchaser has conducted its own investigations and satisfied itself in this regard, prior to entering into this Contract.

**15. Fitness for purpose and compliance with building requirements**

15.1 The Purchaser acknowledges that the Vendor has not nor has anyone on the Vendor's behalf made any representation or warranty as to the fitness for any particular purpose or otherwise of the property or that any structures comply with the current or any building legislation or regulations and the Purchaser expressly releases the Vendor and/or his servants or agents from any claims or demands in those respects and must not call upon the Vendor to bear all or any part of the costs of complying with any building legislation or regulation.

15.2 The Purchaser acknowledges and accepts any improvements, buildings or structures on the Land or Property may be subject to, or require compliance with the Building Act 1993 (VIC) and or the Domestic Building Contracts Act 1995 (VIC) and/or the Building Code of Australia and, or repealed laws under which the improvements, buildings or structures were constructed and any failure to comply will not be deemed to constitute a defect in the Vendor's title and the Purchaser shall not make any requisition, objection or claim or be entitled to compensation or damages from the Vendor; or be entitled to refuse or delays Settlement arising from such matters.

**16. Restrictions on use**

16.1 The Property is sold subject to any restriction as to use imposed by any planning permit, or law or by any authority with power under any legislation to control the use of land. The Vendor gives no warranty as to the use to which the Property may be put, or that the use to which the Vendor has previously put the Property is permissible or permissible only with the consent of any authority; and the Purchaser must obtain any such consent at the Purchaser's own cost. Any such restriction shall not constitute a defect in title or a matter of title or affect the validity of this Contract and the Purchaser shall not make any requisition or objection or claim or be entitled to compensation or damages from the Vendor in those respects.

16.2 Settlement of this Property is not conditional or contingent upon:

- (a) the Purchaser obtaining any consent or approval necessary for the use and occupation of the Property or any part thereof; or
- (b) any other matter contained in this Special Condition.

**17. Compliance with Notices and Orders**

The Purchaser shall assume liability for compliance with all notices or orders (other than those relating to current rates) relating to the property which are made or issued after the date of sale.



**18. Co-Purchasers**

If the Purchaser consists of more than one person each of them are jointly and severally bound by this Contract. Unless inconsistent with the context words involving gender include all genders and the neuter and words importing the singular number include the plural and vice versa.

**18A Purchaser as a Trustee of a Trust:**

If the Purchaser is purchasing the Property as a trustee of a trust:

- (a) the Purchaser must not, in any way prejudice any right of indemnity the Purchaser may have under the trust and warrants that it has a right of indemnity under the trust; and/or
- (b) the Purchaser, by entering into the Contract warrants that it has the power under the trust to enter into this Contract; and/or
- (c) if the trustee is a natural person/s, then the trustee is personally liable under the Contract for the due performance of the Contract and all of the Purchaser's obligations under the Contract as if the trustee was the Purchaser; and/or
- (d) the Purchaser must not allow the variation of a trust or the advance or distribution of capital of the trust or resettlement of any property belonging to the trust.

**19. Stamp duties and GST**

The Purchaser must pay all stamp duties and GST (including penalties and fines) which are payable in connection with this Contract and indemnifies the Vendor against any and all liabilities which result from the fault, delay or omission to pay those duties or any failure to make proper disclosures under the *Duties Act*.

**20. Purchasers buying unequal interests**

- 20.1 If there is more than one purchaser, it is the purchasers' responsibility to ensure this Contract correctly records at the date of sale the proportions in which they are buying the property ("the proportions").
- 20.2 If the proportions recorded in the Transfer differ from those recorded in the Contract it is the purchasers' responsibility to pay any additional duty which may be assessed as a result of the variation.
- 20.3 The purchasers fully indemnify the vendor, the vendor's agent and the vendor's legal practitioner against any claims or demands which may be made against any or all of them in relation to any additional duty payable as a result of the proportions in the Transfer differing from those in the Contract; and all liability and claims whatsoever under the *Duties Act* relating to this Contract.
- 20.4 This Special Condition will not merge on completion.

**21. Deposit Monies**

- 21.1 All deposit monies paid hereunder shall be held and applied in accordance with the provisions of the *Sale of Land Act, 1962* and where there is any inconsistency between this Special Condition and any other provision in this Contract this Special Condition shall prevail over such other provision.
- 21.2 The deposit monies must be paid into the Vendor's Legal Practitioner's trust account.

**22. Foreign Investment**

- 22.1 If the Purchaser is a foreign resident or a non-resident of Australia or is otherwise required to obtain approval or an indication of non-objection under the Foreign Acquisitions and Takeovers Act 1975 or any real estate policy guidelines of the Commonwealth Government and/or the approval or certification of the Treasurer under the Foreign Acquisitions and Takeovers Regulations to enter into this Contract the Purchaser hereby warrants that it has obtained the approval or certification of the Treasurer or has received a statement of non-objection.
- 22.2 If this warranty is untrue in any respect the Purchaser hereby indemnifies the Vendor against any loss which the Vendor suffers as a result of the Vendor having relied on this warranty when entering into this Contract including any consequential loss.
- 22.3 The obligation under this Special Condition does not merge at settlement.

**23. Default**

- 23.1 The Purchaser is responsible for all Loss incurred or suffered directly by the Vendor caused or contributed to by the Purchaser:
  - (a) Breaching any warranty in this Contract; and/or

- (b) Failing to comply with this Contract; and/or
- (c) Committing an act of Bankruptcy or Liquidation as set out in Special Condition 23.3

Including:

- (d) Loss incurred or suffered directly under another Contract of Sale, financing arrangement, construction contract or other agreement relating to the property or Vendor's affairs, including any interests or costs arising from them; and
- (e) Loss of profit and expected profit;
- (f) Legal fees and disbursements on a full indemnity basis and any legal counsel or consultant's fees and expenses at the rate charged to the Vendor incurred in obtaining any advice or representation in relation to a breach or a failure to comply; and
- (g) Additional costs and expenses including interest, discount on bills and borrowing expenses which exceed interest payable this Contract; and
- (h) Any consequential loss regardless of its nature or occurrence;
- (i) Any liability on account of any tax.

23.2. Where appearing in this Special Condition 23, the expression "Loss" encompasses in its meaning any costs, liability, loss, fine, penalty, suit, claim, damage or proceeding, including without being limited to:

- (a) All costs associated with bridging finance to complete the Vendor's purchase of another property;
- (b) Expenses payable by the Vendor under any existing loans secured over the property or other property of the Vendor;
- (c) Accommodation expenses incurred by the Vendor;
- (d) Any commission or other expenses claimed by the Vendor's agents or other representing the Vendor relating to the sale of the property; and
- (e) Penalties and any other expenses payable by the Vendor due to any delay in completion of the purchase of another property.

23.3 For the purposes of this Contract, any of the following (or a combination thereof) shall be considered an act of Bankruptcy or Liquidation:

- (a) The Purchaser or a Guarantor under the Contract:
  - (i) is ordered to be wound up, or is placed in provisional liquidation or is placed in receivership;
  - (ii) enters into a scheme of arrangement for the benefit of its creditors;
  - (iii) resolves to go into liquidation or receivership;
  - (iv) is put into the control of a liquidator, receiver or official manager; or
  - (v) has judgement entered against them for a claim exceeding \$5,000.00;
  - (vi) becomes insolvent, whereby:
    - (A) an order is made or a resolution is passed to wind it up except for reconstruction or amalgamation; and/or
    - (B) a warrant is issued by a court to satisfy a judgement against the Purchaser or a guarantor is not satisfied within 30 days of being issued;
    - (C) the company:
      - (I) goes into liquidation;
      - (II) is placed under official management;
      - (III) has a receiver, including a provisional receiver, or receiver and manager of any of its assets or an administrator appointed.
- (b) the Purchaser, being a natural person becomes bankrupt.

23.4 Any event of default as set out in Special Condition 23.1 and 23.3 will entitle the Vendor to serve a default

notice in accordance with General Condition 27 and should the default not be remedied within the time specified in the default notice, the Vendor shall be entitled to end the Contract and claim for loss and damages pursuant to the terms of this Contract.

- 23.5 In relation to any default, breach of warranty under this Contract or failure to comply with this Contract by the Vendor, to the maximum extent permitted by law, the Vendor shall not, under any circumstances, be liable to the Purchaser for any loss of profits or goodwill, economic, special, indirect or consequential loss or damage, whether in contract, tort (including negligence), for breach of warranty, under indemnity, in equity or otherwise.

#### 24. Going Concern

- 24.1 The Vendor and Purchaser agree that the supply made under this Contract is the supply of a Going Concern and the Purchaser warrants that it is, and will be at settlement, registered for GST (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time), 'GST Act') within the meaning of the GST Act. If this Purchaser's warranty is untrue then the Purchaser must indemnify the Vendor against any loss, damage or liability whatsoever which the Vendor suffers as a result of the Vendor having relied on this warranty.

- 24.2 If the Purchaser nominates a substitute Purchaser to take over the purchase of this Property, such nomination shall be conditional upon the Purchaser causing the nominee to enter into a deed with the Vendor certifying that the nominee and the Vendor intend for the supply made under this Contract to be the supply of a Going Concern and the nomination shall not be finalised until such a time that the deed is executed.

#### 25. GST

- 25.1 The parties have certified pursuant to GC 13.5 that the sale of the Property is a sale of a going concern, but in the event that this supply is a taxable supply, the Purchaser must reimburse the Vendor for GST payable on all adjustments made in favour of the Vendor. For the avoidance of doubt, this means that in the event that the sale of the Property does not qualify as a sale of a going concern, GST will be payable by the Purchaser on the Purchase Price and adjustments after the Vendor and Purchaser allowances have been calculated.

##### 25.2 Price is a GST Exclusive Price

But for this Special Condition 25, the Price expressed in this Contract of Sale is a GST exclusive price.

##### 25.3 Price to be increased for any GST

If any GST is payable by the Vendor in relation to any aspect of its sale of the Property or with respect to anything supplied (or deemed to be supplied) by the Vendor to the Purchaser under this Contract, then the Purchaser must pay the Vendor a sum or sums on account of GST, such that, the Price specified in this Contract ('Original Price') is increased so that the Vendor receives an amount ('Increased Price') which, after subtracting the GST liability of the Vendor on that Increased Price, results in the Vendor retaining the Original Price after payment of that GST liability. The Purchaser must at the same time the taxable supply is made pay the amount of any GST payable in respect of the taxable supply.

##### 25.4 Vendor to act reasonably to minimise any Price increase due to GST

The Vendor will do all things reasonably available to it to minimise any increase in the Price under this Special Condition 25, and to assist the Purchaser to claim on a timely basis any input tax credits the Purchaser may be entitled to claim for the acquisition of the Property.

##### 25.5 Tax Invoice

The Vendor shall on payment by the Purchaser of any GST payment provide to the Purchaser at the time of payment a Tax Invoice for the amount paid.

##### 25.6 Interest, Fines and Penalties

The Purchaser must pay any interest, fine, penalty, additional tax or other sum levied against the Vendor for non-payment of GST that becomes payable as a result of non-payment or delayed payment of GST by the Purchaser. If an amount is payable under this special condition the Purchaser agrees that it cannot claim as a defence that the Vendor has failed to mitigate the Vendor's damages by not paying the GST when it fell due.

#### 26. Leases and Licences

- 26.1 The Purchaser acknowledges as follows:

- (a) The Property is sold subject to the Lease as provided in the Vendor Statement;
- (b) It has inspected and satisfied itself with the terms of the Lease;

- (c) It is not entitled to:
    - (i) raise any objection or make any claims (including purporting to withhold any portion of the purchase price) or delay or refuse settlement for any reason arising out of or in relation to the Lease; and/or
    - (ii) any alleged deficiencies in the Lease; and/or
    - (iii) object to any rights of the Tenant under the Lease;
  - (d) A Tenant may be entitled to remove fixtures, fittings, plans and equipment in accordance with the terms of the Lease.
- 26.2 The Vendor does not warrant or represent that:
- (a) any Lease is binding, valid or enforceable;
  - (b) the Lease comply with all or any applicable laws including the *Retail Leases Act 2003* (VIC) (the "Retail Leases Act");
  - (c) The Retail Leases Act either applies or does not apply to a particular lease regardless of what is stated in the Lease with respect to its applicability; and/or
  - (d) any Lease or tenancy will be in existence or in force at Settlement;
  - (e) the terms of the Lease have been complied with;
  - (f) the Tenant will comply with the Lease after the Day of Sale;
  - (g) at Settlement, the Tenant will not be in breach of its obligations under the Lease;
  - (h) it holds all original counterparts of the relevant Lease documents;
  - (i) there are no disputes under the Lease or the tenant is not in default of the Lease.
- 26.2A Notwithstanding Special Condition 26.2 the Vendor, as at the Day of Sale does not have any knowledge of any Lease being unenforceable or not binding.
- 26.3 The Purchaser must not make any objection, claim for compensation, delay settlement or the payment of the balance of the Purchase Price or seek to terminate this Contract by reason arising from or in connection with this Special Condition.
- 26.4 From Settlement the Purchaser must observe and perform all the Vendor's obligations under the Lease and must indemnify the Vendor against any breach or claims.
- 26.5 If the Lease requires the Purchaser and the Tenant to enter into any deed or agreement or do any act prior to the transfer of the Property, the Purchaser must comply with all such requirement prior to Settlement and the Purchaser shall bear all costs of doing so.
- 26.6 The Purchaser acknowledges and accepts as follows:
- (a) The Vendor may:
    - (i) on or after the Documents Pertaining to the Sale have been made available to the Purchaser; or
    - (ii) on or after the Day of Sale; and
    - (iii) without seeking the prior written approval of the Purchaser:
      - (i) negotiate, execute or complete any lease or licence with respect to the Property which has been previously negotiated but not finalised; and
      - (ii) for any existing lease:
        - (A) enter into, negotiate, grant or consent to:
          - (1) a renewal of lease; and/or
          - (2) transfer of lease; and/or
          - (3) a variation of lease; and/or
          - (4) a sub-lease; and/or
          - (5) an assignment or novation of lease; and/or

- (6) a surrender of lease;
    - (B) Exercise the Vendor's rights as a Landlord or Lessor under a lease and do all such things that are reasonably necessary to enforce and assert the Vendor's rights as a Landlord or Lessor;
    - (C) do all such things that are reasonably necessary or desirable for the management of the lease and the Property.
- 26.7 Notwithstanding any other terms in this Contract of Sale to the contrary, if there is an Agreement for Lease included in the Vendor Statement, the Vendor warrants that:
  - (a) the Vendor will, by Settlement, fulfil the conditions of the Agreement for Lease; and
  - (b) the Property is sold together with the improvements that are to be carried out by the Vendor substantially in accordance with the terms of the Agreement for Lease (the "Vendor's Works"); and
  - (c) the Vendor shall without delay and at its own expense use its best endeavours to carry out the Vendor's Works after the Day of Sale and the Purchaser acknowledges and accepts that the issuing of an occupancy permit for the Vendor's Works shall be conclusive evidence that the Vendor's Works have been completed and the conditions of the Agreement for Lease complied with; and
  - (b) after the Day of Sale, the Vendor must do all such other things that are reasonably necessary to fulfil the conditions of the Agreement for Lease and effect the commencement of the lease;
  - (c) the Vendor will complete the Lease by inserting the Commencement Date (which shall be prior to the Settlement Date) and all such final details that are reasonably required to complete any missing details in the Lease and the Lease Schedule.
- 27. **Guarantees, Warranties, Security Deposits:**
  - 27.1 The Vendor will, at Settlement have assigned (insofar as it is lawfully able to do so) to the Purchaser the benefit of all guarantees, warranties, security deposits, agreements and assurances which relate to the Property. The Vendor is not obliged to procure any consent which is not in the Vendor's possession but may be required to lawfully assign such benefit.
  - 27.2 The Vendor will deliver to the Purchaser at settlement all guarantees, warranties, security deposits, agreements and assurances that are in the Vendor's possession and the Purchaser acknowledges that the Vendor may not hold all such guarantees, warranties, security deposits, agreements and assurances and is not obliged to procure any of them.
  - 27.3 The Purchaser will observe and be bound by the Vendor's obligations under those guarantees, warranties, security deposits, agreements and assurances and must indemnify the Vendor against all loss and claims for any breach of such obligations.
  - 27.4 The Vendor does not warrant or represent that any guarantees, warranties, security deposits, agreements and assurances which relate to the Property are:
    - (a) enforceable; or
    - (b) assignable to the Purchaser; or
    - (c) going to be replaced or substituted by the Tenant in favour of the Purchaser.
  - 27.5 The Purchaser must not make any objection, claim for compensation, delay settlement or the payment of the balance of the Purchase Price or seek to terminate this Contract by reason arising from or in connection with this Special Condition.
- 28. **Rent**
  - 28.1 All Rent payable by the Tenants under the Lease belongs to the Vendor in respect of any period up to and including the Settlement Date. Any Rent payable after Settlement belongs to the Purchaser.
  - 28.2 Any prepaid rent as at Settlement is to be apportioned at Settlement on a pro rata daily basis between the Vendor and the Purchaser. The Purchaser is not entitled to adjust any Rent payable but unpaid for any period.
  - 28.3 The Vendor is entitled to apply any money received from a Tenant prior to Settlement first, in satisfaction of any arrears of Rent or other money payable under the terms of the relevant Lease for periods prior to the Settlement Date and second, in payment of any Rent or other money payable under the relevant Lease for a period after the Settlement.
- 29. **Delay in Settlement: Additional Land Tax**

If:

- (a) There is a delay in settlement; and
- (b) The delay is due or attributable to the Purchaser, the Purchaser's Bank or legal representatives; and
- (c) The delay results in the Contract being completed after 31<sup>st</sup> December in the year that the Contract was supposed to be completed; and
- (d) Additional Land Tax is assessed on the Property

The Purchaser will become liable any such additional Land Tax assessed or levied and must indemnify the Vendor against any claim for such Land Tax being made against the Vendor.

**30. Inspection of property prior to settlement**

- 30.1 The Purchaser is entitled to only one inspection of the premises before the Date of Settlement by making an arrangement with the vendor's real estate agent.
- 30.2 The Vendor or their real estate agent are entitled to set the date and time of the inspection, limit the duration of the inspection and limit the number of people attending the inspection.

**31. Whole agreement**

This contract comprises the whole of the agreement between the parties and it is expressly agreed that no other covenants or promises are implied into this contract or arise between the parties pursuant to any collateral or other agreement and the purchaser shall not be entitled to rely on any representations made by the vendor or their agents except such as are made conditions of this contract. Without limitation, the Purchaser acknowledges that he has not relied on information contained in any brochure, advertisement or marketing material prepared by or on behalf of the Vendor or their agents.

**32. Waiver of breach**

No waiver of any breach of this contract or any of the terms of this contract will be effective unless that waiver is in writing and is signed by the party against whom the waiver is claimed. No waiver of any breach shall operate as a waiver of any other breach or subsequent breach.

**33. Severability**

In the event of any part of this contract being or becoming void or unenforceable or being illegal then that part shall be severed from this contract to the extent that all parts that shall not be or become void, unenforceable or illegal shall remain in full force and effect and be unaffected by such severance. If the ineffective provision is an essential term of this Contract of Sale, the Vendor may at any time terminate this Contract of Sale by serving on the Purchaser not less than seven (7) Business days written notice terminating this Contract of Sale and neither party shall have any claims against the other.

**34. Smoke Alarms**

If the property includes a building to which Regulation 5.14 of the Building Regulations 1994 applies that required the installation of a self-contained smoke alarm complying with AS3786-1993, the Purchaser must comply with the said Regulation and the Purchaser must indemnify and keep the Vendor indemnified against any non-compliance with the said Regulation.

**35. References to statutes**

In this contract a reference to a statute, ordinance, code or other law includes any regulations and other instruments made under it and any consolidations, amendments, re-enactments or equivalent provision in any replacement of any of them occurring at any time before or after the date of this contract.

**36. Rate Certificates**

If requested by the vendor's representative, the purchaser agrees to provide to the vendor's representative copies of all certificates and searches obtained by the purchaser to calculate adjustments. The vendor will not be obliged to provide cheque details until such time as the copies have been received, and the Purchaser will be responsible for all of the Vendor's costs as if it was a default under the Contract.

**37. Environmental Matters**

- 37.1 The Purchaser has purchased the property in its present condition and has conducted its own enquiries and investigation regarding the Property and entered into this Contract on that basis.
- 37.2 The Vendor does not intend to and is not obliged to either remove, encapsulate or otherwise treat any asbestos or Contaminant whatsoever which may be present in or on the improvements, or any fixtures, fittings, or installations in, to, or on the improvements on the Lot or remove, empty, clean or take action in relation to any underground storage tank or tanks or associated pipes valves or appliances or any Contamination in, on, or under the Property.

- 37.3 As from the Settlement Date the Purchaser assumes all risk of loss, damage, liability or injury to any person, corporation or property resulting in any way from the use of the Property or existence or previous existence of any underground storage tank or tanks (including, without limitation, leakage or spillage of oil or other products) or the presence of any asbestos or Contaminant whatsoever which may be in or on or under the improvements or any fixtures, fittings or installation in, to, or on or under the improvements.
- 37.4 As from the Settlement Date, the Purchaser Releases and discharges the Vendor and its successors, assigns, employees and agents from and against all claims, suits, demands, and actions of every description whatsoever and whenever occurring which the Purchaser has, may have, or which may accrue in the future or which, but for the execution of this contract, the Purchaser would or might have had against the Vendor as a result of the presence of any asbestos or contaminant whatsoever in, on or under the Lot and from and against all claims for costs and expenses in respect of such claims, suits, demands and actions.
- 37.5 As from the Settlement date, the Purchase indemnifies and holds harmless the Vendor and its successors, assigns, employees and agents from and against all loss, damage, liability, claims, suits, demands, financial penalties and actions of every description whatsoever and whenever occurring resulting or arising from the presence of any asbestos or contaminant whatsoever in, on or under the Lot (including, without limitation, any costs or expenses incurred in relation to any notice, direction or order issued or made under the *Environment Protection Act 1970* or any other Act or Regulation in force from time to time in Victoria relating to the protection of the environment) and from and against all claims for costs and expenses in respect of such loss, damage, liability, claims, suits, demands and actions.

37.6 In this Special Condition, the following words have the following meaning:

"Containment" or "Contamination" means anything (including a solid, a liquid, a gas, an odour, temperature, sound, vibration or radiation) which makes or may make the Property or the Environment:

- (a) unsafe or unfit for human or animals;
- (b) degraded in any way, including its capacity to support plant life; or
- (c) materially diminished in value; or
- (d) hazardous to health or could otherwise give rise to a risk of non-compliance or breach of any Environmental Law

"Environment" has all meanings given to it or any similar terms in the laws of Victoria and includes all aspects of human surroundings and includes ecosystems and parts of an ecosystem, including people, communities, natural and physical resources and qualities or characteristics of locations, places, locality, biological diversity and aesthetic and cultural conditions.

"Environmental Law" means a law relating to the Environment and includes law governing land use, planning, environmental assessment, heritage, water catchment, air or water pollution, contamination, chemical, hazardous, noxious and dangerous materials and substances, waste, building regulations, occupation health and safety and fire hazards or any similar law relating to the Environment.

**37A Environmental Site Assessment**

- 37A.1 If an Environmental Site Assessment ("the Assessment") is available for the Property, it will be included in the Documents Pertaining to the Sale and/or will form part of the Section 32 Vendor Statement and the Purchaser buys the Property subject to any matters contained therein.
- 37A.2 The Purchaser and their agents must keep all information contained therein strictly confidential and any unauthorised use is strictly prohibited.
- 37A.3 The Purchaser must not, after the signing of the Contract, make any objection, claim for compensation, delay settlement or payment of the balance of the Purchase Price or seek to terminate this Contract by reason of anything contained in Assessment.

**37B Confidentiality:**

- 37B.1 The Purchaser agrees to keep the Assessment confidential and must not disclose any information relating to the Assessment to any third party without the Vendor's prior written consent, except:
- (a) as required by law; or
  - (b) to the Purchaser's professional or financial advisors who are also be under a duty not to disclose the information relating to the Assessment.
- 37B.2 The Vendor must provide its consent under this special condition if:
- (a) the Purchaser wishes to disclose the to a proposed transferee of the Property for the purpose of facilitating a transfer of the Property; and

- (b) the Vendor is satisfied, acting reasonably, that adequate confidentiality measures are in place to preserve the confidentiality of the Assessment and limit disclosure to that purpose only.

**38. Purchaser's Acknowledgments**

38.1 The Purchaser acknowledges and declares that:

- (a) The Purchaser has purchased the Property after conducting a thorough due diligence investigation, including the Purchaser's own satisfactory inspection and inquiry.
- (b) Prior to signing this Contract or any agreement or document in respect of the sale hereby made which is legally binding upon or intended legally to bind the Purchaser, the Purchaser was given adequate and sufficient opportunity to:
  - i. obtain and study and make all relevant inquiries in respect of the planning controls and restrictions;
  - ii. read and understand this Contract, Vendor Statement and the Schedules and appendices; and
  - iii. obtain independent legal advice;

38.2 The Purchaser warrants and covenants that:

- (a) the terms and conditions herein contained constitute the entire and only agreement between the Vendor and the Purchaser;
- (b) other than as specifically recorded in the Contract of Sale, the Purchaser:
  - i. does not rely on any representation or warranty of any nature; and
  - ii. has not been induced to enter into this Contract:
    - (A) by any representation verbal or otherwise;
    - (B) as a consequence of any conduct of any person

which is not set out in this Contract.

**39. Due Diligence Checklist**

The purchaser acknowledges having received a copy of the Due Diligence Checklist prior to signing the Section 32 Vendor's Statement.

**40. Confidentiality:**

40.1 The Purchaser agrees to keep the terms of this Contract confidential and must not disclose any information relating to the Contract to any third party without the Vendor's prior written consent, except:

- (a) as required by law; or
- (b) to the Purchaser's professional or financial advisors who are also be under a duty not to disclose the information relating to the Assessment.

40.2 The Vendor must provide its consent under this special condition if:

- (a) the Purchaser wishes to disclose the to a proposed transferee of the Property for the purpose of facilitating a transfer of the Property; and
- (b) the Vendor is satisfied, acting reasonably, that adequate confidentiality measures are in place to preserve the confidentiality of the Assessment and limit disclosure to that purpose only.

**41. Vendor's Additional Right to Rescission:**

41.1 If at Settlement or any time prior to settlement, any one of the following events have occurred (irrespective of whether any such event pertains to only one of the several persons or companies purchasing jointly), then the Vendor shall be at liberty in the Vendor's sole discretion to terminate this Contract by written notice to the Purchaser whereupon all money paid by the Purchaser to the Stakeholder shall be refunded to the Purchaser without deduction, together with all interest (if any) which has accrued thereon and neither party shall have any claim against the other by virtue of this Contract of such termination:



- 41.2 the Purchaser, or Guarantor being a natural person –
- (a) dies;
  - (b) is sentenced to imprisonment for a term exceeding one month; or
  - (c) is unable to manage his own affairs by reason of unsoundness of mind;
- 41.3 the Purchaser being a company, any or all of the directors and/or principal shareholders of the Purchaser fail or refuse to execute the Guarantee comprising annexed to this Contract.

#### 42. Continuing Obligation

- 42.1 If any right, obligation, duty or liability is capable of being performed after Settlement, that right, duty or liability does not merge at Settlement.
- 42.2 Unless specifically provided otherwise:
- (a) each indemnity in this Contract survives Settlement or termination of this Contract;
  - (b) each indemnity is separate and independent from any other indemnities or obligations; and
  - (c) the Vendor may recover payment under an indemnity in this Contract before it makes the payment in respect of which the indemnity is given.

#### 43. Interpretation

Wherever appearing in this Contract of Sale words importing persons shall include corporations, words importing the singular or plural numbers shall include plural and singular numbers respectively, words importing the masculine gender shall include all genders as the case may require and references to statutes shall include any statutes amending consolidating or replacing the same and any headings are for ease of reference only and shall not affect the construction of this Contract.

#### 44. Vendor's Capacity and Liability

- 44.1 Despite anything else in this Contract, and except for circumstances involving negligence, breach of trust or fraud of the Vendor, the Purchaser acknowledges and accepts that:
- (a) the Vendor has entered into this Contract in its capacity as the trustee of the Vendor trust; and
  - (b) the Vendor is not liable to pay or satisfy any of its obligations under this agreement and will have no liability to the Purchaser except to the extent of the Vendor's right of indemnity out of the assets of the Vendor trust;
  - (c) if the assets of the Vendor's trust are insufficient, the Purchaser will not seek to recover any shortfall by bringing proceedings against the Vendor personally and may not seek the appointment of a liquidator, administrator, receiver or similar person to the Vendor or prove in any liquidation, administration or arrangement of or affecting the Vendor; and
  - (d) the Purchaser waives its rights and releases the Vendor from any personal liability whatsoever in respect of any loss or damage which cannot be paid or satisfied out of the assets of the Vendor trust;
- 44.2 For the purposes of this Special condition "Vendor Trust" shall mean Ingild Trust.

#### 45. Exchange

- 45.1 This Agreement is binding on the parties on the exchange of counterparts. A copy of a counterpart sent by facsimile machine:
- (a) must be treated as an original counterpart;
  - (b) is sufficient evidence of the execution of the original; and
  - (c) may be produced in evidence for all purposes in place of the original.
- 45.2 This Contract may be signed and exchanged electronically.

- (a) It is an essential term of this Contract that the respective parties must have contemporaneously entered into each of the following contracts of sale:
- (i) 124 High Street, Taradale VIC 3447, being the land more particularly described in the Certificates of Title: Volume 09022 Folio 334 and Volume 09962 Folio 570;
  - (ii) 9-13 Main Street Deminallum and 15 Main Street, Deminallum VIC 3325 being the land more particularly described in the Certificates of Title Volume 09896 Folio 550; and Volume 11952 Folio 243; and Volume 07117 Folio 214; and Volume 11952 Folio 242; and Volume 11952 Folio 241; and Volume 11952 Folio 240;
  - (iii) 9 Gregory Street, Ouyen VIC 3490 being the land more particularly described in the Certificate of Title Volume 06684 Folio 757;
  - (iv) 31 Ellerman Street, Dimboola VIC 3414, being the land more particularly described in the Certificate of Title Volume 09600 Folio 250;
  - (v) 22 High Street, Rushworth VIC 3612 being the land more particularly described in the Certificate of Title Volume 08524 Folio 773;
  - (vi) 55 Nolan Street, Maryborough VIC 3465, being the land more particularly described in the Certificate of Title Volume 10186 Folio 509;
  - (vii) 160 Murray Valley Highway, Lake Boga VIC 3584, being the land more particularly described in the Certificates of Title Volume 08866 Folio 430 and Volume 08943 Folio 309;
  - (viii) 89 Betka Road, Mallacoota VIC 3892 being the land more particularly described in the Certificate of Title Volume 09460 Folio 157;
  - (ix) 14 Kirwin Road, Morwell VIC 3840 being the land more particularly described in the Certificate of Title Volume 09936 Folio 084;
  - (x) 2 Cowslip St, Violet Town VIC 3669 being the land more particularly described in the Certificate of Title Volume 10833 Folio 740;
  - (xi) 9/269 275 High Street, Golden Square VIC 3555 being the land more particularly described in the Certificate of Title Volume 11982 Folio 143
- together "The Interdependent Contracts".
- (b) It is an essential term of this Contract that Settlement for each of the Interdependent Contracts must occur contemporaneously.
- (c) If any of the Interdependent Contracts do not settle for any reason whatsoever (other than because of the Vendor's inability to perform the Contract), the Vendor will not be obliged to settle on any of the other Interdependent Contracts. For the avoidance of doubt, Special Condition 46 operates for the sole benefit of the Vendor and only the Vendor may refuse to settle on any or all of the Interdependent Contracts if any of the other Interdependent Contracts cannot settle, pursuant to Additional Special Condition 46. The Vendor cannot rely on this Additional Special Condition 46, if settlement does not occur because of the Vendor's inability to perform the Contract.
- (d) In the event of default of this Contract by the Purchaser, the date of service of the first rescission notice by the Vendor shall be deemed to be the effective date of service for each of the other Interdependent Contracts.
- (e) If the Contract is terminated pursuant to Special Condition 46(d), the Purchaser must not make any Claim against the Vendor.

#### 47. Adjustments

- 47.1 All rates, taxes (excluding Land Tax), assessments, insurance premiums or other periodic outgoing and levies (the "Outgoings") for the Property that are not payable by the Tenant directly to a third party pursuant to the Lease (the "Adjustable Outgoings") are to be adjusted between the Purchaser and the Vendor on the basis that they have or will be paid by the Vendor when they fall due.
- 47.2 If any Outgoing is payable by the Tenant directly to a third party:
- (a) no adjustments are to be made between the Vendor and the Purchaser for those outgoings; and
  - (b) the Vendor is not obliged to pay any such Outgoings or a portion thereof of such Outgoings that remain unpaid at Settlement.
- 47.3 If:

- (a) any Outgoing has been paid by the Vendor; and
- (b) the Tenant is required to reimburse the Vendor (as the landlord) for those Outgoings; and
- (c) at Settlement, such Outgoings have been paid by the Vendor but not yet reimbursed by the Tenant

then, such Outgoings shall be adjusted against the Purchaser at Settlement and the Purchaser may recover such amounts from the Tenant after Settlement as the new landlord under the Lease. For the avoidance of doubt, the term "adjusted against the Purchaser" means that the Purchaser must credit the Vendor with that amount as an adjustment at Settlement, by way of an increase in the amount owed by the Purchaser to the Vendor at Settlement.

- 47.4 If the Property is not separately assessed in respect of any Adjustable Outgoings, then, for the purpose of apportionment and preparing the statement of adjustments, the Outgoings shall be apportioned between the Vendor and the Purchaser in accordance with the Proportion. In this Special Condition, the expression "Proportion" means the same proportion that the Property bears to the whole of the land to which the Outgoings relate.
- 47.5 Notwithstanding any other provisions to the contrary, the Purchaser and Vendor specifically acknowledge and agree that:
- (a) if the Vendor is liable to pay land tax calculated at a premium or surcharge or proportionate basis, land tax will be adjusted and apportioned between the Purchaser and Vendor at such premium or surcharge or proportionate basis, notwithstanding that the Property may not be assessable at that premium or surcharge or proportionate basis based on the Purchaser's holdings; and
  - (b) such land tax will be apportioned between the Vendor and Purchaser such that the vendor is liable for the payment of land tax up to and including the day of sale and the Purchaser is liable for any period thereafter.
- 47.6 Where General Condition 15 is inconsistent with this Special Condition, General Condition 15.2 shall not apply.
- 47.7 If any supplementary rates and/or Outgoings are assessed for the Property after the Day of Sale, the Purchaser accepts sole responsibility for the supplementary rates and/or Outgoings and the Vendor is not obliged to adjust or pay for any part of the supplementary rates and Outgoings.

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48. Purchaser's due diligence

This contract of sale is subject to and conditional upon satisfactory due diligence to the purchaser's satisfaction until close of business on 30<sup>th</sup> September 2019.



# General Conditions

Part 2 being Form 2 prescribed by the *Estate Agents (Contracts) Regulations 2008*

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## Title

### 1. ENCUMBRANCES

- 1.1 The purchaser buys the property subject to:
- (a) any encumbrance shown in the section 32 statement other than mortgages or caveats; and
  - (b) any reservations in the crown grant; and
  - (c) any lease referred to in the particulars of sale.
- 1.2 The purchaser indemnifies the vendor against all obligations under any lease that are to be performed by the landlord after settlement.
- 1.3 In this general condition 'section 32 statement' means a statement required to be given by a vendor under section 32 of the *Sale of Land Act 1962* in accordance with Division 2 of Part II of that Act.

### 2. VENDOR WARRANTIES

- 2.1 The vendor warrants that these general conditions 1 to 28 are identical to the general conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the *Estate Agents (Contracts) Regulations 2008* for the purposes of section 53A of the *Estate Agents Act 1980*.
- 2.2 The warranties in general conditions 2.3 and 2.4 replace the purchaser's right to make requisitions and inquiries.
- 2.3 The vendor warrants that the vendor:
- (a) has, or by the due date for settlement will have, the right to sell the land; and
  - (b) is under no legal disability; and
  - (c) is in possession of the land, either personally or through a tenant; and
  - (d) has not previously sold or granted any option to purchase, agreed to lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
  - (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
  - (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.
- 2.4 The vendor further warrants that the vendor has no knowledge of any of the following:
- (a) public rights of way over the land;
  - (b) easements over the land;
  - (c) lease or other possessory agreement affecting the land;
  - (d) notice or order affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
  - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 2.5 The warranties in general conditions 2.3 and 2.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement required to be given by the vendor under section 32 of the *Sale of Land Act 1962* in accordance with Division 2 of Part II of that Act.
- 2.6 If sections 137B and 137C of the *Building Act 1993* apply to this contract, the vendor warrants that:
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
  - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
  - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the *Building Act 1993* and regulations made under the *Building Act 1993*.
- 2.7 Words and phrases used in general condition 2.6 which are defined in the *Building Act 1993* have the same meaning in general condition 2.6.

### 3. IDENTITY OF THE LAND

- 3.1 An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.
- 3.2 The purchaser may not:
- (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
  - (b) require the vendor to amend title or pay any cost of amending title

#### 4. SERVICES

- 4.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.
- 4.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

#### 5. CONSENTS

The vendor must obtain any necessary consent or licence required for the sale. The contract will be at an end and all money paid must be refunded if any necessary consent or licence is not obtained by settlement.

#### 6. TRANSFER

The transfer of land document must be prepared by the purchaser and delivered to the vendor at least 10 days before settlement. The delivery of the transfer of land document is not acceptance of title. The vendor must prepare any document required for assessment of duty on this transaction relating to matters that are or should be within the knowledge of the vendor and, if requested by the purchaser, must provide a copy of that document at least 3 days before settlement.

#### 7. RELEASE OF SECURITY INTEREST

- 7.1 This general condition applies if any part of the property is subject to a security interest to which the *Personal Property Securities Act 2009 (Cth)* applies.
- 7.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 7.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.
- 7.3 If the purchaser is given the details of the vendor's date of birth under condition 7.2, the purchaser must
- (a) only use the vendor's date of birth for the purposes specified in condition 7.2; and
  - (b) keep the date of birth of the vendor secure and confidential.
- 7.4 The vendor must ensure that at or before settlement, the purchaser receives –
- (a) a release from the secured party releasing the property from the security interest; or
  - (b) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009 (Cth)* setting out that the amount or obligation that is secured is nil at settlement; or
  - (c) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009 (Cth)* indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 7.5 Subject to general condition 7.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property –
- (a) that –
    - (i) the purchaser intends to use predominately for personal, domestic or household purposes; and
    - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the *Personal Property Securities Act 2009 (Cth)*, not more than that prescribed amount; or
  - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.
- 7.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 7.5 if –
- (a) the personal property is of a kind that may be described by a serial number in the Personal Property Securities Register; or
  - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 7.7 A release for the purposes of general condition 7.4(a) must be in writing.
- 7.8 A release for the purposes of general condition 7.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 7.9 If the purchaser receives a release under general condition 7.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 7.10 In addition to ensuring a release is received under general condition 7.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 7.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Property Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.

7.12 The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 7.11

7.13 If settlement is delayed under general condition 7.12, the purchaser must pay the vendor –

- (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
- (b) any reasonable costs incurred by the vendor as a result of the delay –  
as though the purchaser was in default.

7.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 7.14 applies despite general condition 7.1.

7.15 Words and phrases which are defined in the *Personal Property Securities Act 2009 (Cth)* have the same meaning in general condition 7 unless the context requires otherwise.

## 8. BUILDING WARRANTY INSURANCE

The vendor warrants that the vendor will provide at settlement details of any current builder warranty insurance in the vendor's possession relating to the property if requested in writing to do so at least 21 days before settlement.

## 9. GENERAL LAW LAND

9.1 This general condition only applies if any part of the land is not under the operation of the *Transfer of Land Act 1958*.

9.2 The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.

9.3 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.

9.4 The purchaser is taken to have accepted the vendor's title if:

- (a) 21 days have elapsed since the day of sale; and
- (b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.

9.5 The contract will be at an end if:

- (a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and
- (b) the objection or requirement is not withdrawn in that time.

9.6 If the contract ends in accordance with general condition 9.5, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.

9.7 General condition 10.1 should be read, in respect of that part of the land which is not under the operation of the *Transfer of Land Act 1958*, as if the reference to 'registered proprietor' is a reference to 'owner'.

## Money

### 10. SETTLEMENT

10.1 At settlement:

- (a) the purchaser must pay the balance; and
- (b) the vendor must:
  - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
  - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.

10.2 The vendor's obligations under this general condition continue after settlement.

10.3 Settlement must be conducted between the hours of 10.00 a.m. and 4.00 p.m. unless the parties agree otherwise.

### 11. PAYMENT

11.1 The purchaser must pay the deposit:

- (a) to the vendor's licensed estate agent; or
- (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
- (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.

11.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:

- (a) must not exceed 10% of the price; and
- (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.

11.3 The purchaser must pay all money other than the deposit:

(b) in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.

11.4 At settlement, payments may be made or tendered:

- (a) in cash; or
- (b) by cheque drawn on an authorised deposit-taking institution; or
- (c) if the parties agree, by electronically transferring the payment in the form of cleared funds.

11.5 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate in relation to which an authority under subsection 9(3) of the *Banking Act 1959* (Cth) is in force.

11.6 At settlement, the purchaser must pay the fees on up to three cheques drawn on an authorised deposit-taking institution. If the vendor requests that any additional cheques be drawn on an authorised deposit-taking institution, the vendor must reimburse the purchaser for the fees incurred.

## 12. STAKEHOLDING

12.1 The deposit must be released to the vendor if:

- (a) the vendor provides particulars, to the satisfaction of the purchaser, that either-
  - (i) there are no debts secured against the property; or
  - (ii) if there are any debts, the total amount of those debts does not exceed 80% of the sale price; and
- (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and
- (c) all conditions of section 27 of the *Sale of Land Act 1962* have been satisfied.

12.2 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.

12.3 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.

## 13. GST

13.1 The purchaser does not have to pay the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price unless the particulars of sale specify that the price is 'plus GST'. However the purchaser must pay to the vendor any GST payable by the vendor:

- (a) solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or
- (b) if the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on and the supply (or a part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
- (c) if the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.

13.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if the particulars of sale specify that the price is 'plus GST'.

13.3 If the purchaser is liable to pay GST, the purchaser is not required to make payment until provided with a tax invoice, unless the margin scheme applies.

13.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:

- (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
- (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.

13.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':

- (a) the parties agree that this contract is for the supply of a going concern; and
- (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
- (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.

13.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.

13.7 This general condition will not merge on either settlement or registration.

13.8 In this general condition:

- (a) 'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (b) 'GST' includes penalties and interest.

## 14. LOAN

14.1 If the particulars of sale specify that this contract is subject to a loan being approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.

14.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:

- (a) immediately applied for the loan; and
- (b) did everything reasonably required to obtain approval of the loan; and
- (c) serves written notice ending the contract on the vendor within 2 clear business days after the approval date or any later date allowed by the vendor; and
- (d) is not in default under any other condition of this contract when the notice is given.

14.3 All money must be immediately refunded to the purchaser if the contract is ended.

#### 15. ADJUSTMENTS

15.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustment paid and received as appropriate.

15.2 The periodic outgoings and rent and other income must be apportioned on the following basis:

- (a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
- (b) the land is treated as the only land of which the vendor is owner (as defined in the *Land Tax Act 2005*); and
- (c) the vendor is taken to own the land as a resident Australian beneficial owner; and
- (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.

#### Transactional

##### 16. TIME

16.1 Time is of the essence of this contract.

16.2 Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday or bank holiday.

##### 17. SERVICE

17.1 Any document sent by –

- (a) post is taken to have been served on the next business day after posting, unless proved otherwise;
- (b) email is taken to have been served at the time of receipt within the meaning of section 13A of the *Electronic Transactions (Victoria) Act 2000*.

17.2 Any demand, notice, or document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party. It is sufficiently served if served on the party or on the legal practitioner or conveyancer:

- (a) personally; or
- (b) by pre-paid post; or
- (c) in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner; or
- (d) by email.

17.3 This general condition applies to the service of any demand, notice or document by or on any party, whether the expression 'give' or 'serve' or any other expression is used.

##### 18. NOMINEE

The purchaser may nominate a substitute or additional transferee, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

##### 19. LIABILITY OF SIGNATORY

Any signatory for a proprietary limited company purchaser is personally liable for the due performance of the purchaser's obligations as if the signatory were the purchaser in the case of a default by a proprietary limited company purchaser.

##### 20. GUARANTEE

The vendor may require one or more directors of the purchaser to guarantee the purchaser's performance of this contract if the purchaser is a proprietary limited company.

##### 21. NOTICES

The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale that does not relate to periodic outgoings. The purchaser may enter the property to comply with that responsibility where action is required before settlement.

##### 22. INSPECTION

The purchaser and/or another person authorised by the purchaser may inspect the property at any reasonable time during the 7 days preceding and including the settlement day.



## 23. TERMS CONTRACT

23.1 If this is a 'terms contract' as defined in the *Sale of Land Act 1962*:

- (a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the *Sale of Land Act 1962*; and
- (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.

23.2 While any money remains owing each of the following applies:

- (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
- (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
- (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
- (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
- (e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;
- (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;
- (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
- (h) the purchaser must observe all obligations that affect owners or occupiers of land;
- (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

## 24. LOSS OR DAMAGE BEFORE SETTLEMENT

24.1 The vendor carries the risk of loss or damage to the property until settlement.

24.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.

24.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 24.2, but may claim compensation from the vendor after settlement.

24.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 24.2 at settlement.

24.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.

24.6 The stakeholder must pay the amounts referred to in general condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

## 25. BREACH

A party who breaches this contract must pay to the other party on demand:

- (a) compensation for any reasonably foreseeable loss to the other party resulting from the breach; and
- (b) any interest due under this contract as a result of the breach.

## Default

### 26. INTEREST

Interest at a rate of 2% per annum plus the rate for the time being fixed by section 2 of the *Penalty Interest Rates Act 1983* is payable on any money owing under the contract during the period of default, without affecting any other rights of the offended party.

### 27. DEFAULT NOTICE

27.1 A party is not entitled to exercise any rights arising from the other party's default, other than the right to receive interest and the right to sue for money owing, until the other party is given and fails to comply with a written default notice.

27.2 The default notice must:

- (a) specify the particulars of the default; and
- (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of the notice being given-
  - (i) the default is remedied; and
  - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

## 28. DEFAULT NOT REMEDIED

28.1 All unpaid money under the contract becomes immediately payable to the vendor if the default has been made by the purchaser and is not remedied and the costs and interest are not paid.

28.2 The contract immediately ends if:

- (a) the default notice also states that unless the default is remedied and the reasonable costs and interest are paid, the contract will be ended in accordance with this general condition; and
- (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.

28.3 If the contract ends by a default notice given by the purchaser:

- (a) the purchaser must be repaid any money paid under the contract and be paid any interest and reasonable costs payable under the contract; and
- (b) all those amounts are a charge on the land until payment; and
- (c) the purchaser may also recover any loss otherwise recoverable.

28.4 If the contract ends by a default notice given by the vendor:

- (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
- (b) the vendor is entitled to possession of the property; and
- (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
  - (i) retain the property and sue for damages for breach of contract; or
  - (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
- (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
- (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.

28.5 The ending of the contract does not affect the rights of the offended party as a consequence of the default.

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## Due diligence checklist

### What you need to know before buying a residential property

Before you buy a home, you should be aware of a range of issues that may affect that property and impose restrictions or obligations on you, if you buy it. This checklist aims to help you identify whether any of these issues will affect you. The questions are a starting point only and you may need to seek professional advice to answer some of them. You can find links to organisations and web pages that can help you learn more, by visiting the [Due diligence checklist page on the Consumer Affairs Victoria website](http://consumer.vic.gov.au/duediligencechecklist) (consumer.vic.gov.au/duediligencechecklist).

#### Urban living

##### *Moving to the inner city?*

High density areas are attractive for their entertainment and service areas, but these activities create increased traffic as well as noise and odours from businesses and people. Familiarising yourself with the character of the area will give you a balanced understanding of what to expect.

##### *Is the property subject to an owners corporation?*

If the property is part of a subdivision with common property such as driveways or grounds, it may be subject to an owners corporation. You may be required to pay fees and follow rules that restrict what you can do on your property, such as a ban on pet ownership.

#### Growth areas

##### *Are you moving to a growth area?*

You should investigate whether you will be required to pay a growth areas infrastructure contribution.

#### Flood and fire risk

##### *Does this property experience flooding or bushfire?*

Properties are sometimes subject to the risk of fire and flooding due to their location. You should properly investigate these risks and consider their implications for land management, buildings and insurance premiums.

## Rural properties

### *Moving to the country?*

If you are looking at property in a rural zone, consider:

Is the surrounding land use compatible with your lifestyle expectations? Farming can create noise or odour that may be at odds with your expectations of a rural lifestyle.

Are you considering removing native vegetation? There are regulations which affect your ability to remove native vegetation on private property.

Do you understand your obligations to manage weeds and pest animals?

### *Can you build new dwellings?*

Does the property adjoin crown land, have a water frontage, contain a disused government road, or are there any crown licences associated with the land?

### *Is there any earth resource activity such as mining in the area?*

You may wish to find out more about exploration, mining and quarrying activity on or near the property and consider the issue of petroleum, geothermal and greenhouse gas sequestration permits, leases and licences, extractive industry authorisations and mineral licences.

## Soil and groundwater contamination

### *Has previous land use affected the soil or groundwater?*

You should consider whether past activities, including the use of adjacent land, may have caused contamination at the site and whether this may prevent you from doing certain things to or on the land in the future.

## Land boundaries

### *Do you know the exact boundary of the property?*

You should compare the measurements shown on the title document with actual fences and buildings on the property, to make sure the boundaries match. If you have concerns about this, you can speak to your lawyer or conveyancer, or commission a site survey to establish property boundaries.

## **Planning controls**

### ***Can you change how the property is used, or the buildings on it?***

All land is subject to a planning scheme, run by the local council. How the property is zoned and any overlays that may apply, will determine how the land can be used. This may restrict such things as whether you can build on vacant land or how you can alter or develop the land and its buildings over time.

The local council can give you advice about the planning scheme, as well as details of any other restrictions that may apply, such as design guidelines or bushfire safety design. There may also be restrictions – known as encumbrances – on the property's title, which prevent you from developing the property. You can find out about encumbrances by looking at the section 32 statement.

### ***Are there any proposed or granted planning permits?***

The local council can advise you if there are any proposed or issued planning permits for any properties close by. Significant developments in your area may change the local 'character' (predominant style of the area) and may increase noise or traffic near the property.

## **Safety**

### ***Is the building safe to live in?***

Building laws are in place to ensure building safety. Professional building inspections can help you assess the property for electrical safety, possible illegal building work, adequate pool or spa fencing and the presence of asbestos, termites, or other potential hazards.

## **Building permits**

### ***Have any buildings or retaining walls on the property been altered, or do you plan to alter them?***

There are laws and regulations about how buildings and retaining walls are constructed, which you may wish to investigate to ensure any completed or proposed building work is approved. The local council may be able to give you information about any building permits issued for recent building works done to the property, and what you must do to plan new work. You can also commission a private building surveyor's assessment.

### ***Are any recent building or renovation works covered by insurance?***

Ask the vendor if there is any owner-builder insurance or builder's warranty to cover defects in the work done to the property.



## **Utilities and essential services**

### ***Does the property have working connections for water, sewerage, electricity, gas, telephone and internet?***

Unconnected services may not be available, or may incur a fee to connect. You may also need to choose from a range of suppliers for these services. This may be particularly important in rural areas where some services are not available.

## **Buyers' rights**

### ***Do you know your rights when buying a property?***

The contract of sale and section 32 statement contain important information about the property, so you should request to see these and read them thoroughly. Many people engage a lawyer or conveyancer to help them understand the contracts and ensure the sale goes through correctly. If you intend to hire a professional, you should consider speaking to them before you commit to the sale. There are also important rules about the way private sales and auctions are conducted. These may include a cooling-off period and specific rights associated with 'off the plan' sales. The important thing to remember is that, as the buyer, you have rights.

---

INGLWD PTY LTD (ACN 622 141 931)

**AND**

**AND**

---

**DEED OF GUARANTEE OF CONTRACT**

---

---

**THIS DEED** dated      day of                      2019

**BETWEEN**    **INGLWD Pty Ltd** of Suite 308/838 Collins Street, Docklands, Victoria  
**(Vendor)**

**AND**                      of **(Purchaser)**

**AND**                      of **(Guarantor)**

IN CONSIDERATION of the vendor having at the request of the guarantor agreed to sell the land described within the contract of sale to the purchaser, the Guarantor, for himself/herself and their respective executors and administrators **JOINTLY AND SEVERALLY COVENANTS AND GUARANTEES** to the vendor (and the Vendor's assigns) the due and punctual payment by the purchaser of the purchase money and interest payable thereon as detailed in the contract of sale; and all other money that is payable or may become payable pursuant thereto, the money hereby secured, **AND ALSO** the due performance and observance by the purchaser of all and singular the covenants provisions and stipulations contained or implied in the contract of sale and on the part of the purchaser to be performed and observed **AND** to pay on demand by the Vendor the whole of the deposit money, residue of purchase money, interest and other monies which shall then be due and payable to the Vendor and hereby indemnifies the and agrees to keep the Vendor indemnified against all loss and damage, costs, charges and expenses whatsoever which the Vendor may incur by reason of any default by the Purchaser.

**THE GUARANTOR HEREBY EXPRESSLY ACKNOWLEDGES AND DECLARES** that it has examined the contract of sale and has access to a copy thereof and further that this guarantee is given upon and subject to the following conditions:

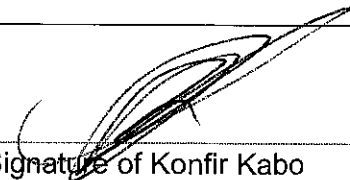
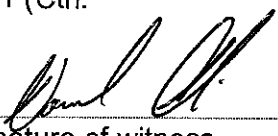
1. The vendor shall have the fullest liberty without affecting this guarantee to postpone for any time and from time to time the exercise of all or any of the powers rights authorities and discretions conferred by the contract of sale on it and to exercise the same at any time and in any manner and either to enforce or forbear to enforce the covenants for payment of the money owing or any other covenants contained or implied in the contract of sale or any other remedies or securities available to the vendor and the guarantor shall not be released by any exercise by the vendor of its liberty with reference to the matters aforesaid or any of them or by any time being given to the purchaser or by any other thing whatsoever which by contract of sale or any other remedies or securities available to operation of law would but for this provision have the effect of so releasing the guarantor;
2. This guarantee shall be a continuing guarantee and shall not be considered as wholly discharged by the payment at any time hereafter of any part of the money hereby secured or by any settlement of account, intervening payment or by any other matter or thing whatsoever except the payment by the purchaser of the whole of the purchase price, interest and other money payable by the purchasers under the contract of sale;

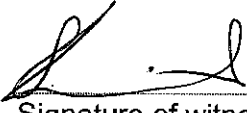



- 
3. This guarantee shall not be determined by the liquidation of the guarantor and shall bind the successors or assignees of the guarantor;
  4. This guarantee shall not be affected or prejudiced by any variation or modification of the terms of contract of sale except that the contract as varied or modified shall thereafter be deemed to be the contract of sale referred to herein or by the transfer or partial transfer of any part of the land to the purchaser pursuant to the terms thereof;
  5. This guarantee shall not affect or be affected by any or any further security now or hereafter taken by the vendor or by any loss by the vendor of such collateral or other security or otherwise any of the money at any time owing under the contract of sale to the vendor or by any laches or mistake on the part of the vendor;
  6. This guarantee and indemnity shall at all times be valid and enforceable against the guarantor notwithstanding:
    - (a) That the contract for the repayment of the money hereby secured is void or cannot be legally enforced against the purchaser for reasons arising out of an act, omission, state or condition of the purchaser;
    - (b) That the purchaser was prohibited, whether expressly or by implication, by law contract or otherwise from entering into the contract of sale or was without the capacity or under some legal disability in respect thereof; and
    - (c) That the vendor had or ought to have had knowledge of any matters referred to in this clause.
  7. Until the vendor shall have received all money payable to it under the contract of sale the guarantor shall not be entitled on any grounds whatsoever to claim the benefit of any security for the time being held by the vendor or either directly or indirectly to claim or receive the benefit of any dividend or payment on the winding up of the purchaser and in the event of the purchaser going into liquidation or assigning its assets for the benefit of its creditors or making a deed or arrangement or a composition in satisfaction of its debts or a scheme of arrangement of its affairs the guarantor shall not be entitled to prove or claim in the liquidation of the purchaser in competition with the vendor so as to diminish any dividend or payment which but for such proof the vendor would be entitled to receive out of such winding up and the receipt of any dividend or other payment which the vendor may receive from such winding up shall not prejudice the right of the vendor to recover from the guarantor to the full amount of this guarantee the money due to the vendor. The guarantor further covenants with the vendor after the purchaser shall have gone into liquidation to pay to the vendor all sums of money received by the guarantor for credit of any account of the purchaser and for which the guarantor may in any liquidation or official management of the purchaser be obliged to account or may in its discretion so account;
  8. Any demand or notice to be made upon the guarantor by or on behalf of the vendor hereunder shall be deemed to be duly made if the same be in writing and signed by a director of the vendor or by any solicitor purporting to act for the vendor or by any other person duly authorised by the directors of the vendor to make such demand on behalf of the vendor and the same may be left at or sent through the post in a prepaid registered letter addressed to the guarantor at its address as hereinbefore provided;

- 
9. The guarantor shall be deemed to be jointly and severally liable with the purchaser, in lieu of being merely a surety for it, for the payment of the purchase money interest and all other money if any payable pursuant to the contract in the performance of the obligations herein contained and it shall not be necessary for the vendor to make any claim or demand on or to take any action or proceedings against the purchaser before calling on the guarantor to pay the money or to carry out and perform the obligations herein contained;
  10. This guarantee shall enure for the benefit of the vendor and its successors and transferees;
  11. For the consideration aforesaid and as a separate and coverable covenant the guarantor HEREBY AGREES to indemnify the vendor not only by reason of the non-payment by the purchaser of all money payable or that may become payable under the contract of sale but also in respect of all costs charges and expenses whatsoever which the vendor may incur by reason of any default on the part of the purchaser in relation to the contract of sale; and
  12. Notwithstanding anything else herein contained, but subject to clauses 6 and 11 hereof, the guarantor shall not be liable, in any circumstances whatsoever, for any amount whatsoever in excess of the amount for which the purchaser shall be liable under the contract and upon payment to the vendor of all money payable as aforesaid under the contract and any money payable under clauses 6 and 11 hereof, if any, whether by the purchaser or by the guarantor or otherwise then this guarantee shall be at an end and the guarantor shall be forever freed and discharged from all of its provisions.
  13. This Guarantee shall be a continuing Guarantee and Indemnity and shall not be released by:
    - (a) any neglect or forbearance on the part of the Vendor in enforcing payment of any of the monies payable under the Contract of Sale; and/or
    - (b) the performance or observance of any of the agreements, obligations or conditions under the Contract of Sale; and/or
    - (c) by time given to the Purchaser for any such payment, performance or observance; and/or
    - (d) by reason of the Vendor assigning its rights under the said Contract of Sale; and/or
    - (e) by any other thing which under the law relating to sureties would, but for this provision, have the effect of releasing the Guarantors, their executors or administrators.

**EXECUTED AS A DEED**

<b>EXECUTED BY INGLWD PTY LTD</b> (ACN 622 141 931) in accordance with Section 127 of the Corporations Act 2001 (Cth:	) )	 Signature of Konfir Kabo Sole Director/Sole Company Secretary
 Signature of witness		
<u>NDWEID ALI</u> Print name of witness		

<b>SIGNED SEALED &amp; DELIVERED BY</b> in the presence of:	)	<u>VINCE TESORIERO &amp;/OR NOMINEES</u>
 Signature of witness	)	 Signature
<u>SARAH BECKWITH</u> Print name of witness		


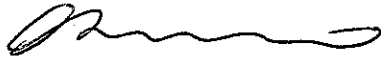
<b>SIGNED SEALED &amp; DELIVERED BY</b> in the presence of:	)	
Signature of witness	)	Signature
Print name of witness		

# Vendor Statement

The vendor makes this statement in respect of the land in accordance with section 32 of the *Sale of Land Act 1962*.

This statement must be signed by the vendor and given to the purchaser before the purchaser signs the contract. The vendor may sign by electronic signature.

The purchaser acknowledges being given this statement signed by the vendor with the attached documents before the purchaser signed any contract.

<b>Land</b>	22 High Street, Rushworth VIC 3612	
<b>Vendor's name</b>	INGLWD Pty Ltd (ACN 622 141 931)	<b>Date</b> 8/9/19
<b>Vendor's signature</b>		
<b>Purchaser's name</b>	VINCE TESORIERO &/OR NOMINEES	<b>Date</b> 20/09/19
<b>Purchaser's signature</b>		
<b>Purchaser's name</b>		<b>Date</b> / /
<b>Purchaser's signature</b>		

## Important Notice to Purchasers:

The use to which you propose the Property may be prohibited by Planning or Building Regulation or any other similar restriction applying to the locality or may require consent or permits from the Council or other Authority. You should conduct proper enquiries and investigation on the permitted use of the Property before committing to buy. You should also check with the appropriate authorities as to the cost, availability and adequacy of services not connected to the Property.

The Property may be located in an area where commercial agricultural production activities may affect your enjoyment of the Property. You should conduct proper enquiries and investigation of the possible amenity and other impacts from the nearby properties and agricultural processes and practices conducted there.

## 1. FINANCIAL MATTERS

### 1.1 Particulars of any Rates, Taxes, Charges or Other Similar Outgoings (and any interest on them)

- (a) Are contained in the attached certificate/s. Any amounts referred to and contained therein relating to fees, charges or outgoings may become subject to a Goods and Services Tax ("GST");
- (b) At settlement, the Purchaser will become liable for their share of the outgoings, any supplementary valuation, any special land tax, any street construction or drainage scheme or any contributions or levies;
- (c) The future land tax payable by the Purchaser may depend on the use, level of land ownership, and nature of the Purchaser.
- (d) The Purchaser may be liable for any Owners Corporation fees and levies, council and water rates, land tax and water consumption and any similar charges, after settlement.

### 1.2 Particulars of any Charge (whether registered or not) imposed by or under any Act to secure an amount due under that Act, including the amount owing under the charge

	To	
--	----	--

Other particulars (including dates and times of payments):

### 1.3 Terms Contract

This section 1.3 only applies if this vendor statement is in respect of a terms contract where the purchaser is obliged to make 2 or more payments (other than a deposit or final payment) to the vendor after the execution of the contract and before the purchaser is entitled to a conveyance or transfer of the land.

Not Applicable.

### 1.4 Sale Subject to Mortgage

This section 1.4 only applies if this vendor statement is in respect of a contract which provides that any mortgage (whether registered or unregistered), is NOT to be discharged before the purchaser becomes entitled to possession or receipts of rents and profits.

Not Applicable.

## 2. INSURANCE

### 2.1 Damage and Destruction

This section 2.1 only applies if this vendor statement is in respect of a contract which does NOT provide for the land to remain at the risk of the vendor until the purchaser becomes entitled to possession or receipt of rents and profits.

Not Applicable.

### 2.2 Owner Builder

This section 2.2 only applies where there is a residence on the land that was constructed by an owner-builder within the preceding 6 years and section 137B of the Building Act 1993 applies to the residence.

Not Applicable.

## 3. LAND USE

### 3.1 Easements, Covenants or Other Similar Restrictions

- (a) A description of any easement, covenant or other similar restriction affecting the land (whether registered or unregistered): -

Is in the attached copies of title documents.

- (b) Particulars of any existing failure to comply with that easement, covenant or other similar restriction are:

To the best of the vendors knowledge there is no existing failure to comply with the terms of any easement, covenant or other similar restriction.

The Purchaser should note that:

There may be sewers, drains, water pipes, underground and/or overhead electricity cables, underground and/or overhead telephone cables and underground gas pipes (if applicable) laid outside registered easements.

### 3.2 Road Access

There is NO access to the property by road if the square box is marked with an 'X'

### 3.3 Designated Bushfire Prone Area

The land is in a designated bushfire prone area within the meaning of regulations made under the *Building Act 1993* if the square box is marked with an 'X'

### 3.4 Planning Scheme

Attached is a certificate with the required specified information.

## 4. NOTICES

### 4.1 Notice, Order, Declaration, Report or Recommendation

Particulars of any notice, order, declaration, report or recommendation of a public authority or government department or approved proposal directly and currently affecting the land, being a notice, order, declaration, report, recommendation or approved proposal of which the vendor might reasonably be expected to have knowledge:

If applicable, are contained in the attached certificates and or statements.

### 4.2 Agricultural Chemicals

There are NO notices, property management plans, reports or orders in respect of the land issued by a government department or public authority in relation to livestock disease or contamination by agricultural chemicals affecting the ongoing use of the land for agricultural purposes. However, if this is not the case, the details of any such notices, property management plans, reports or orders, are as follows:

Other than as disclosed in the attached certificates, none to the knowledge of the Vendor. However, the Vendor has no means of knowing the decisions of public authorities unless communicated to the Vendor.

### 4.3 Compulsory Acquisition

The particulars of any notices of intention to acquire that have been served under section 6 of the *Land Acquisition and Compensation Act 1986* are as follows:

Other than as disclosed in the attached certificates, none to the knowledge of the Vendor. However, the Vendor has no means of knowing the decisions of public authorities unless communicated to the Vendor.

## 5. BUILDING PERMITS

Particulars of any building permit issued under the *Building Act 1993* in the preceding 7 years (required only where there is a residence on the land):

Are contained in the attached certificate. The Vendor makes no representation that the improvements on the land sold or any alterations or additions thereto comply with the requirements of responsible authorities. The Purchaser should inspect the Property hereby sold, and save as is otherwise expressly provided, the Purchaser is purchasing the Property in its present condition and state of repair.

## 6. OWNERS CORPORATION

This section 6 only applies if the land is affected by an owners corporation within the meaning of the *Owners Corporations Act 2006*.

Not Applicable.

## 7. GROWTH AREAS INFRASTRUCTURE CONTRIBUTION ("GAIC")

Not applicable.

## 8. SERVICES

The services which are marked with an 'X' in the accompanying square box are NOT connected to the land:

Electricity supply <input type="checkbox"/>	Gas supply <input checked="" type="checkbox"/>	Water supply <input type="checkbox"/>	Sewerage <input checked="" type="checkbox"/>	Telephone services <input type="checkbox"/>
---	--	---------------------------------------	--	---

Services may be available to the Property even if they are noted as "Not Connected". Even if Services are noted as "Connected" may nevertheless be necessary to arrange connection and supply in the Purchaser's name after settlement from the relevant authorities. The Purchaser is responsible for any such costs and the Purchaser should satisfy itself of the cost, availability and adequacy of such services. The Vendor reserves the right to disconnect any or all of the services prior to settlement. The Purchaser will be responsible for any costs for the re-connection of these services.

## 9. TITLE

Attached are copies of the following documents:

9.1 (a) Registered Title

9.2 A Register Search Statement and the document, or part of a document, referred to as the 'diagram location' in that statement which identifies the land and its location.

## 10. SUBDIVISION

### 10.1 Unregistered Subdivision

This section 10.1 only applies if the land is subject to a subdivision which is not registered.

Not Applicable.

### 10.2 Staged Subdivision

This section 10.2 only applies if the land is part of a staged subdivision within the meaning of section 37 of the *Subdivision Act 1988*.

Not Applicable.

### 10.3 Further Plan of Subdivision

This section 10.3 only applies if the land is subject to a subdivision in respect of which a further plan within the meaning of the *Subdivision Act 1988* is proposed.

Not Applicable.

## 11. DISCLOSURE OF ENERGY INFORMATION

*(Disclosure of this information is not required under section 32 of the Sale of Land Act 1962 but may be included in this vendor statement for convenience.)*

Details of any energy efficiency information required to be disclosed regarding a disclosure affected building or disclosure area affected area of a building as defined by the *Building Energy Efficiency Disclosure Act 2010 (Cth)*

- (a) to be a building or part of a building used or capable of being used as an office for administrative, clerical, professional or similar based activities including any support facilities; and
- (b) which has a net lettable area of at least 2000m<sup>2</sup>; (but does not include a building under a strata title system or if an occupancy permit was issued less than 2 years before the relevant date);

Not Applicable.

## 12. DUE DILIGENCE CHECKLIST

*(The Sale of Land Act 1962 provides that the vendor or the vendor's licensed estate agent must make a prescribed due diligence checklist available to purchasers before offering land for sale that is vacant residential land or land on which there is a residence. The due diligence checklist is NOT required to be provided with, or attached to, this vendor statement but the checklist may be attached as a matter of convenience.)*

Is attached.

## 13. ATTACHMENTS

*(Any certificates, documents and other attachments may be annexed to this section 13)*

*(Additional information may be added to this section 13 where there is insufficient space in any of the earlier sections)*

*(Attached is an "Additional Vendor Statement" if section 1.3 (Terms Contract) or section 1.4 (Sale Subject to Mortgage) applies)*

1. Title Information
2. Planning Information
3. Building Information
4. Rates Information
5. Agreement for Lease and Lease
6. Environmental Site Assessment





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**REGISTER SEARCH STATEMENT (Title Search) Transfer of  
Land Act 1958**

Page 1 of 1

VOLUME 08524 FOLIO 773

Security no : 124078919511C  
Produced 20/08/2019 02:47 PM

**LAND DESCRIPTION**

Lot 1 on Title Plan 431133N (formerly known as part of Crown Allotment 1  
Section 5 Township of Rushworth Parish of Moora).  
PARENT TITLE Volume 02992 Folio 228  
Created by instrument C089298 23/11/1964

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Sole Proprietor  
INGLWD PTY LTD of SUITE 308 838 COLLINS STREET DOCKLANDS VIC 3008  
AR574275K 19/10/2018

**ENCUMBRANCES, CAVEATS AND NOTICES**

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section  
24 Subdivision Act 1988 and any other encumbrances shown or entered on the  
plan set out under DIAGRAM LOCATION below.

**DIAGRAM LOCATION**

SEE TP431133N FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 22 HIGH STREET RUSHWORTH VIC 3612

DOCUMENT END



## Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Land Use Victoria.

Document Type	<b>plan</b>
Document Identification	<b>TP431133N</b>
Number of Pages (excluding this cover sheet)	<b>1</b>
Document Assembled	<b>20/08/2019 14:50</b>

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The document is invalid if this cover sheet is removed or altered.

TITLE PLAN		EDITION 1	TP 431133N
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<p><b>Location of Land</b></p> <p>Parish: MOORA          Township: RUSHWORTH          Section: 5          Crown Allotment: 1 (PT)          Crown Portion:</p> <p><b>Last Plan Reference:</b>          Derived From: VOL 8524 FOL 773          Depth Limitation: NIL</p>	<p><b>Notations</b></p> <p>ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN</p>
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<p><b>Description of Land / Easement Information</b></p>	<p>THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT</p> <p>COMPILED: 09/05/2000          VERIFIED: CL</p>
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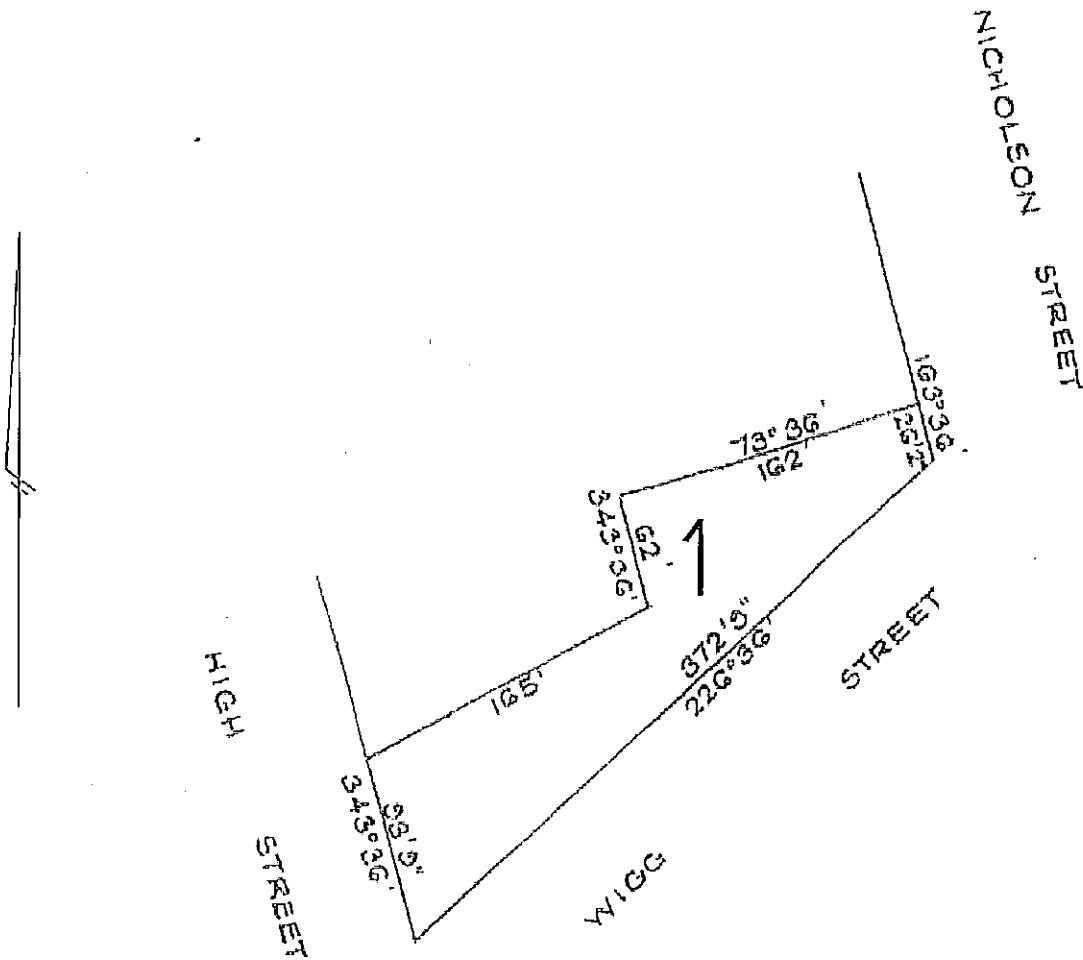


TABLE OF PARCEL IDENTIFIERS	
WARNING: Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962	
PARCEL 1 = CA 1 (PT)	428



vic.gov.au



## Property Report

from [www.land.vic.gov.au](http://www.land.vic.gov.au) on 20 August 2019 02:46 PM

**Address:** 22 HIGH STREET RUSHWORTH 3612

**Land and Plan Number:** Lot 1 TP431133

**Standard Parcel Identifier (SPI):** 1\TP431133

**Local Government (Council):** CAMPASPE **Council Property Number:** 10394

**Factory Reference:** VicRoads 598 E11

This property is in a designated bushfire prone area. Special bushfire construction requirements apply. Planning provisions may apply.

For further information about the building control system and building in bushfire prone areas can be found in the Building Commission section of the Victorian Building Authority website [www.vba.vic.gov.au](http://www.vba.vic.gov.au)

### State Electorates

**Legislative Council:** NORTHERN VICTORIA

**Legislative Assembly:** EUROA

### Utilities

**Drinking Water Corporation:** Goulburn-Murray Water

**Wastewater Water Corporation:** Goulburn Valley Water

**Stormwater:** outside drainage boundary

**Electricity Supplier:** POWERCOR (Information about [choosing an electricity retailer](#))

### Planning Zone Summary

**Planning Zone:** [TOWNSHIP ZONE \(TZ\)](#)

[SCHEDULE TO THE TOWNSHIP ZONE \(TZ\)](#)

**Planning Overlay:** [HERITAGE OVERLAY \(HO\)](#)

[HERITAGE OVERLAY SCHEDULE \(HO301\)](#)

Planning scheme data last updated on 19 August 2019.

The planning scheme sets out policies and requirements for the use, development and protection of land.

This report provides information about the zone and overlay provisions that apply to the selected land.

For further information about the State and local policy, particular, general and operational provisions of the local planning scheme that may affect the use of this land can be obtained by contacting the local council or by visiting [Planning Schemes Online](#)

This report is NOT a Planning Certificate issued pursuant to Section 199 of the *Planning and Environment Act 1987*.

It does not include information about exhibited planning scheme amendments, or zonings that may affect the land.

To obtain a Planning Certificate go to [Titles and Property Certificates](#)

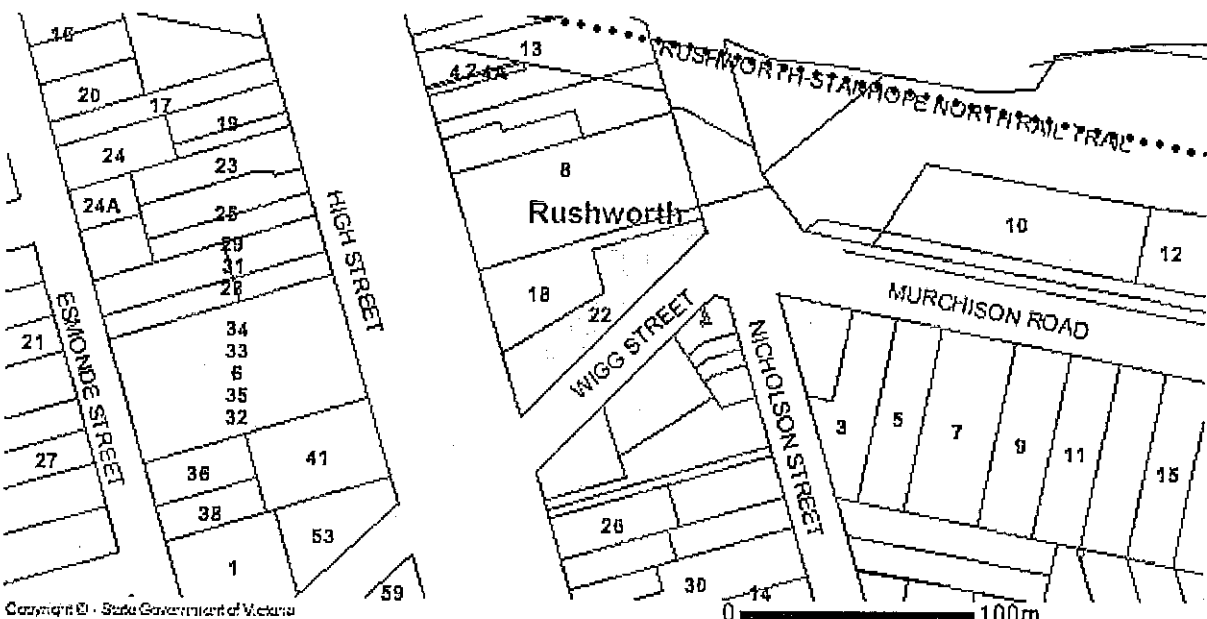
This Planning Property Report includes separate maps of zones and overlays

For details of surrounding properties, use this service to get the Reports for properties of interest

To view planning zones, overlay and heritage information in an interactive format visit [Planning Maps Online](#)

For other information about planning in Victoria visit [www.planning.vic.gov.au](http://www.planning.vic.gov.au)

## Area Map



- +++++ Railway
- Tram
- River, stream
- Lake, waterbody

## Extract of EPA Priority Site Register

Page 1 of 1



\*\*\*\* Delivered by the LANDATA® System, Department of Environment, Land, Water & Planning \*\*\*\*

### PROPERTY INQUIRY DETAILS:

STREET ADDRESS: 22 HIGH STREET

SUBURB: RUSHWORTH

MUNICIPALITY: CAMPASPE

MAP REFERENCES: Vicroads Eighth Edition, State Directory, Map 46 Reference B3

DATE OF SEARCH: 20th August 2019

### PRIORITY SITES REGISTER REPORT:

A search of the Priority Sites Register for the above map references, corresponding to the address given above, has indicated that this site is not listed on, and is not in the vicinity of a site listed on the Priority Sites Register at the above date.

### IMPORTANT INFORMATION ABOUT THE PRIORITY SITES REGISTER:

You should be aware that the Priority Sites Register lists only those sites for which EPA has requirements for active management of land and groundwater contamination. Appropriate clean up and management of these sites is an EPA priority, and as such, EPA has issued either a:

Clean Up Notice pursuant to section 62A, or a

Pollution Abatement Notice pursuant to section 31A or 31B

of the Environment Protection Act 1970 on the occupier of the site to require active management of these sites.

The Priority Sites Register does not list all sites known to be contaminated in Victoria. A site should not be presumed to be free of contamination just because it does not appear on the Priority Sites Register.

Persons intending to enter into property transactions should be aware that many properties may have been contaminated by past land uses and EPA may not be aware of the presence of contamination. EPA has published information advising of potential contaminating land uses. Municipal planning authorities hold information about previous land uses, and it is advisable that such sources of information also be consulted.

For sites listed on the Priority Sites Register, a copy of the relevant Notice, detailing the reasons for issue of the Notice, and management requirements, is available on request from EPA for \$8 per Notice.

For more information relating to the Priority Sites Register, refer to EPA contaminated site information bulletin: Priority Sites Register Contaminated Land Audit Site Listing (EPA Publication 735). For a copy of this publication, copies of relevant Notices, or for more information relating to sites listed on the Priority Sites Register, please contact EPA as given below:

Environment Protection Authority Victoria  
GPO Box 4395 Melbourne Victoria 3001  
Tel: 1300 372 842

20 August 2019



Kabo Lawyers C/- InfoTrack  
c/- Landata  
GPO BOX 527  
MELBOURNE VIC 3001

6 Parliament Place  
East Melbourne  
VIC 3002

Email: [conservation@nattrust.com.au](mailto:conservation@nattrust.com.au)  
Web: [www.nationaltrust.org.au](http://www.nationaltrust.org.au)

T 03 9656 9818

Re: Vol 8524 Folio 773, 22 HIGH STREET, RUSHWORTH VIC 3612  
Reference: 32437482-027-0

Dear Sir/Madam,

With reference to your recent enquiry, I write to advise that as of this date the above property is **not classified** by the National Trust.

Please note that the property may have been identified on the following statutory registers:

- Victorian Heritage Register—Heritage Victoria, Department of Environment, Land, Water and Planning  
<https://www.heritage.vic.gov.au/> or 03 9938 6894
- Victorian Aboriginal Heritage Register—Department of Premier and Cabinet  
[vahr@dpc.vic.gov.au](mailto:vahr@dpc.vic.gov.au) or 1800 762 003
- Municipal planning controls—contact the Statutory Planning department of the Shire of Campaspe
- World, National and Commonwealth Heritage Lists—Department of the Environment  
<http://www.environment.gov.au/topics/heritage/heritage-places>

For further information about classification on the National Trust Register visit:  
<https://www.nationaltrust.org.au/services/heritage-register-vic/>

For enquiries please contact the National Trust Conservation & Advocacy Team on 03 9656 9818.

Yours faithfully,

Felicity Watson  
Advocacy Manager  
National Trust of Australia (Victoria)

HERITAGE  
VICTORIA  
HERITAGE  
VICTORIA  
HERITAGE  
VICTORIA

## CERTIFICATE

Pursuant to Section 58 of the *Heritage Act 2017*

Kabo Lawyers

CERTIFICATE NO:  
32437482

PROPERTY ADDRESS:  
22 HIGH STREET RUSHWORTH

PARCEL DESCRIPTION:  
Lot 1 TP431133N

1. The place or object is not included in the Heritage Register.
2. The place is not in a World Heritage Environs Area.
3. The place or object is not subject to an interim protection order.
4. A nomination has not been made for inclusion of the place or object in the Heritage Register.
5. The place or object is not being considered for inclusion in the Heritage Register.
6. The site is not included in the Heritage Inventory.
7. A repair order is not in force in respect of the place or object.
8. There is not an order of the Supreme Court under Division 3 of Part 10 in force in respect of the place or object.
9. There is not a Governor in Council declaration made under section 227 in force against the owner of the place or object.
10. There is not a court order made under section 229 in force against a person in respect of the place or object.
11. There are no current proceedings for a contravention of this Act in respect of the place or object.
12. There has not been a rectification order issued in respect of the place or object.



**Ainsley Thompson**  
**Heritage Officer (Registry)**  
(as delegate for Steven Avery, Executive Director, Heritage Victoria, pursuant to the instrument of delegation)

**DATED: 20 August 2019**

*Note: This Certificate is valid at the date of issue.*





\*\*\*\* Delivered by the LANDATA® System, Department of Environment, Land, Water & Planning \*\*\*\*

## ROADS PROPERTY CERTIFICATE

The search results are as follows:

Kabo Lawyers C/- InfoTrack  
135 King St  
SYDNEY 2000  
AUSTRALIA

Client Reference: 60528

NO PROPOSALS. As at the 20th August 2019, VicRoads has no approved proposals requiring any part of the property described in your application. You are advised to check your local Council planning scheme regarding land use zoning of the property and surrounding area.

This certificate was prepared solely on the basis of the Applicant-supplied address described below, and electronically delivered by LANDATA®.

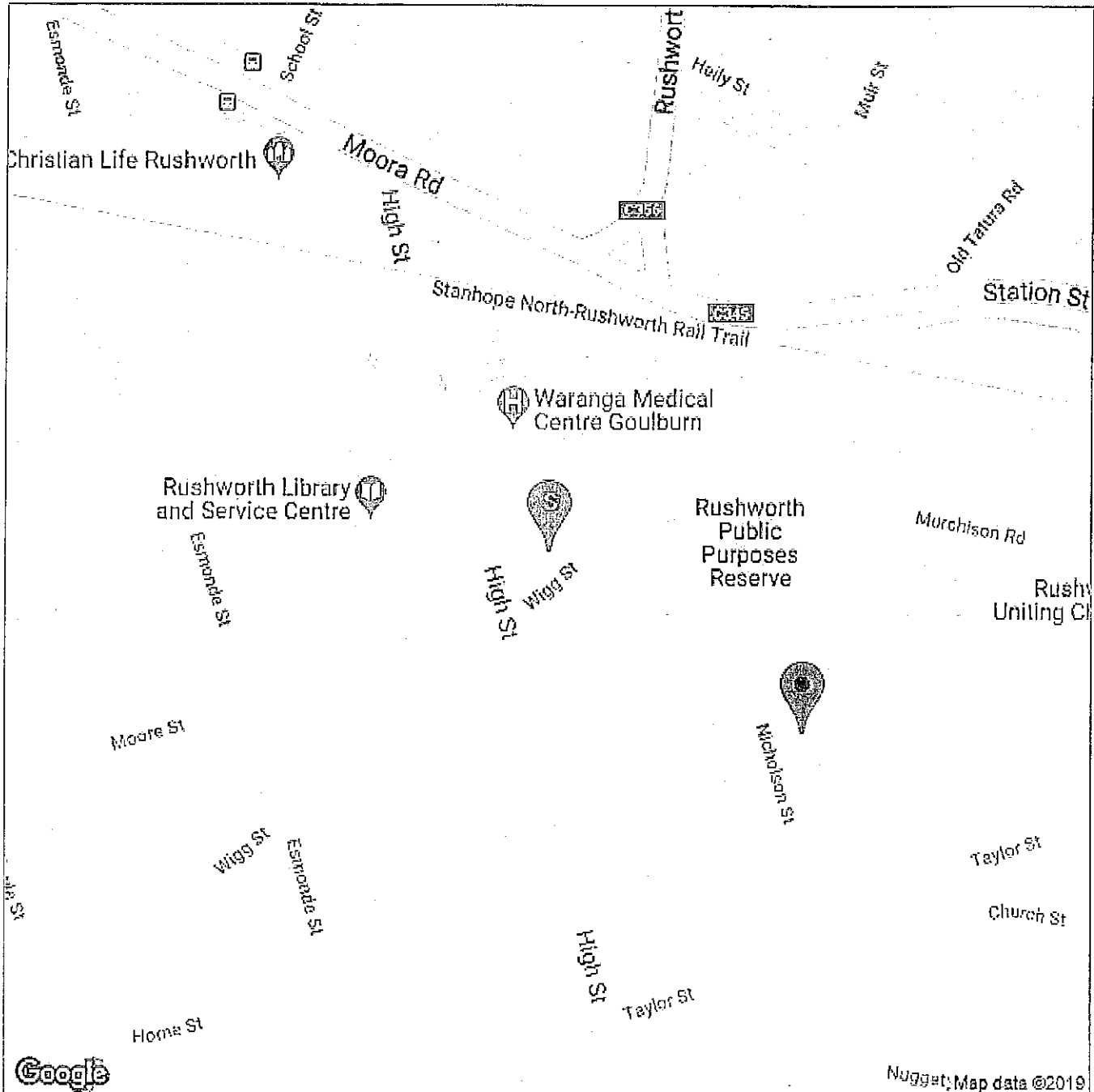
22 HIGH STREET, RUSHWORTH 3612  
SHIRE OF CAMPASPE

This certificate is issued in respect of a property identified above. VicRoads expressly disclaim liability for any loss or damage incurred by any person as a result of the Applicant incorrectly identifying the property concerned.

Date of issue: 20th August 2019

Telephone enquiries regarding content of certificate: 13 11 71


# Development Application Report



## 22 HIGH STREET, RUSHWORTH VIC 3612

Matter 190454 Council Campaspe


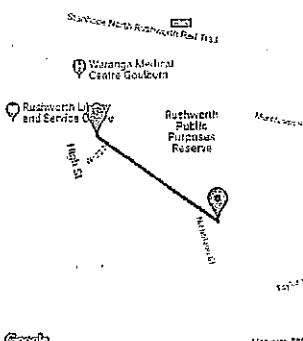
 **1**  
Applications

 **10/08/2017**  
Last Update

 **400m**  
Range

Whilst efforts are made to ensure the accuracy of data and the contents of Development Application reports, InfoTrack cannot guarantee the accuracy or completeness of information contained therein. Results are currently limited to the first 200 applications based on proximity to the property. By using the Development Application product and Development Application reports, you agree to indemnify fully InfoTrack (and its related body corporate, directors, officers, agents, employees and contractors) from any claim, action, demand, loss or damages made or incurred directly or indirectly by you or any third party arising out of or relating to your conduct, your use of the Development Application product or Development Application reports.

# Summary

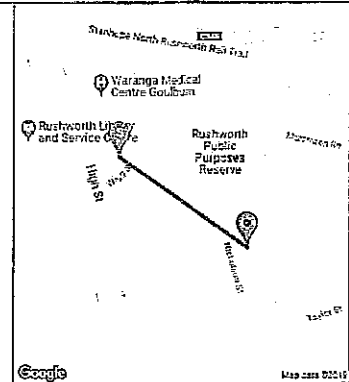
<p> <b>11 NICHOLSON STREET, RUSHWORTH VIC 3612</b></p> <p>Distance 179m Applications 1</p>	
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# Details



**11 NICHOLSON STREET, RUSHWORTH VIC  
3612**

Distance 179m  
Applications 1



**S108207S**

# PLANNING PROPERTY REPORT



www.planning.vic.gov.au on 20 August 2019 02:46 PM

## PROPERTY DETAILS

Address: 22 HIGH STREET RUSHWORTH 3612  
 Land and Plan Number: Lot 1 TP431133  
 Standard Parcel Identifier (SPI): 1\TP431133  
 Local Government Area (Council): CAMPASPE [www.campaspe.vic.gov.au](http://www.campaspe.vic.gov.au)  
 Council Property Number: 10394  
 Planning Scheme: Campaspe [planning-schemes.delwp.vic.gov.au/schemes/campaspe](http://planning-schemes.delwp.vic.gov.au/schemes/campaspe)  
 VicRoads Reference: VicRoads 598 E11

## UTILITIES

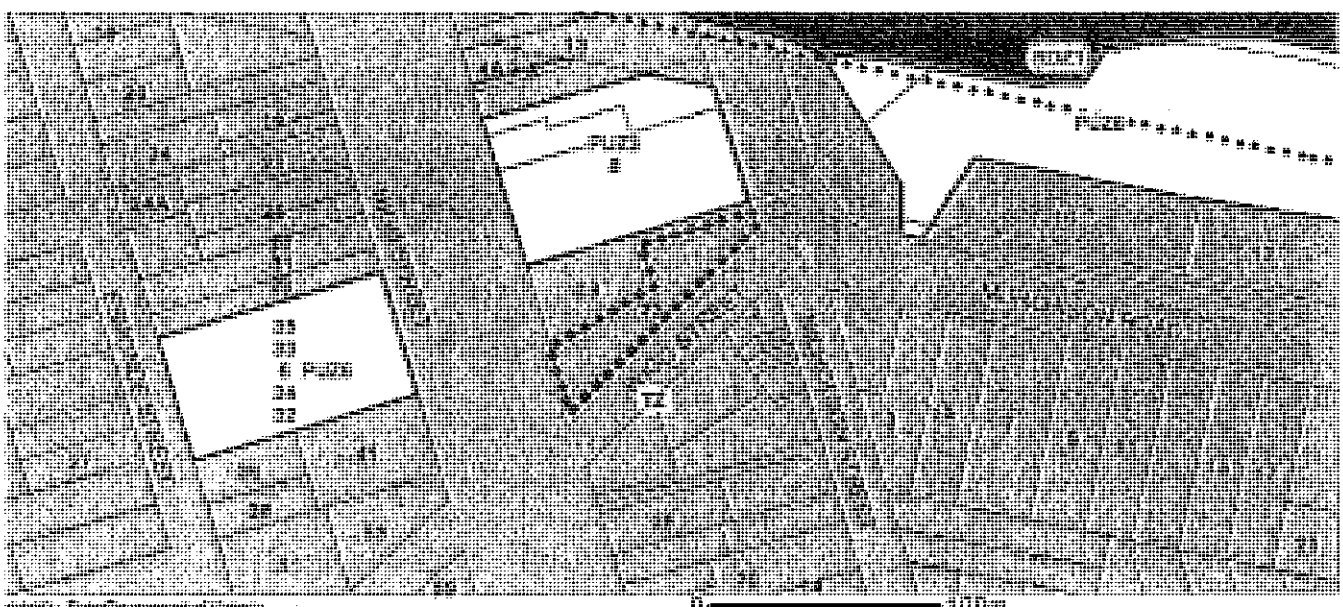
Water Corporation: Goulburn-Murray Water  
 Sewer Water Corporation: Goulburn Valley Water  
 Stormwater: outside drainage boundary  
 Gas Distributor: POWERCOR

## STATE ELECTORATES

Legislative Council: NORTHERN VICTORIA  
 Legislative Assembly: EUROA

## Planning Zones

TOWNSHIP ZONE (TZ)  
SCHEDULE TO THE TOWNSHIP ZONE (TZ)



- PPRZ - Public Park & Recreation
- RDZ1 - Road - Category 1
- PUZ3 - Public Use - Health Community
- TZ - Township
- PUZ6 - Public Use - Local Government

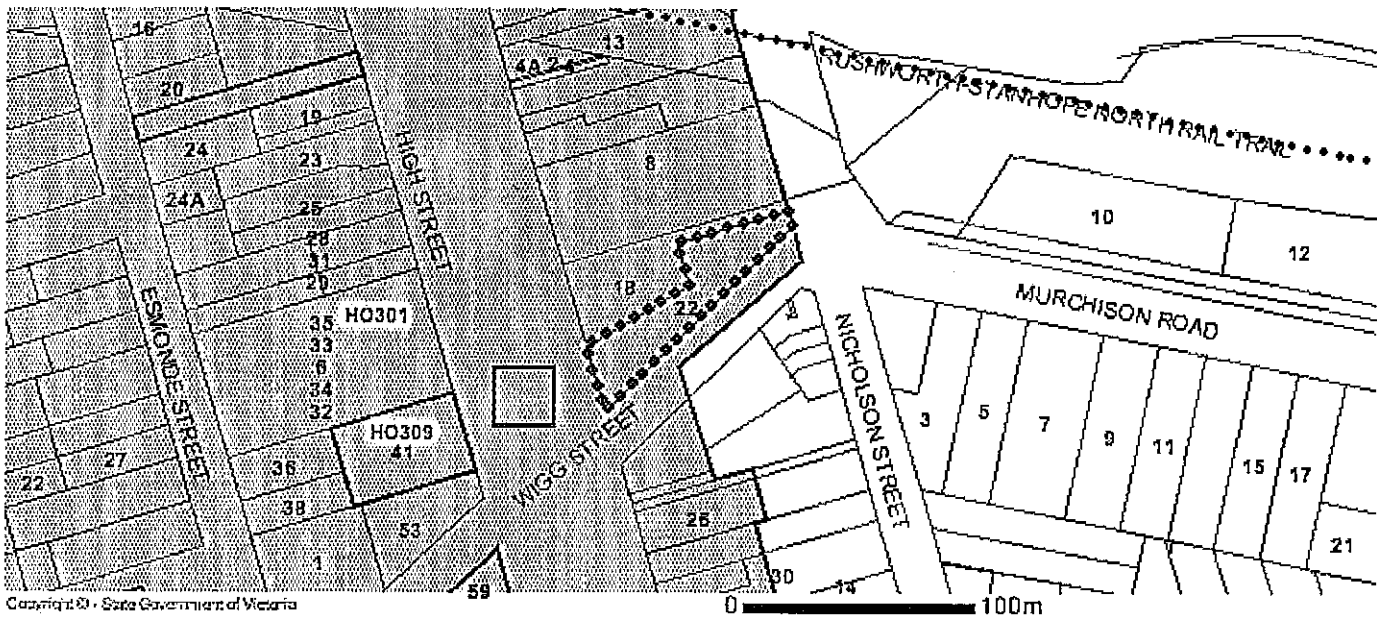
Labels for zones may appear outside the actual zone - please compare the labels with the legend.

# PLANNING PROPERTY REPORT

## Planning Overlay

HERITAGE OVERLAY (HO)

HERITAGE OVERLAY SCHEDULE (HO301)



Copyright © State Government of Victoria

HO - Heritage

Note: due to overlaps, some overlays may not be visible, and some colours may not match those in the legend.

## Further Planning Information

Planning scheme data last updated on 19 August 2019.

A **planning scheme** sets out policies and requirements for the use, development and protection of land.

This report provides information about the zone and overlay provisions that apply to the selected land.

Information about the State and local policy, particular, general and operational provisions of the local planning scheme that may affect the use of this land can be obtained by contacting the local council or by visiting <https://www.planning.vic.gov.au>

This report is NOT a **Planning Certificate** issued pursuant to Section 199 of the *Planning and Environment Act 1987*.

It does not include information about exhibited planning scheme amendments, or zonings that may affect the land.

To obtain a Planning Certificate go to Titles and Property Certificates at Landata - <https://www.landata.vic.gov.au>

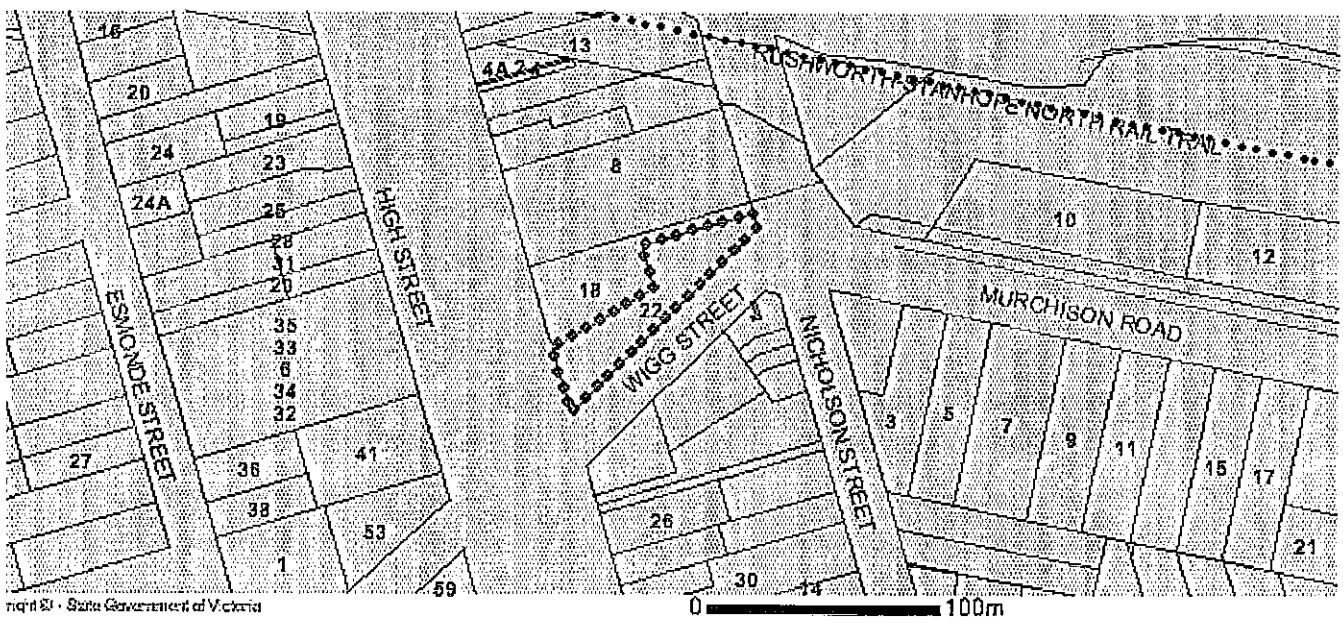
For details of surrounding properties, use this service to get the Reports for properties of interest.

To view planning zones, overlay and heritage information in an interactive format visit <http://mapshare.maps.vic.gov.au/vicplan>

For other information about planning in Victoria visit <https://www.planning.vic.gov.au>

**Designated Bushfire Prone Area**

As property is in a designated bushfire prone area, special bushfire construction requirements apply. Planning provisions may apply.



Designated Bushfire Prone Area

Designated bushfire prone areas as determined by the Minister for Planning are in effect from 8 September 2011 and amended from time to time.

Building Regulations 2018 through application of the Building Code of Australia, apply bushfire protection standards for building works in designated bushfire prone areas.

Designated bushfire prone areas maps can be viewed on VicPlan at <http://mapshare.maps.vic.gov.au/vicplan> at the relevant local council.

Before 8 September 2011, the whole of Victoria was designated as bushfire prone area for the purposes of the building control system.

For further information about the building control system and building in bushfire prone areas can be found on the Victorian Building Authority website [www.vba.vic.gov.au](http://www.vba.vic.gov.au)

Provisions of the Building Act and Building Regulations are available from [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

For Planning Scheme Provisions in bushfire areas visit <https://www.planning.vic.gov.au>

**PLANNING PERMIT**

Permit No: PIn015/2018.A (Amended)  
 Planning Scheme: Campaspe Planning Scheme  
 Responsible Authority: Campaspe Shire Council  
 Prop No.: 10394

**ADDRESS OF THE LAND**

<b>Land Title:</b>	Volume 08524, Folio 773
<b>Land Address:</b>	22 High Street RUSHWORTH VIC 3612

**THE PERMIT ALLOWS**

Variation of hours of operation and buildings and works (tree removal, canopy, carport, fence and replacement fuel tanks) in association with an existing service station in the Township Zone and Heritage Overlay Schedule HO301, Internally Illuminated Business Identification Signage pursuant to Clause 52.05 and Heritage Overlay Schedule HO301
---

**THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT**

Conditions 1 - 20 (inclusive)

**1. Amended Plans Required**

Before the development starts, amended plans must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and a minimum of three copies must be provided. Such plans must be generally in accordance with the plan submitted but modified to show:

- a) The internally illuminated business identification sign (with petrol prices) reduced in height and width to integrate with the existing streetscape.

To the satisfaction of the Responsible Authority

**2. Layout not Altered**

The development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

**3. Heritage Requirements**

Building materials and paint colours must be in accordance with the endorsed plan and must be to the satisfaction of the responsible authority in consultation with the Heritage Adviser.

**4. Signs not Altered**

The location and details of signs shown on the endorsed plans must not be altered without the written consent of the responsible authority.

Date Issued: 19 July 2018

441  

 A handwritten signature in black ink, appearing to read "Michael", is written over the number 441.



**PLANNING PERMIT**

Permit No: Pln015/2018.A (Amended)  
 Planning Scheme: Campaspe Planning Scheme  
 Responsible Authority: Campaspe Shire Council  
 Prop No.: 10394

**5. Signs within Land Boundary**

All signs must be located wholly within the boundary of the land.

**6. Sign Maintenance**

All signs must be constructed to the satisfaction of the responsible authority and maintained to the satisfaction of the responsible authority.

**7. Sign within boundaries**

The signs permitted by this permit must be located so as to be wholly contained within the boundaries of the subject land, to the satisfaction of Responsible Authority.

**8. No Sign Illumination**

Signs must not be illuminated by external lights except with the written consent of the responsible authority.

**9. Environment Protection Agency**

- a) Odours offensive to the senses of human beings must not be discharged, emitted or released beyond the boundaries of the premises.
- b) Displaced petrol fumes must be collected with a vapour recovery system.
- c) Noise emitted from the premises must not exceed the recommended levels as set out in Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011) or as amended.
- d) Surface water discharge from the premises must not be contaminated with waste.
- e) Stormwater contaminated with effluent must not be discharged beyond the boundary of the premises.
- f) A secondary containment system must be provided for liquids which if spilt are likely to cause pollution or pose an environmental hazard, in accordance with the EPA Publication 347.1 Bunding Guidelines 2015 or as amended.
- g) There must be no discharge or seepage of petroleum from the premises to the land.
- h) All tanks must be decommissioned by suitably qualified professionals, as outlined in EPA Publication 888.4 Underground Petroleum Storage Systems (UPSSs) 2015 or as amended and the Australian Standards referenced therein.
- i) Petroleum storage tanks must be designed, installed and operated in accordance with the Guidelines on the Design, Installation and Management Requirements for Underground Petroleum Storage Systems (UPSSs) (EPA Publication No. 888.4, August 2015).

**10. Environmental Health**

- a) As the business will be preparing and selling food to the public it must register with Council in accordance with the Food Act 1984.
- b) The business must comply in full with requirements of the Food Act 1984 and the Food Standards Code.

Date Issued: 19 July 2018

A handwritten signature in black ink, appearing to read "A. B. ...", is written over the signature line.

Signature for the Responsible Authority:

**PLANNING PERMIT**

Permit No: Pln015/2018.A (Amended)  
 Planning Scheme: Campaspe Planning Scheme  
 Responsible Authority: Campaspe Shire Council  
 Prop No.: 10394



- c) Contact must be made with Councils Environmental Health Department to discuss the proposed food handling activities to determine specific registration requirements.
- d) Prior to the commencement of any building works, a plan of the proposed internal fit out of the food premises is required to be submitted to Councils Environmental Health Department for review, comment and approval. Furthermore, an onsite meeting will be required to be held with the applicant, proposed proprietor and a representative from Councils Environmental Health Department to discuss the proposal prior to the commencement of building works.
- e) Goulburn Valley Water is required to be consulted with regards to the requirements for a grease trap.
- f) Connection to Goulburn Valley Waters reticulated sewerage system is required for all wastewater disposal.

**11. Construction Phase**

Soil erosion control measures must be employed throughout the construction stage of the development to the satisfaction of the Responsible Authority.

Before the development starts, a construction management plan shall be submitted to and approved by the Responsible Authority. The plan must outline how issues such as mud on roads, dust generation and erosion and sediment control will be managed, on site, during the construction phase. Details of a contact person/site manager must also be provided, so that this person can be easily contacted should any issues arise.

Management measures are to be in accordance with EPA guidelines for Environment Management, "Doing It Right On Subdivisions" Publication 960, September 2004.

**12. Upgrade of Existing Vehicle Crossing**

The existing gravel vehicle crossing in Wigg Street is to be replaced with a concrete crossing that is structurally sound to the satisfaction of the Council prior to occupation of the building.

**13. Landscape Plan**

Before the development starts a landscape plan must be submitted to and approved by the Responsible Authority. The landscape plan must be to the satisfaction of the Responsible Authority, and be in accordance with the requirements of the *Landscape Plan Guide for Developments in Campaspe Shire Council, City of Greater Shepparton and Moira Shire Council, 2017*. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The landscaping plan must show:

- a) A survey of all existing vegetation and natural features showing plants (greater than 1200mm diameter) to be removed;
- b) A planting schedule of all proposed trees, shrubs and ground cover, which will include the location, number and size at maturity of all plants, the botanical names of such plants and the location of all areas to be covered by grass, lawn or other surface materials as specified;

FORM 4

Sections 63 & 86

# PLANNING PERMIT

Permit No: Pin015/2018.A (Amended)  
Planning Scheme: Campaspe Planning Scheme  
Responsible Authority: Campaspe Shire Council  
Prop No.: 10394



- c) All trees planted as part of the landscape works shall have a minimum height of 1.5m at the time of planting;
  - d) The method of preparing, draining, watering and maintaining the landscaped area;
  - e) Details of surface finishes of pathways and driveways;
  - f) Landscaping and planting within all open areas of the site;
  - g) The sewer and water supply connection points;
  - h) The weed management program;
  - i) Proposed bed heights above car-park surface;
  - j) All areas where vehicle overhang will occur;
  - k) All landscaped areas proposed to be used for stormwater retardation;
  - l) A permanent screen of trees and shrubs with a minimum of two rows using a mixture of local trees and understorey species;
  - m) Indicate that an in-ground irrigation system is to be provided to all landscaped areas.
- All to the Satisfaction of the Responsible Authority.

## **14. Landscape Maintenance**

Before occupation of the buildings or by such a later date as is approved by the Responsible Authority in writing, landscaping works shown on the endorsed plan must be carried out and completed to the satisfaction of the Responsible Authority.

The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including the replacement of any dead, diseased or damaged plants.

## **15. Drainage Discharge Plan**

Before any of the development starts, a properly prepared drainage discharge plan with computations to the satisfaction of the responsible authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and a minimum of three copies must be provided. The information submitted must show the details listed in the council's Infrastructure Design Manual and be designed in accordance with the requirements of that manual.

The information and plan must include:

- a) Details of how the works on the land are to be drained and/or retarded.
- b) Computations including total energy line and hydraulic grade line for the existing and proposed drainage as directed by Responsible Authority
- c) Underground pipe drains conveying stormwater to the legal point of discharge;
- d) Measures to enhance stormwater discharge quality from the site and protect downstream waterways Including the expected discharge quality emanating from the development (output from MUSIC or similar) and design calculation summaries of the treatment elements;
- e) A maximum discharge rate from the site is to be determined by computation to the satisfaction of Council.

Date Issued: 19 July 2018

A handwritten signature in black ink, appearing to be "S. Walker", written over a horizontal line.

Signature for the Responsible Authority:

**PLANNING PERMIT**

Permit No: Pln015/2018.A (Amended)  
 Planning Scheme: Campaspe Planning Scheme  
 Responsible Authority: Campaspe Shire Council  
 Prop No.: 10394



- f) The provision of gross pollutant and/or litter traps installed at the drainage outfall of the development to ensure that no effluent or polluted water of any type may be allowed to enter the Council's stormwater drainage system.
- g) The details of the incorporation of water sensitive urban design designed in accordance either "Urban Stormwater Best Practice Environmental Management Guidelines" 1999.
- Before the use begins all works constructed or carried out must be in accordance with those plans to the satisfaction of the Responsible Authority

**16. Operation Within the Site Boundaries Only**

All operations and activities associated with the use of the land must be carried out within the confines of the site boundaries unless the prior written consent is obtained from the responsible authority.

**17. Vehicle Turning**

All car parking spaces must be designed to allow all vehicles to drive forwards both when entering and leaving the property, to the satisfaction of Responsible Authority.

**18. Delivery of Goods**

The loading and unloading of goods from vehicles must only be carried out on the land subject to this permit.

**19. Advertising Signs Expiry Date**

The advertising signs shown on the endorsed plan and authorised by this permit must be removed at the expiry of fifteen years from the date of this permit unless a further planning permit for the signs has been obtained within that time from the responsible authority.

**20. Time for Starting and Completion**

This permit will expire if the following circumstance applies:

- a) The development is not started within two years of the date of this permit.  
 The Responsible authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards.

**NOTATIONS****Responsible authority**

The term "responsible authority" in the planning permit means the municipal council in accordance with section 13 of the Planning and Environment Act 1987.

**Building Approval Required**

This permit does not authorise the commencement of any building construction works. Before any such development may commence, the applicant must apply for and obtain appropriate building approval.

**Heritage Overlay Tree Controls**

Date Issued: 19 July 2018

445

**PLANNING PERMIT**

Permit No: Pln015/2018.A (Amended)  
 Planning Scheme: Campaspe Planning Scheme  
 Responsible Authority: Campaspe Shire Council  
 Prop No.: 10394



*Trees must not be removed, destroyed or lopped without planning approval unless exempt pursuant to Clause 43.01 of the Campaspe Planning Scheme.*

**THIS PERMIT HAS BEEN AMENDED AS FOLLOWS:**

Date of amendment	Brief description of amendment
30 August 2019	Pursuant to Section 72 of the <i>Planning and Environment Act 1987</i> the following changes were made: <ul style="list-style-type: none"> <li>• Amended what the permit allows</li> </ul>
30 August 2019	The following changes were made: <ul style="list-style-type: none"> <li>• Amended Plans</li> </ul>

Date Issued: 19 July 2018

A handwritten signature in black ink, appearing to read "S. Walker" or similar, written over a horizontal line.

Signature for the Responsible Authority:

## IMPORTANT INFORMATION ABOUT THIS PERMIT

### **WHAT HAS BEEN DECIDED?**

The responsible authority has issued a permit.

(Note: This is not a permit granted under Division 5 or 6 of Part 4 of the **Planning and Environment Act 1987**.)

### **CAN THE RESPONSIBLE AUTHORITY AMEND THIS PERMIT?**

The responsible authority may amend this permit under Division 1A of Part 4 of the **Planning and Environment Act 1987**.

### **WHEN DOES A PERMIT BEGIN?**

A permit operates:

- From the date specified in the permit; or
- If no date is specified, from –
  - (i.) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal; or
  - (ii.) the date on which it was issued, in any other case

### **WHEN DOES A PERMIT EXPIRE?**

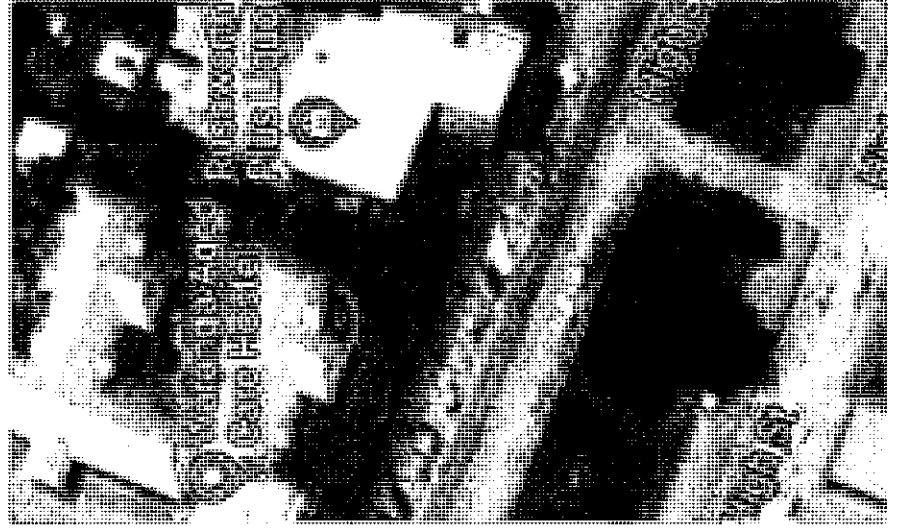
1. A permit for the development of land expires if –
  - the development or any stage of it does not start within the time specified in the permit; or
  - the development requires the certification of a plan of subdivision or consolidation under the **Subdivision Act 1988** and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or
  - the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within five years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.
2. A permit for the use of land expires if –
  - the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
  - the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if—
  - the development or any stage of it does not start within the time specified in the permit; or
  - the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
  - the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
  - the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**, or to any combination of use, development or any of those circumstances requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision –
  - the use or development of any stage is to be taken to have started when the plan is certified; and
  - the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

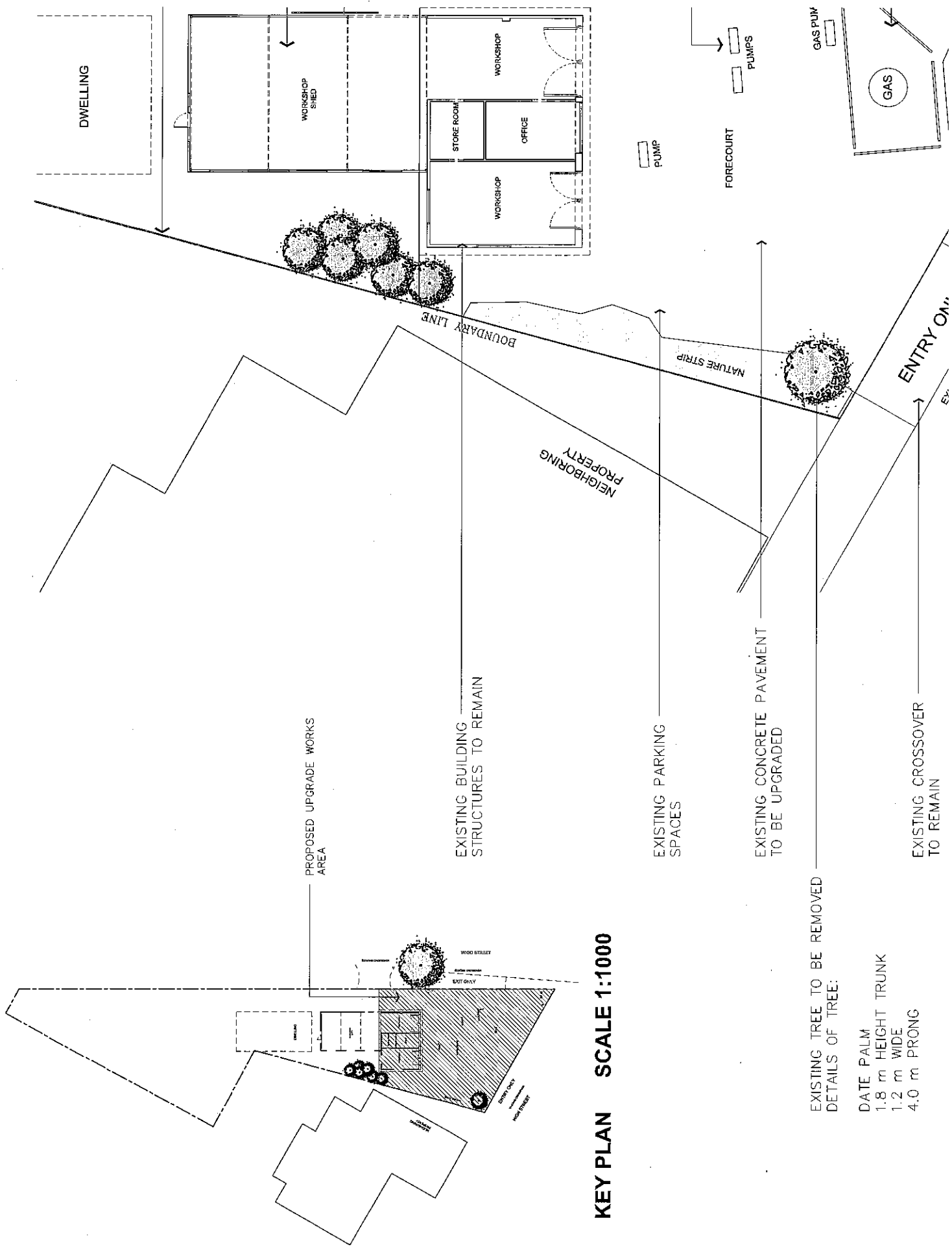
### **WHAT ABOUT REVIEWS?**

- The person who applied for the permit may apply for a review of any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal, in which case no right of review exists.
- An application for review must be lodged within 60 days after the permit was issued, unless a notice of decision to grant a permit has been issued previously, in which case the application for review must be lodged within 60 days after the giving of that notice.
- An application for review is lodged with the Victorian Civil and Administrative Tribunal.
- An application for review must be made on the relevant form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
- An application for review must state the grounds upon which it is based.
- A copy of an application for review must also be served on the Responsible Authority.
- Details about applications for review and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal

# UPGRADE OF EXISTING SERVICE STATION 22 HIGH ST. RUSHWORTH VIC. 3612

DRAWING SCHEDULE		
CODE	CONTENT	REVISION
P-00	COVER SHEET AND DRAWINGS SCHEDULE	Rev D
P-01	EXISTING SITE PLAN	Rev D
P-02	PROPOSED SITE PLAN	Rev D
P-03	PROPOSED SITE SETOUT PLAN	Rev D
P-04	SALES BUILDING FLOOR PLAN	Rev D
P-05	PROPOSED ELEVATIONS	Rev D
P-06	PROPOSED SIGNAGE PLAN	Rev D
P-07	PROPOSED SIGNAGE DETAILS	Rev D
P-08	LANDSCAPE PLAN	Rev D
P-09	PROPOSED LIGHT VEHICLE CANOPY	Rev D
	LAND SURVEY PLAN	

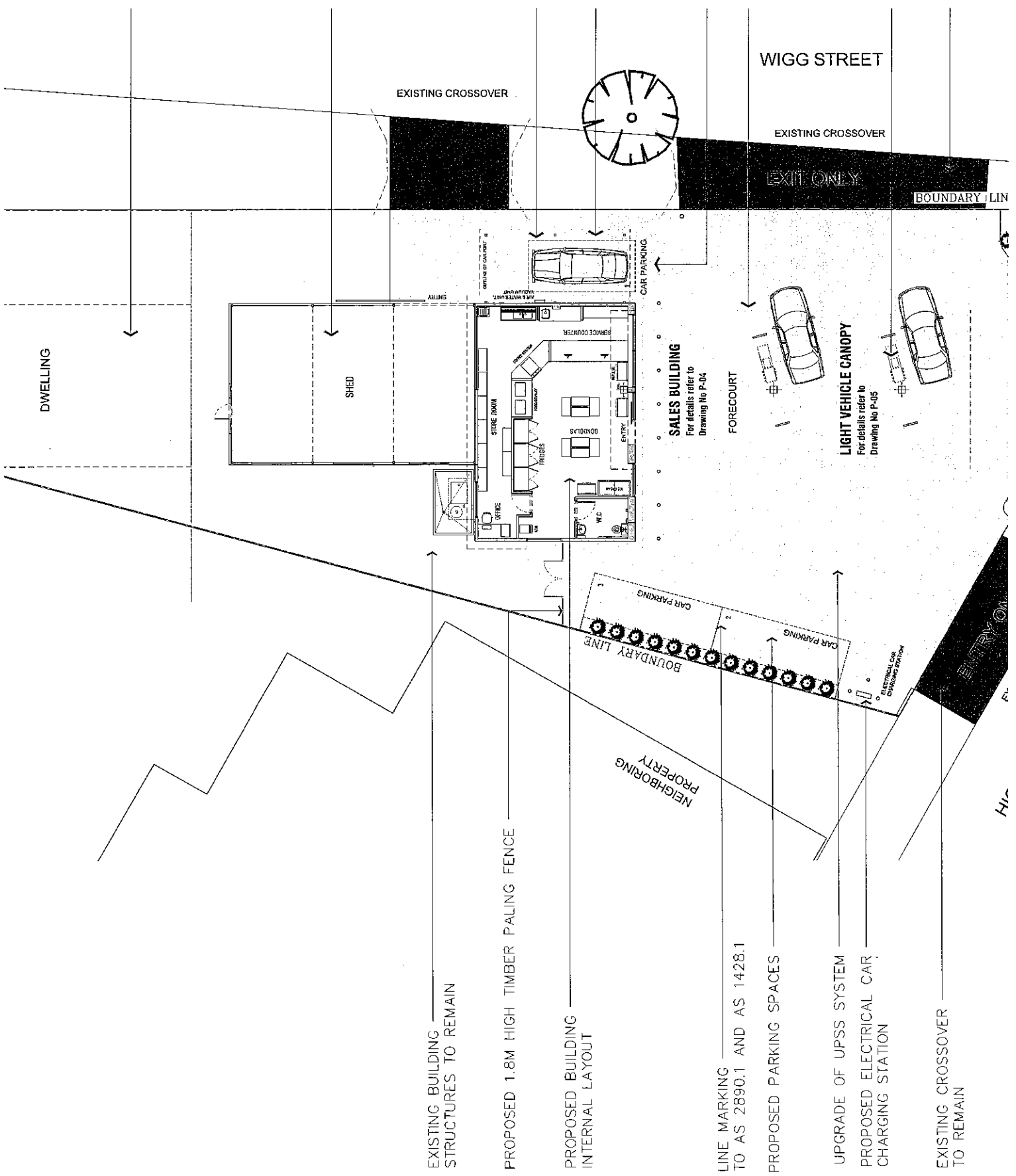




**KEY PLAN SCALE 1:1000**

- EXISTING TREE TO BE REMOVED
- DETAILS OF TREE:
- DATE PALM
- 1.8 m HEIGHT TRUNK
- 1.2 m WIDE
- 4.0 m PRONG





EXISTING BUILDING STRUCTURES TO REMAIN

PROPOSED 1.8M HIGH TIMBER PALING FENCE

PROPOSED BUILDING INTERNAL LAYOUT

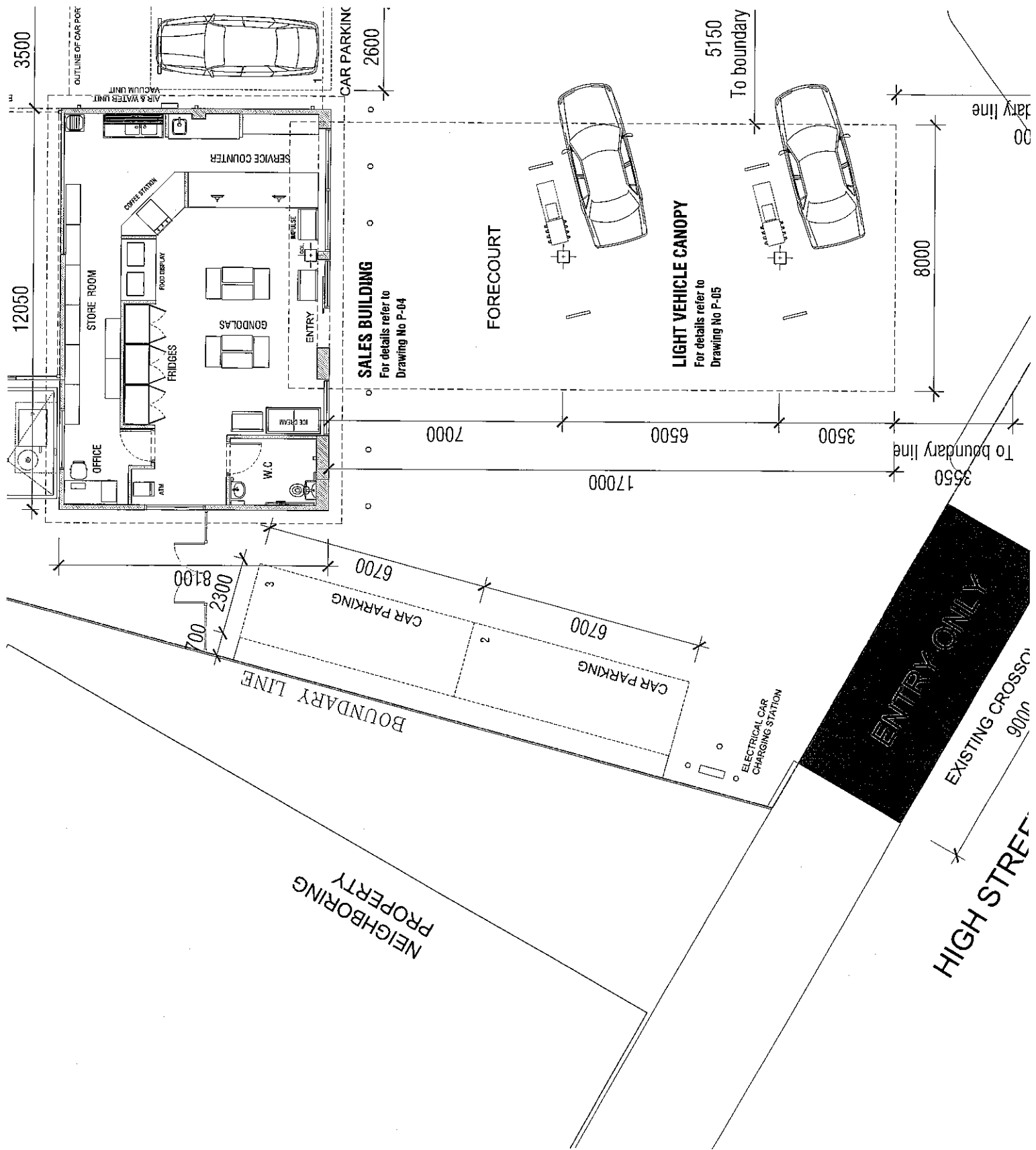
LINE MARKING TO AS 2890.1 AND AS 1428.1

PROPOSED PARKING SPACES

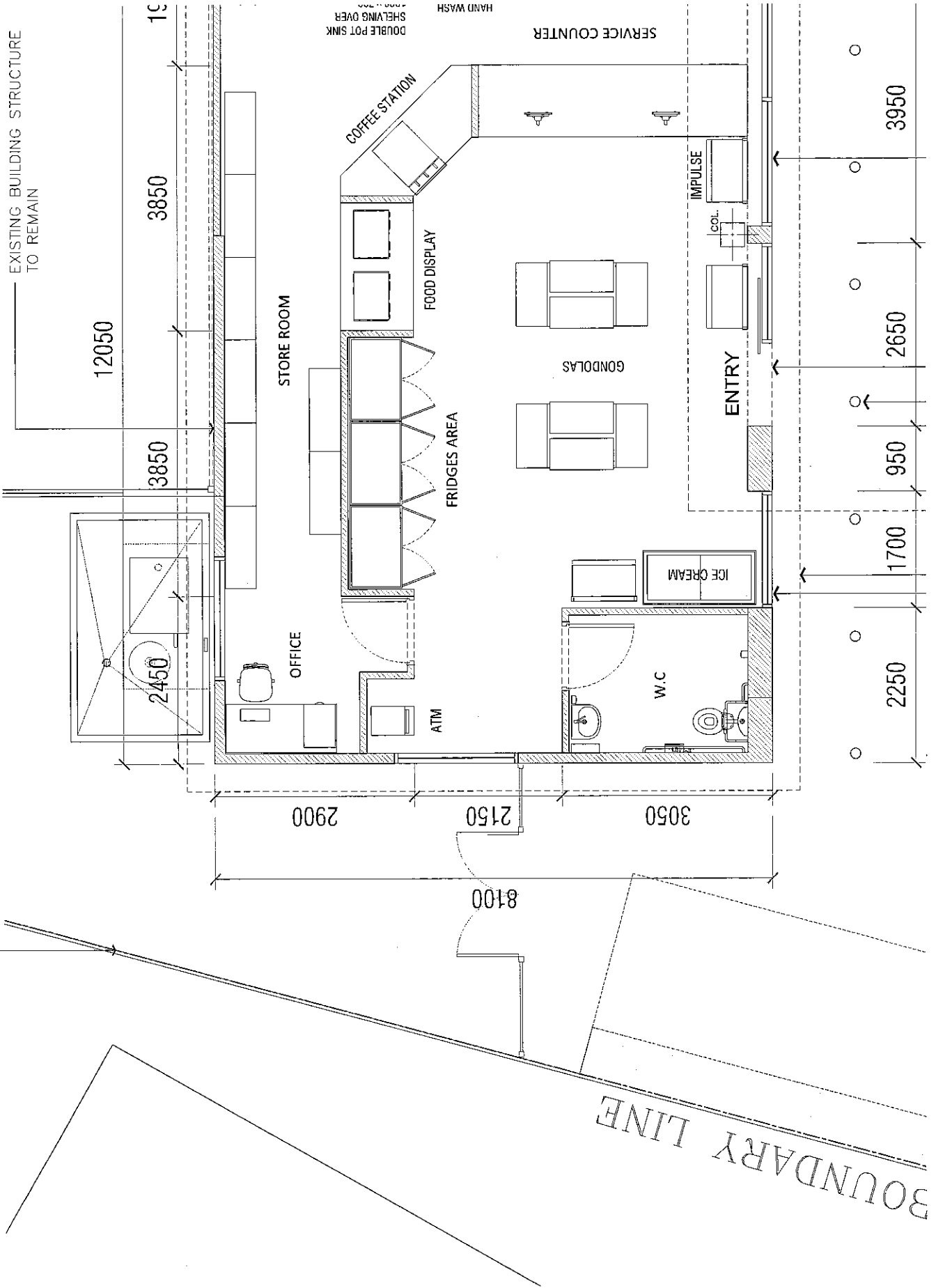
UPGRADE OF UPSS SYSTEM

PROPOSED ELECTRICAL CAR CHARGING STATION

EXISTING CROSSOVER TO REMAIN



EXISTING BOUNDARY FENCE  
TO REMAIN



EXISTING BRICK WALLS TO BE PAINTED AS PER METRO PETROLEUM STANDARDS

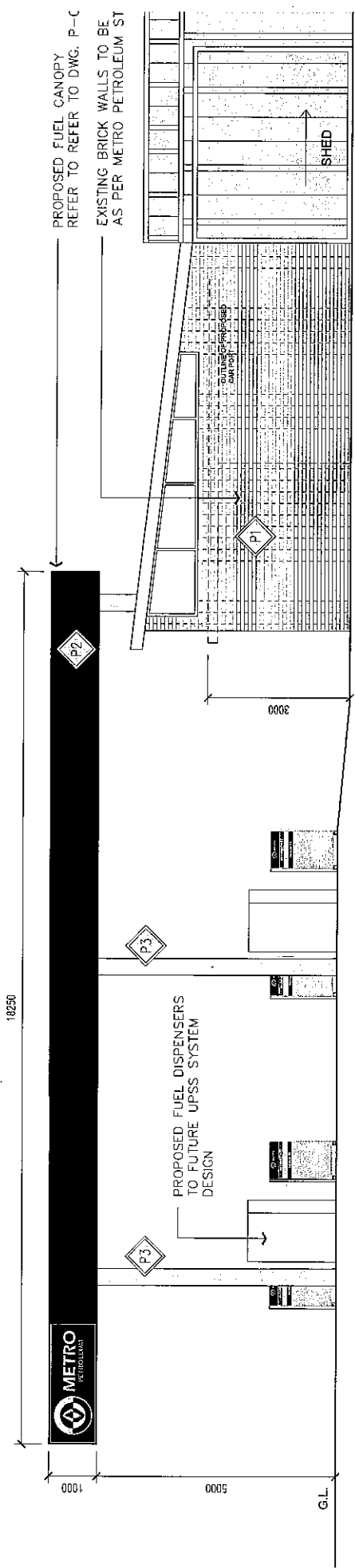
NEW FASCIA SIGNAGE OVER EXISTING WALLS. DRAWING P-07 FOR DETAILS

PROPOSED CAR POI ROOF SHEETING AN TO FUTURE ENG. DI

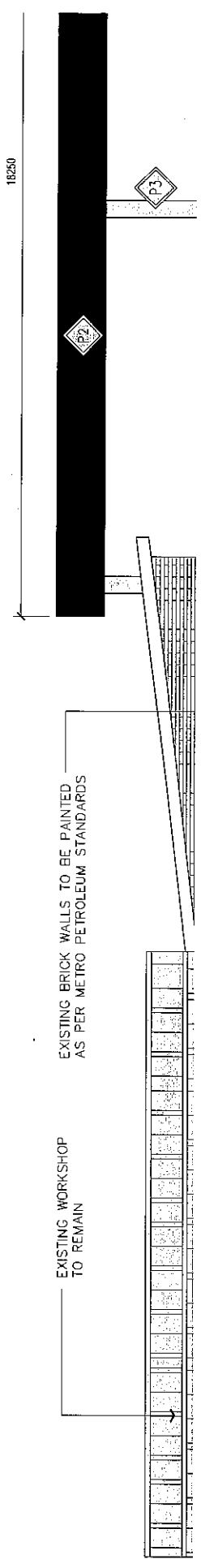
REMOVE EXISTING DOORS TO NEW FIXED WINDOWS. INFILL OPENING WITH BRICKWORK TO MATCH EXISTING

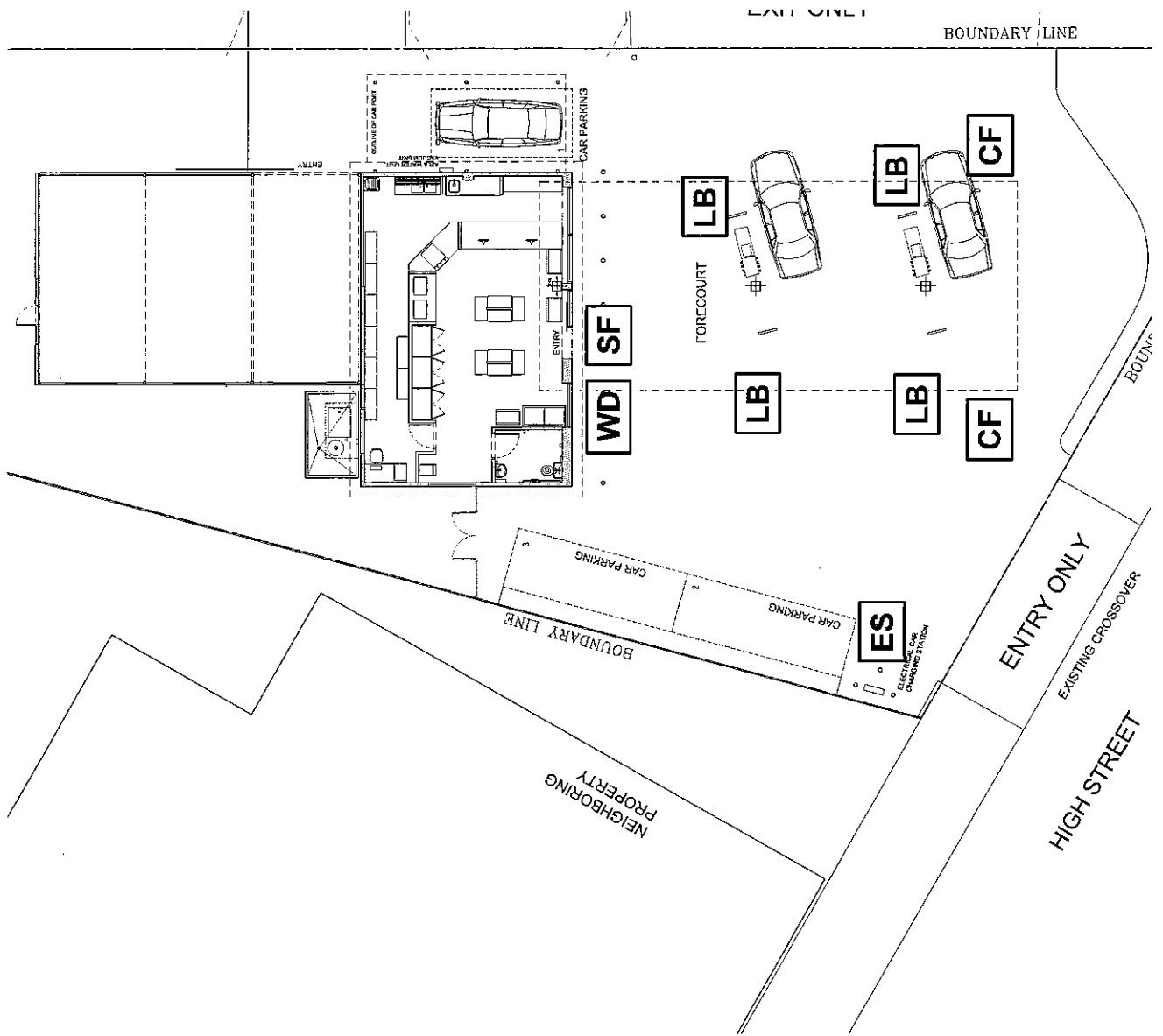
PAINTED FACE BRICK WALLS AS PER TENANT IMAGE SPECS  
PROPOSED 1.8M HIGH TIMBER PALING FENCE

### WEST ELEVATION SCALE 1 : 125



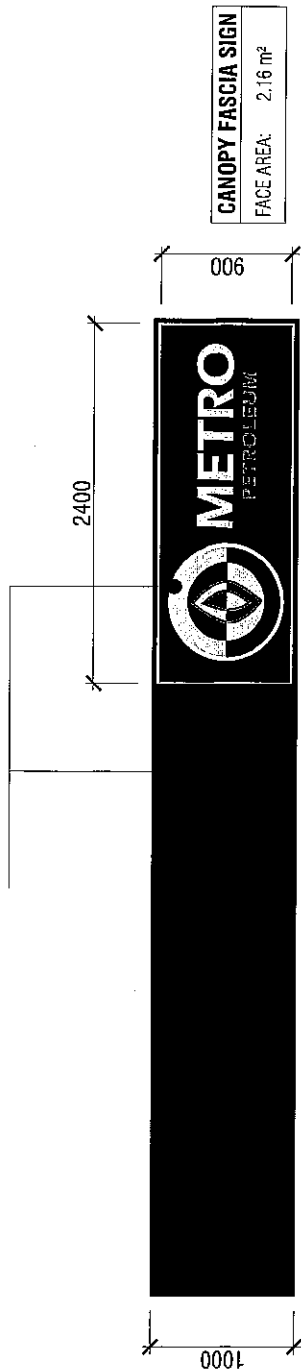
### SOUTH ELEVATION SCALE 1 : 125



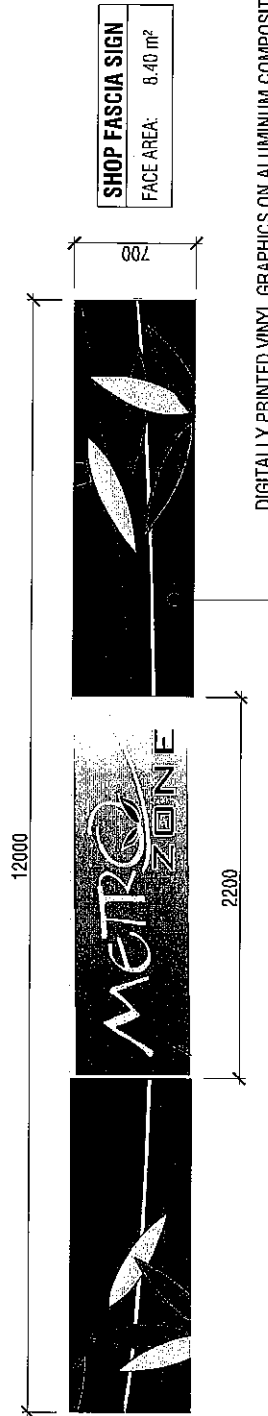


SIGNAGE SCHEDULE		ILLUMINATION	QTY.
CODE	DESCRIPTION		
SF	SHOP FASCIA SIGN 0.7m HIGH x 12.00 m WIDE	<input checked="" type="checkbox"/>	1
WD	Safety Window Decals 150mm HIGH x 8.880m WIDE	<input checked="" type="checkbox"/>	1
CF	CANOPY FASCIA SIGN, Illuminated Logo	<input checked="" type="checkbox"/>	2
LB	LEADER BOARD	<input checked="" type="checkbox"/>	4

DIGITALLY PRINTED NON ILLUMINATED VINYL GRAPHICS ON PROPOSED CANOPY FASCIA - METRO LOGO TO BE ILLUMINATED

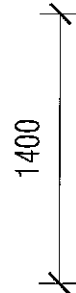


**CF** CANOPY FASCIA SIGNAGE  
NON - ILLUMINATED



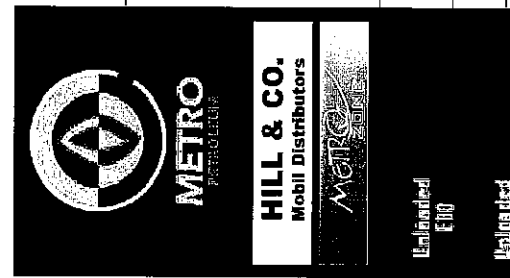
**SF** SHOP FASCIA SIGNAGE  
NON - ILLUMINATED

DIGITALLY PRINTED VINYL GRAPHICS ON ALUMINUM COMPOSITE SHEET. REFER TO ELEVATIONS FOR LOCATION



**ID SIGN**  
FACE AREA: 5.6 m²

LOGO INTERNALLY ILLUMINATED



INTERNALLY ILLUMINATED PERSPEX BOX SIGNS.

INTERNALLY ILLUMINATED

**COLOUR PALETTE:**

CF - CANOPY FASCIA SIGNAGE

- Metro Canopy Box Vinyl Colours**
- Avery Bright Yellow 739
  - Avery Turquoise 731
  - Avery Classic Blue 793

SF - SHOP FASCIA SIGNAGE

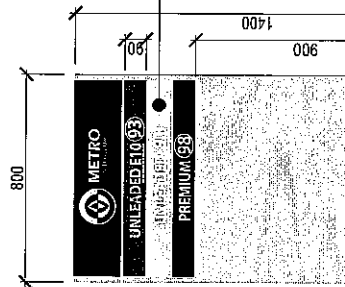
- Metro Zone Stripe Pantone Solid Colour**
- Pantone 314 C (background)
  - Pantone 320 C (curve 1 / leaves)
  - Pantone 319 C (curve 2 / leaves)
  - Pantone 354 C (leaves)

ID - ID SIGNAGE (PYLON SIGN)

- Metro Pylon Sign Translucent Vinyl Colours**
- Avery Bright Yellow 739
  - Avery Turquoise 731
  - Avery Classic Blue 793
  - Avery Blood Red 765

WD - WINDOW DECALS

- Window Decals Pantone Solid Colour**
- Pantone 109 C
  - Pantone 320 C
  - Pantone 662 C



**LEADER BOARD**  
FACE AREA: 1.12 m²

DIGITALLY PRINTED NON ILLUMINATED VINYL GRAPHICS ON WHITE ALUMINIUM COMPOSITE SHEET. ACTUAL GRAPHICS VARIES TO SUIT PRODUCTS DISPENSED.

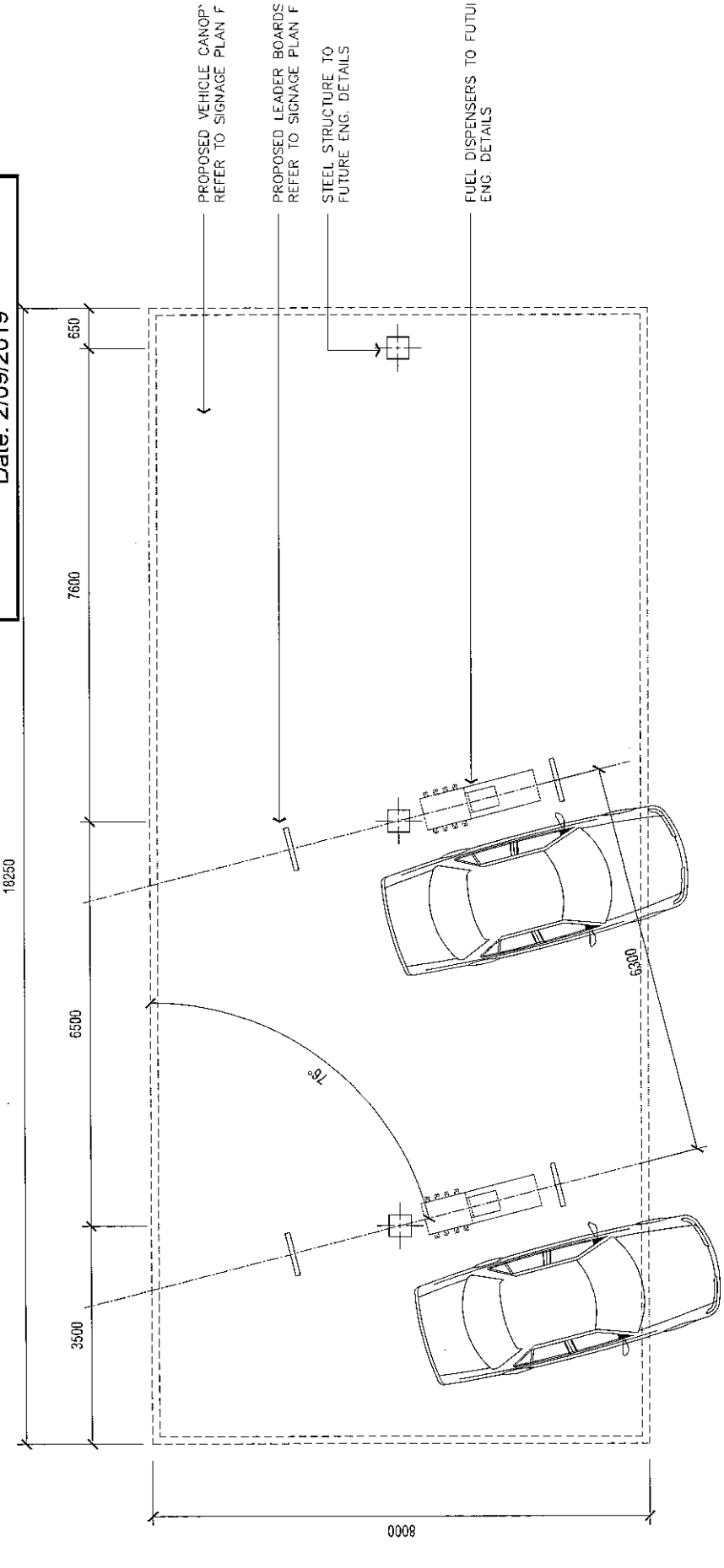
REFER TO COLOUR F COLOUR SPECS.



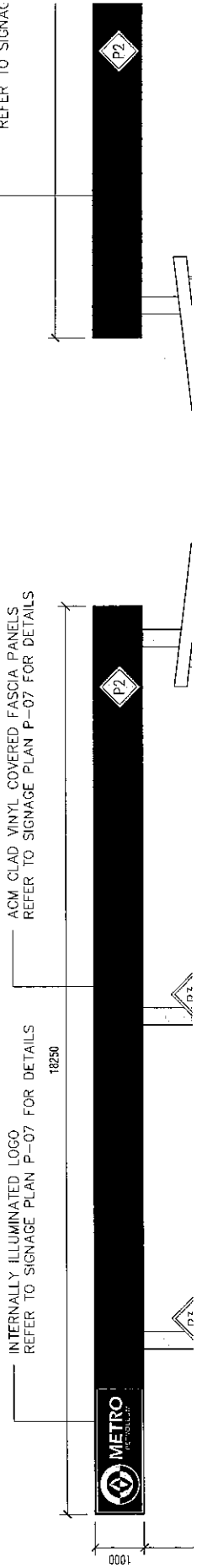
STEEL ROLLBAR; PAINTED STEEL FRAME

Shire Council  
 Amended Endorsed Plan  
 Planning and Environment Act 1987  
 Permit No: PLN015/2018.A  
 Sheet: 9 of 9  
 Authorised Officer: Ally Wilkie  
 Planning Team Leader  
 Date: 2/09/2019

FINISHES SCHEDULE				
ID	FINISH / MATERIAL	SPECIFICATIONS	LOCATION	INTERNAL / EXTERNAL
P1	PAINT	SELECTED LIGHT GREY PAINT FINISH TO MATCH TENANT SPECS.	EXISTING BUILDING FASCIA WALLS	EXTERNAL
P2	ALUMINIUM COMPOSITE	COLOUR TO MATCH TENANT SPECS. REFER TO SIGNAGE DRAWINGS FOR DETAILS	NEW FUEL CANOPY	EXTERNAL
P3	ALUMINIUM COMPOSITE	WHITE COLOUR TO MATCH TENANT SPECS.	NEW FUEL CANOPY	EXTERNAL
P4	TIMBER	NATURAL COLOUR	CAR PORT STRUCTURE	EXTERNAL



**VEHICLE CANOPY FLOOR PLAN**  
**SCALE 1 : 100**





REQUEST FOR BUILDING INFORMATION  
BUILDING ACT 1993  
BUILDING REGULATIONS 2018  
REGULATIONS 51 (1)

---

APPLICANT: Kabo Lawyers  
ADDRESS: C/- Landata  
GPO Box 527  
Melbourne VIC 3001

YOUR REFERENCE: 32437482-011-9

RE: 22 High Street Rushworth  
Lot 1 TP431133N  
Parish of Moora

51 (1) A search of our records, based on the ownership details provided has revealed that:-

- No Building Permits / Approvals have been issued in the preceding ten (10) year period, for the above mentioned property.

There are no current determinations made under regulation 64 (1) or exemptions granted under regulation 231 (2).

There are no current orders, notices or certificates on this land.

Yours sincerely

A handwritten signature in black ink, appearing to read "Bob Barrass", written over a horizontal line.

**BOB BARRASS**  
**MUNICIPAL BUILDING SURVEYOR**

PROPERTY NO: 10394

ISSUE NO: 19/7264

DATE: 22/08/2019





REQUEST FOR BUILDING INFORMATION  
BUILDING ACT 1993  
BUILDING REGULATIONS 2018  
REGULATIONS 51 (2)

APPLICANT: Kabo Lawyers  
ADDRESS: C/- Landata  
GPO Box 527  
Melbourne VIC 3001

YOUR REFERENCE: 32437482-012-6

RE: 22 High Street Rushworth  
Lot 1 TP431133N  
Parish of Moora

51 (2) The above mentioned land:-

- a) is not in an area that is liable to flooding within the meaning of regulation 5(2).
- b) is in an area designated under regulation 150 as an area in which buildings are likely to be subject to attack by termites.
- c) is not in an area for which a bushfire attack level has been specified in a planning scheme.
- d) is not in an area determined under regulation 152 to be likely to be subject to significant snowfalls.
- e) is not designated land
- f) is not designated works

Additional Information: The land is located in a bush fire prone area.

Yours sincerely

A handwritten signature in black ink, appearing to read "Bob Barrass", written over a faint circular stamp.

**BOB BARRASS**  
**MUNICIPAL BUILDING SURVEYOR**

PROPERTY NO: 10394

ISSUE NO: 19/7265

DATE: 22/08/2019

# Land Tax Clearance Certificate

Land Tax Act 2005



INFOTRACK / KABO LAWYERS

Your Reference: 190454  
Certificate No: 31617044  
Issue Date: 20 AUG 2019  
Enquiries: ESYSPROD

Land Address: 22 HIGH STREET RUSHWORTH VIC 3612

Land Id	Lot	Plan	Volume	Folio	Tax Payable
32643137	1	431133	8524	773	\$0.00

Vendor: INGLWD PTY LTD  
Purchaser: FOR INFORMATION PURPOSES

Current Land Tax	Year	Taxable Value	Proportional Tax	Penalty/Interest	Total
INGLWD TRUST	2019	\$72,000	\$258.25	\$0.00	\$0.00

Comments: Land Tax of \$258.25 has been assessed for 2019, an amount of \$258.25 has been paid.

Current Vacant Residential Land Tax	Year	Taxable Value	Proportional Tax	Penalty/Interest	Total
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Comments:

Arrears of Land Tax	Year	Proportional Tax	Penalty/Interest	Total
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This certificate is subject to the notes that appear on the reverse. The applicant should read these notes carefully.

Paul Broderick  
Commissioner of State Revenue

CAPITAL IMP VALUE:	\$203,000
SITE VALUE:	\$72,000
AMOUNT PAYABLE:	\$0.00

# Notes to Certificates Under Section 105 of the *Land Tax Act 2005*

Certificate No: 31617044

- Under Section 96 of the *Land Tax Act 2005* (the Act), unpaid land tax (including special land tax and vacant residential land tax) is a first charge on the land to which it relates and should the vendor default, payment will be obtained from the purchaser. The purchaser should take into account the possibility that the vendor may default where land tax has been assessed but not paid.
- A purchaser who has obtained a Certificate is only liable to a charge on the land to the amount of unpaid land tax as certified by a Certificate. A purchaser must obtain the Certificate from the Commissioner. They cannot rely on the Certificate obtained by the vendor.
- If land tax (including special land tax and vacant residential land tax) is due but not paid on a property, the Land Tax Clearance Certificate will certify the amount of land tax due and payable on that land. This amount will be binding on the Commissioner of State Revenue (the Commissioner) for purposes of section 96 of the Act whether or not it is paid to the State Revenue Office (SRO) on, or shortly after, settlement.
- The amount of land tax on this certificate relates to the amount of land tax (including special land tax and vacant residential land tax) due and payable as at the date of the application only and not to any future liability or the tax status of the land.
- A 'Nil' Land Tax Clearance certificate does not mean that the land on the certificate is exempt from land tax or vacant residential land tax.
- If land tax (including special land tax or vacant residential land tax) will be payable on a property but payment is not due at the time the application is processed, the certificate will certify the amount that should be retained by the purchaser at settlement and remitted to the SRO. The Commissioner will consider himself bound by this amount against the purchaser, only if the amount is remitted to the SRO.
- If the amount in 4. (above) is understated, the Commissioner has the right to seek recovery of the correct amount, or the balance, as the case may be, from the:
  - vendor, or
  - purchaser, if the vendor defaults and the certified amount has not been remitted to the SRO.
- If an amount is certified in respect of a proposed sale which is not completed, the Commissioner will not be bound by the same amount in respect of a later sale of the subject land - another certificate must be applied for in respect of that transaction.
- If an amount certified is excessively high (for example, because an exemption or concession has not been deducted in calculating the amount) the Commissioner will issue an amended certificate, without an additional fee being charged on receipt of sufficient evidence to that effect from the vendor.
- If no land tax (including special land tax or vacant residential land tax) is stated as being payable in respect of the property, the Commissioner will consider himself bound by that certification, in respect of the purchaser, if the land is subsequently found to be taxable and the vendor defaults.
- If the vendor refuses to be bound by an amount stated by the Commissioner and does not agree to the amount being withheld and remitted at settlement, the purchaser cannot rely on such refusal as a defence to an action by the Commissioner to recover the outstanding amount from the purchaser under Sections 96 or 98 of the Act.
- The information on a certificate cannot preclude the Commissioner from taking action against a vendor to recover outstanding land tax (including special land tax and vacant residential land tax).
- You can request a free update of a Land Tax Clearance Certificate via our website if:
  - there is no change to the parties involved in the transaction, and
  - the request is within 90 days of the original certificate being issued.

## For Information Only


LAND TAX CALCULATION BASED ON SINGLE OWNERSHIP


Land Tax = \$0.00

Taxable Value = \$72,000

Calculated as \$0 plus ( \$72,000 - \$0) multiplied by 0.000 cents.

## Land Tax Clearance Certificate - Payment Options

<b>BPAY</b> 	Billier Code: 5249 Ref: 31617044
Telephone & Internet Banking - BPAY®	
Contact your bank or financial institution to make this payment from your cheque, savings, debit or transaction account.	
<a href="http://www.bpay.com.au">www.bpay.com.au</a>	

<b>CARD</b> 	Ref: 31617044
Visa or Mastercard.	
Pay via our website or phone 13 21 61. A card payment fee applies.	
<b>460</b>	
<a href="http://sro.vic.gov.au/nav/landtax">sro.vic.gov.au/nav/landtax</a>	

# CAMPASPE SHIRE COUNCIL

PO Box 35 Echuca Vic. 3564  
PH: 03 5481 2200 FAX: 03 5481 2290  
EMAIL: shire@campaspe.vic.gov.au

## LAND INFORMATION CERTIFICATE SECTION 229 LOCAL GOVERNMENT ACT 1989

This certificate provides information regarding valuation, rates, charges, other monies owing and any orders and notices made under the Local Government Act 1958, Local Government Act 1989 or under a local law or by-law of the Council.

This certificate is not required to include information regarding planning, building, health, landfill, landlip, other flooding information or service easements. Information regarding these matters may be available from the Council or other relevant authority. A fee may be charged for such information.

21 August 2019

Landata  
Gpo Box 527  
MELBOURNE VIC 3001

**Bill Code:** 102087  
**Reference No:** 010000103944  
**Email Acquisition to:** shire@campaspe.vic.gov.au

**Certificate No:** CerR/D004684

**Your Reference:** 32437482-010-2 Kabo Lawyers

### PROPERTY DETAILS

**Property Number:** 10394  
**Property Owner/s:** Inglwd Pty Ltd  
**Property Address:** 22 High Street RUSHWORTH VIC 3612  
**Property Description:** LOT 1 TP 431133N PSH MOO  
**Land Area:** 2057.00m2

### VALUATION DETAILS

**Site Value:** \$84,000 **Valuation Date:** 01/01/2019  
**Capital Improved Value:** \$233,000  
**Net Annual Value:** \$23,150 **Effective Date:** 01/07/2019  
Council utilises the Capital Improved Valuation (C.I.V.) for rating purposes

### RATES AND CHARGES DETAILS

Details for financial year ending 30th June 2020:

Rate Category		
Current Commercial Rates	1,161.78	
Current Municipal Charge	200.00	
Current Recycle Charge	67.54	
Current Fire Service Levy & Rate	411.24	
Current Waste Charge	305.58	
Current Rates Year Charges - SUB TOTAL		2,146.14
Current Rates Year Adjustments\Payments	0.00	0.00
Payments Received	-535.14	0.00
Current Rates Year Adjust\Payments - SUB TOTAL		-535.14
	0.00	0.00
<b>Scheme Charges</b>		<b>0.00</b>
Scheme Charges - TOTAL	0.00	0.00
<b>TOTAL BALANCE OUTSTANDING</b>	<b>0.00</b>	<b>\$1,611.00</b>

## CAMPASPE SHIRE COUNCIL

PO Box 35 Echuca Vic. 3564  
PH: 03 5481 2200 FAX: 03 5481 2290  
EMAIL: shire@campaspe.vic.gov.au

### LAND INFORMATION CERTIFICATE SECTION 229 LOCAL GOVERNMENT ACT 1989

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This certificate is not required to include information regarding planning, building, health, landfill, landslip, other flooding information or service easements. Information regarding these matters may be available from the Council or other relevant authority. A fee may be charged for such information.

#### ORDERS:

##### IS THE LAND:

- |     |   |     |
|-----|---|-----|
| (a) | Liable to flooding?   | No  |
| (b) | Along with all other land in the Campaspe Shire, designated as likely to be subject to infestation by termites (pursuant to Building Regulations 2006, Regulation 803)? | Yes |
| (c) | Likely to be subject to significant snowfalls?  | No  |

**CULTURAL & RECREATION LAND:** There is no potential liability for rates under the Cultural and Recreational Lands Act 1963. The Liability is:

**SECTIONS 173, 174A.** There is no potential liability for the land to become rateable under Sections 173 or 174A of the Local Government Act 1989. The liability is:

**RECREATIONAL PURPOSES:** There is no outstanding amount required to be paid for recreational purposes for any transfer of land required to Council for Recreational purposes under Section 18 of the Subdivision of Land Act 1988, or the Local Government Act 1958. The liability is:

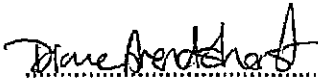
**OTHER:** There are no notices or order on the land that have been served by Council under the Local Government Act 1958, or 1989, or any other act or regulation, or under Local Law of the Council which have a continuing application as at the date of this certificate. The orders are as follows:

**RECOVERY OF MONEY OWED TO COUNCIL:** There is no outstanding monies owed to Council by a former owner / occupier of any building or land (other than rates or charges or money for personal services carried out by Council). The liability on the present occupier / owner is:

**ELECTRICITY INDUSTRY ACT 2000:** There is no money owed in relation to the land under section 94(5) of the Electricity Industry Act 2000.

**SECTION 181C:** There is no environmental upgrade charge in relation to the land which is owed under section 181C of the act.

Should you have any queries regarding this Certificate, please quote Certificate reference **CerR/D004684**.

I hereby certify that as at the issue date the information given in this certificate is true and correct disclosure of the rates and other monies and interest payable to the Shire of Campaspe together with any notices or orders referred to in this certificate.	
..... Authorised Officer	21 August 2019 Issue Date

- NOTE:
- (1) In accordance with Section 175(1) of the Local Government Act 1989, the purchaser **MUST PAY** all rates and charges outstanding at the time that person become owner of the land. Any rates unpaid after the final date for payment will incur interest at the prescribed rate. The final date for payment is: 15 Feb 2020
  - (2) Any structural improvements or alterations to this property may result in the property being revalued. Supplementary valuations may be returned by Councils valuer at any stage during the rating year which may result in additional rates being assessed for part, or all of the rating year.
  - (3) The information provided on the land certificate in relation to flooding is based upon the Campaspe Planning Scheme "Land Subject to Inundation Overlay". This control is based upon information provided to Council by the Department of Natural Resources and Environment. Council does not take any responsibility for the accuracy of this information. This information does not include inundation that may occur from urban stormwater systems.



ABN 84 578 076 056  
 Tel: 1300 360 007  
 Fax: (03) 5831 1467

mail@gwwater.vic.gov.au  
 www.gwwater.vic.gov.au

Goulburn Valley Region Water Corporation  
 104-110 Fryers Street  
 Shepparton, Victoria 3630

P.O. Box 185, Shepparton 3632  
 DX 63036 Shepparton

Victorian Land Registry Services Pty Ltd ATF  
 Victorian Land Registry Services Trust  
 Level 1, 2 Lonsdale Street  
 MELBOURNE VIC 3000

Your Ref: 32437482-019-5  
 Statement No: 198222  
 Account No: 30-0684-0300-01-6  
 Date: 22-Aug-2019

## Information Statement

### Water Act 1989. Section 158

Statement of encumbrances, works required, outstanding matters, tariffs and other charges including outstanding amounts and other information which the Corporation considers relevant for the property known as:

#### SERVICE STATION, 22 High St, Rushworth VIC 3612

**Title(s):**  
 Part of Lot 1, Title Plan 431133N, Volume 8524, Folio 773, Parish of Moora

**Owner(s):**  
 Inglwd Pty Ltd

**Purchaser(s):**  
 No purchaser on application

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**Account Calculation:**

Fees and Charges (including interest)	\$0.00
Scheme Arrears	\$0.00
<b>Total Amount in Arrears at Date of Issue:</b>	<b>\$0.00</b>
Service Charges & Estimated Consumption to: (from page 2)	\$172.43
<b>Total Amount:</b>	<b>\$172.43</b>

---

Goulburn Valley Water would like to remind conveyancers that they are obligated under the Water Act to notify Water Authorities on change of ownership. This is not automatically done via PEXA.

**Electronic Payment Option:**

Make this payment via internet or phone banking.



Biller Code: 39420 Ref: 3006 8403 0001 6
---

Statement No: 198222  
 Account No: 30-0684-0300-01  
 Property Address: SERVICE STATION, 22 High St, Rushworth VIC 3612

**Details for Services provided and their tariffs:**

METERED SERVICE: 12802 (20mm) Meter Number: 10w048472

Sewerage Service Fee:	From 07/06/19 To 01/07/19 = 24 days @ 121.41¢ per day	=	\$29.14
Sewerage Service Fee:	From 01/07/19 To 17/09/19 = 78 days @ 119.40¢ per day	=	\$93.13
Water Service Fee:	From 07/06/19 To 01/07/19 = 24 days @ 46.74¢ per day	=	\$11.22
Water Service Fee:	From 01/07/19 To 17/09/19 = 78 days @ 45.97¢ per day	=	\$35.86
Sew. Volume Charge:	From 07/06/19 To 01/07/19 0.000kL @ 160.09¢ per kL	=	\$0.00
Sew. Volume Charge:	From 01/07/19 To 17/09/19 0.000kL @ 157.87¢ per kL	=	\$0.00
Water Volume:	Est. Y.E. 4163 (01/07/19) - Prev. Read 4150 (07/06/19) =	13 kL	
Water Volume:	Est. Read 4203 (17/09/19) - Prev. Read 4163 (01/07/19) =	40 kL	
Water Volume Charged:	53.000 kL x 5.00% =	2.650 kL	
Water Volume Charge(2018-19):	0.650 kL @ 117.44¢ per kL =	\$0.76	
Water Volume charge(2019-20):	2.000 kL @ 115.81¢ per kL =	\$2.32	

**Note:**  
 This Statement is valid for 120 days only from the date of issue. Within the valid timeframe, please obtain an update prior to settlement to avoid overpayment.

Consumption charges to the date specified is an ESTIMATION ONLY. A Special Meter Reading certificate may be applied for to obtain accurate consumption charges for property settlement adjustment - standard fees apply. Consumption charges are not applicable to unconnected services.

**Orders and Notices:**  
 This property has a combined drain.

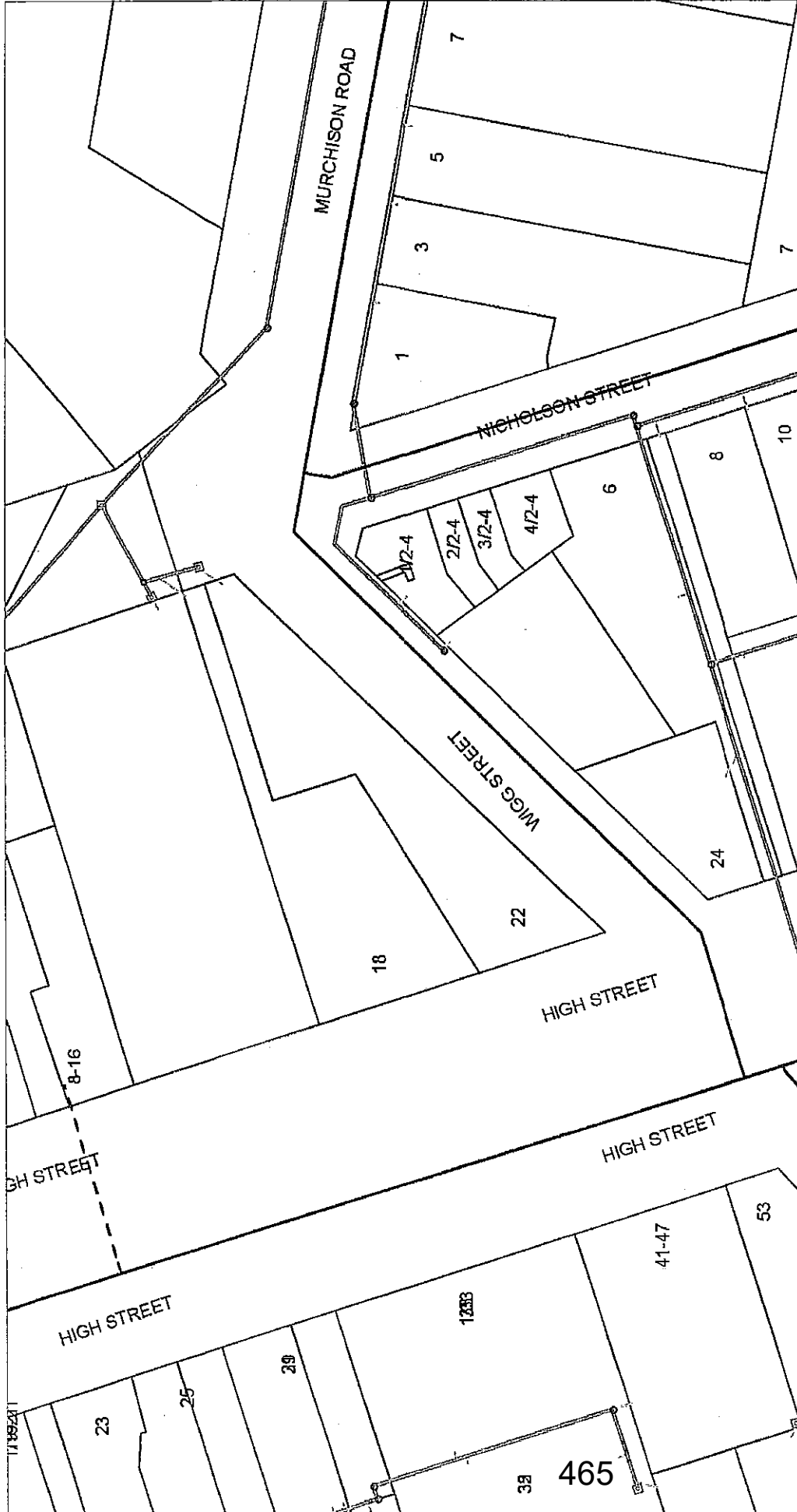
**Comments:**  
 Service Station.  
 This property is serviced by a shared meter.

A financial update for this information statement can now be accessed via -  
[https://goulburnvalleywater.formstack.com/forms/information\\_statement\\_update](https://goulburnvalleywater.formstack.com/forms/information_statement_update)

I hereby certify that the above Statement is correct.



Clair Haines  
 Manager - Customer Accounts and Services



**Address:** SERVICE STATION 22 High Street Rushworth VIC 3612

**Property No:** 30-0684-0300



22-08-2019

**Scale 1:** 1233

**Sewer Main DOES NOT traverse property**  
**Water Main DOES NOT traverse property**

**DISCLAIMER**  
 Goulburn Valley Water provides this information with the understanding that it is not guaranteed to be accurate, correct or complete and conclusions drawn from such information are the responsibility of the user. While every effort has been made to ensure the accuracy, correctness and timeliness of the data, Goulburn Valley Water assumes no responsibility for errors or omissions.





ABN 84 578 076 056  
 Tel: 1300 360 007  
 Fax: (03) 5831 1467

mail@gwater.vic.gov.au  
 www.gwater.vic.gov.au

Goulburn Valley Region Water Corporation  
 104-110 Fryers Street  
 Shepparton, Victoria 3630

P.O. Box 185, Shepparton 3632  
 DX 63036 Shepparton

Victorian Land Registry Services Pty Ltd ATF  
 Victorian Land Registry Services Trust  
 Level 1, 2 Lonsdale Street  
 MELBOURNE VIC 3000

Your Ref: 32451072-019-8  
 Statement No: 198223  
 Account No: 30-0684-0305-01-5  
 Date: 22-Aug-2019

## Information Statement

Water Act 1989. Section 158

Statement of encumbrances, works required, outstanding matters, tariffs and other charges including outstanding amounts and other information which the Corporation considers relevant for the property known as:

**RESIDENCE, 22 High St, Rushworth VIC 3612**

**Title(s):**  
 Part of Lot 1, Title Plan 431133N, Volume 8524, Folio 773, Parish of Moora

**Owner(s):**  
 Inglwd Pty Ltd

**Purchaser(s):**  
 No purchaser on application

---

**Account Calculation:**

Fees and Charges (including interest)	\$0.00
Scheme Arrears	\$0.00
<b>Total Amount in Arrears at Date of Issue:</b>	<b>\$0.00</b>
Service Charges & Estimated Consumption to: (from page 2)	\$227.86
<b>Total Amount:</b>	<b>\$227.86</b>

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Goulburn Valley Water would like to remind conveyancers that they are obligated under the Water Act to notify later Authorities on change of ownership. This is not automatically done via PEXA.

**Electronic Payment Option:**

Make this payment via internet or phone banking.



Bill Code: 39420  
 Ref: 3006 8403 0501 5

Statement No: 198223  
Account No: 30-0684-0305-01  
Property Address: RESIDENCE, 22 High St, Rushworth VIC 3612

**Details for Services provided and their tariffs:**

METERED SERVICE: 12802 (20mm) Meter Number: 10W048472

Sewerage Service Fee:	From 07/06/19 To 01/07/19 = 24 days @ 121.41¢ per day	=	\$29.14
Sewerage Service Fee:	From 01/07/19 To 17/09/19 = 78 days @ 119.40¢ per day	=	\$93.13
Water Service Fee:	From 07/06/19 To 01/07/19 = 24 days @ 46.74¢ per day	=	\$11.22
Water Service Fee:	From 01/07/19 To 17/09/19 = 78 days @ 45.97¢ per day	=	\$35.86
Water Volume:	Est. Y.E. 4163 (01/07/19) - Prev. Read 4150 (07/06/19) =	13 kL	
Water Volume:	Est. Read 4203 (17/09/19) - Prev. Read 4163 (01/07/19) =	40 kL	
Water Volume Charged:	53.000 kL x 95.00% =	50.350 kL	
Water Volume Charge(2018-19):	12.350 kL @ 117.44¢ per kL =	\$14.50	
Water Volume Charge(2019-20):	38.000 kL @ 115.81¢ per kL =	\$44.01	

**Note:**

This Statement is valid for 120 days only from the date of issue. Within the valid timeframe, please obtain an update prior to settlement to avoid overpayment.

Consumption charges to the date specified is an ESTIMATION ONLY. A Special Meter Reading certificate may be applied for to obtain accurate consumption charges for property settlement adjustment - standard fees apply. Consumption charges are not applicable to unconnected services.

**Orders and Notices:**

This property has a combined drain.

**Comments:**

This property is serviced by a shared meter.

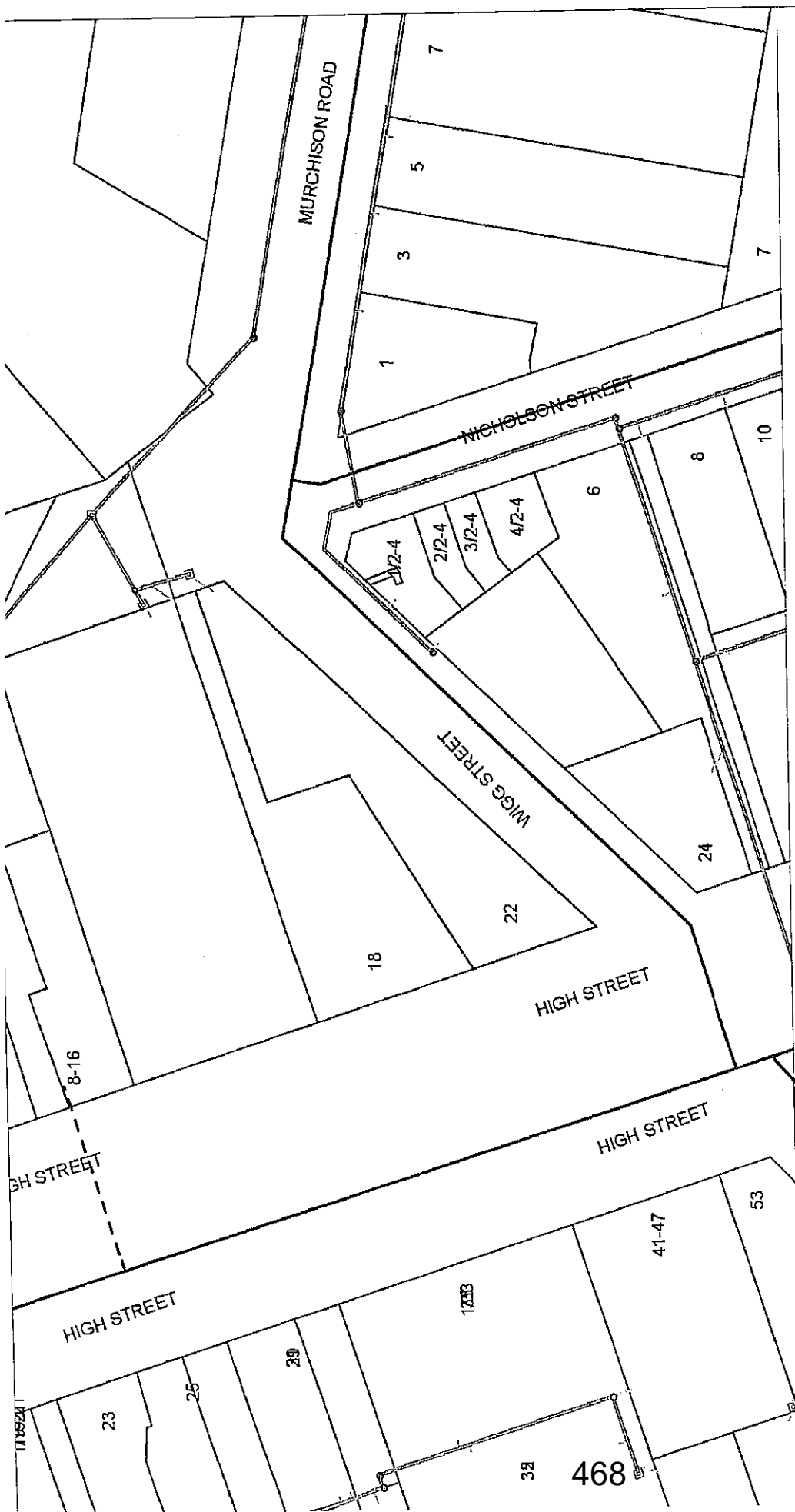
A financial update for this information statement can now be accessed via -

[https://goulburnvalleywater.formstack.com/forms/information\\_statement\\_update](https://goulburnvalleywater.formstack.com/forms/information_statement_update)



I hereby certify that the above Statement is correct.



Clair Haines  
Manager - Customer Accounts and Services



**Address: RESIDENCE 22 High Street Rushworth VIC 3612**

<b>Property No:</b> 22-08-2019		

**Sewer Main DOES NOT traverse property**  
**Water Main DOES NOT traverse property**

**DISCLAIMER**  
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Date

24 May

2018

INGLWD PTY LTD (ACN 622 141 931) ATF INGLWD TRUST  
AND

DIB GROUP PTY. LIMITED  
(ACN 002 889 474)

---

## AGREEMENT FOR LEASE

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Premises: 22 High Street, Rushworth VIC 3612



KABO LAWYERS  
MARN 0206289

Noweid Ali  
Solicitor  
Telephone +61 3 9663 3337

Kabo Lawyers  
Level 5, 100 Collins Street  
Melbourne Vic 3000  
Email: [Noweid.ali@kabolawyers.com](mailto:Noweid.ali@kabolawyers.com)  
Ref:NA: 170738

---

**THIS AGREEMENT** made the 21 day of 5 / 2018

**BETWEEN** Entity identified in Item 1 of the Agreement for Lease Schedule (Lessor)

**AND** DIB GROUP PTY. LIMITED (ACN 002 889 474) (Lessee)

## **RECITALS**

Whereby in consideration of the mutual covenants herein contained the parties expressly covenant and agree as follows:

- A.** The Lessor has entered or will enter into a Contract of Sale ("**Contract of Sale**") with the registered proprietor ("**Vendor**") of "**the Premises**" as detailed in Item 2 of the Agreement for Lease Schedule for the purchase of the Premises;
- B.** Upon completion of **Settlement** in accordance with the Contract of Sale and on the **Date of Settlement** the Lessor is entitled to become the registered proprietor for the Premises;
- C.** Subject to the Condition Precedent to Lease being fulfilled, the Lessor and Lessee have agreed to enter into a **Lease** for the Premises in accordance with this agreement to lease.

## **OPERATIVE PART**

### **1.1 Definitions and Interpretation**

This agreement is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In the interpretation of this agreement:

- (a)** References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b)** Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- (c)** Grammatical forms of defined words or phrases have corresponding meanings;
- (d)** Parties must perform their obligations on the dates and times fixed by reference to the capital city of Victoria;

- 
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
  - (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
  - (g) References to a party are intended to bind their executors, administrators and permitted transferees; and
  - (h) Obligations under this agreement affecting more than one party bind them jointly and each of them severally.
  - (i) Any provision of this agreement must not be construed to the detriment of a party solely on the basis that the party was responsible for the preparation or drafting of that provision or inclusion of that provision.

## **1.2 Definitions**

- (a) "Contract of Sale" means the contract of sale for the Premises between the Vendor and the Lessor (as the purchaser) for the Premises.
- (b) "Settlement" means the day on which the Lessor pays all monies owed to the Vendor for the purchase of the Premises and the Lessor is entitled to become the registered proprietor of the Premises.
- (c) "Lease" means the lease between the Lessor and Lessee annexed to this agreement to lease.
- (d) "Latest Date for Commencement of Lease" means the date stipulated in Item 3 of the Agreement for Lease Schedule.
- (e) "Latest Date for Settlement" means 30<sup>th</sup> June 2019.
- (f) "Commencement Notice" means a written notice of at least 14 days from the Lessor to the Lessee informing the Lessee that the Lease is anticipated to commence on a nominated date and Settlement is not a pre-condition to providing the Commencement Notice to the Lessee.
- (g) "Permitted Use" means Service station outlet for the sale of automotive fuel approved by the relevant statutory authority, convenience store, liquor shop and café.
- (h) "Claim" includes any claim, order, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or damages and claim for abatement of rent obligation.
- (i) "Lessor's Works" are as detailed in the annexure to this agreement and labelled: "Lessor's Works".

## **2. Impediment to leasing**

- 
- 2.1 The parties are unable to enter into a lease of the Premises because:
- (a) the Lessor does not have possession thereof; and
  - (b) the Condition Precedent to Lease may not have been fulfilled.
- 2.2 The parties have entered into this agreement in the expectation that by the Commencement Date, possession will be available and the Condition Precedent to Lease will have been fulfilled.

**2A. Condition Precedent to Lease**

The rights and obligations of the parties under this Agreement including the grant of the Lease under Clause 3 are subject to and conditional upon and the Lease is conditional upon the following:

**2A.1 Settlement**

Settlement occurring for the Premises by the Latest Date for Settlement.

**2A.2 Commercial Viability**

The Lessor being satisfied, in its absolute discretion of the commercial viability of the project for the Lessor, having regard to matters including but not limited to the following:

- (a) The cost of any construction works (including the Lessor's Works) to be carried out by the Lessor;
- (b) The issuing of all relevant permits for the Lessor's Works and for the use of the Premises for the Permitted Use;
- (c) Any actual or potential disputes with the Lessee or a third party that may adversely affect the Premises or its suitability as to Permitted Use;
- (d) Complying with any notices issued by an Authority; or
- (e) Any change in circumstances;
- (f) Commercial exigencies.

(The "Commercial Viability Condition")

**2A.3 Lessor's Works**

The Lessor completing the Lessor's Works no later than the Latest Date for Commencement of Lease.

Clause 2A.1, 2A.2 and 2A.3 together (the "Condition Precedent to Lease").

**2AA Termination if any Condition Precedent to Lease not satisfied**

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2AA.1 If any of the Condition Precedent to Lease is not fulfilled or satisfied, the Lessor may terminate this Agreement by providing written notice to the Lessee at any time before the **Commencement Date**.

2AA.2 For the avoidance of doubt, only the Lessor may rely on the provisions of the Condition Precedent to Lease to terminate this Agreement.

2AA.3 If the Agreement is terminated then:

- (a) this Agreement and the Lease will be at an end; and
- (b) both parties expressly release each other from any **Claim**; and
- (c) no further liabilities arise; and
- (d) both parties are released from their respective obligations to further perform this Agreement; and
- (e) any sums of money paid shall be refunded; and
- (f) neither party shall have any claim or right of action against the other; and
- (g) the Lease will become void.

**2B. Commencement of Lease:**

The Commencement Date for the Lease shall be on the later of:

**2B.1 Settlement:**

Settlement occurring for the Premises by the Latest Date for Settlement.

**2B.2 Lessor's Works**

Upon the Lessor providing the Lessee with at least 14 days' written notice that the Lessor's Works have been completed.

**2B.3 Commercial Viability Condition**

The Lessor being satisfied with the Commercial Viability Condition.

**2C Ancillary Matters:**

2C.1 The Commencement Date will apply regardless of whether the Lessee occupies or commences trading from the Premises on the Commencement Date.

2C.2 The Lessor shall do all things reasonably required to obtain possession of the Premises by the Commencement Date.

2C.3 The Lessor shall endeavour to notify the Lessee after Settlement has occurred for the Premises as soon as practicable after Settlement.



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**3. Lease**

- (a) The Lessor will grant or procure the grant of, and the Lessee will accept, a lease (the "Lease") of the Premises for the term and at the rent and upon and subject to the covenants, terms and conditions contained in the annexure and labelled "Lease".
- (b) The Lessee must at the time of signing this agreement also sign the Lease in triplicate.
- (c) The Lease shall be completed by inserting therein:
  - (i) The date of execution by the Lessee;
  - (ii) The date of commencement of the term;
  - (iii) Details sufficient to complete any other blanks which occur therein.
- (d) The Lessee authorises the Lessor's legal practitioner to complete the Lease by inserting the items specified in Clause 3 (c).
- (e) As from the Commencement Date of the Lease and until it has been so duly executed, completed and delivered as hereinbefore provided, the Lessor and the Lessee shall be bound by the covenants and provisions therein contained as if the Lease had been duly executed and delivered as aforesaid.

**3A INTENTIONALLY DELETED**

**3B Fixtures and Fittings:**

- (a) The Lessor and Lessee hereby agree that the fixtures and fittings provided by the Lessor with the Premises (including items provided as part of the Lessor's Works) for use by the Lessee (the "Fixtures and Fittings" shall be on an "as is basis" in their present condition and state of repair with all defects (latent and patent).
- (b) The Lessee acknowledges and agrees that:
  - (i) the Lessee must not during the term of the Lease or any period of holding over, require the Lessor to maintain the Fixtures and Fittings or to rectify any defects or bear the cost or any part thereof for doing so, unless arising from or contributed to by the Lessor's negligent and/or wilful act or omission; and
  - (ii) the Lessor makes no warranty (to the extent permitted at law) as to the suitability of the Fixtures and Fittings for:
    - (A) any particular use or purpose;
    - (B) the purpose for which items of that type are ordinarily used.

- (iii) the Lessor retains ownership of the Fixtures and Fittings, unless otherwise agreed between the parties in writing.

**3C Insurance:**

- (a) At or before the Commencement Date and in addition to anything else contained in this Agreement, the Lessor must provide to the Lessee a Building Insurance Certificate for replacement value of the Leased Premises for the amount listed in Item 4 and otherwise in accordance with the Lease annexed hereto. If, despite the Lessor having obtained Building Insurance, a Building Insurance Certificate is not available to the Lessor at the Commencement Date, the Lessor must confirm in writing to the Lessee warranting that the Lessor has obtained Building Insurance as required under this Agreement and the Lease; and must provide the Lessee with a copy of the Building Insurance Certificate as soon as practicable after it becomes available to the Lessor.
- (b) At or before the Commencement Date and in addition to anything else contained in this Agreement, the Lessee must provide to the Lessor insurance certificate for the following:
  - (i) Public Liability insurance for the Premises for a sum no less than \$20,000,000 (twenty million dollars);

**4. General**

- (a) Nothing in this agreement shall prohibit or in any way prevent the Lessor from selling the Premises but in any such event the Lessor covenants with the Lessee that the Lessor must procure for the Lessee at the Lessor's cost and expense, the purchaser of the Premises to enter into an Agreement on identical terms to this Agreement for Lease and Lease with the Lessee for the Premises with the necessary modifications only to this Agreement for Lease and Lease as regards the name of the Lessor. The exercise by the Lessor of its rights under this clause shall not affect its obligations to the Lessee hereunder in any way whatsoever.
- (b) The Lessee shall not transfer or assign or otherwise dispose of the Lessee's rights and obligations under this agreement without the Lessor's written consent. Notwithstanding the provisions of this clause the Lessor's written consent shall not be unreasonably withheld in the case of an assignment of the Lessee's rights to a related company.
- (c) This agreement may only be amended or varied in writing and must be signed by both parties.
- (d) If there is any inconsistency between this agreement and any other document forming part of the entire agreement between the parties, this agreement takes priority over any other conflicting provision/s to the extent of the inconsistency.
- (e) No waiver of any breach of this contract or any of the terms of this contract will be effective unless that waiver is in writing and is signed by the party against whom the waiver is claimed. No waiver of any

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breach shall operate as a waiver of any other breach or subsequent breach.

- (f) This agreement may be signed in any number of counterparts and all the counterparts together constitute one agreement.
- (g) In the event of any part of this agreement being or becoming void or unenforceable or being illegal then that part shall be severed from this contract to the extent that all parts that shall not be or become void, unenforceable or illegal shall remain in full force and effect and be unaffected by such severance.
- (h) If any right, obligation, duty or liability is capable of being performed after the completion or termination of this agreement, that right, duty or liability does not merge at completion or termination.
- (i) Time is of the essence of this contract. Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday or bank holiday.
- (j) Each party must promptly do all things necessary or desirable to give effect to this agreement including signing necessary documents.

#### 5.1 Notices

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A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (a) Delivered personally; or
- (b) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (c) Faxed to their facsimile number when it will be treated as received when it is transmitted; or
- (d) Sent by email to their email address when it will be treated as received when it enters the recipient's information system.

5.2 Any notice given in connection with this agreement must be given to the persons identified below or any other address as notified by the parties from time to time:

(a) Lessor:

Name: Konfir Kabo  
Position: Director  
Address: Level 5, 100 Collins Street, Melbourne VIC 3000  
Phone: (03) 9663 3337  
Fax: (03) 9663 3334

---

And

Name: Noweid Ali  
Position: Solicitor/Legal Practitioner for the Lessor  
Address: Level 5, 100 Collins Street, Melbourne VIC 3000  
Phone: (03) 9663 3337  
Fax: (03) 9663 3334

(b) Lessee: Name: John Dib  
Position: Director  
Address: 9 East Street, Lidcombe NSW 2141  
Phone: (02) 8722 2100  
Fax: (02) 8722 2181

**6. Costs**

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Each party must pay its own costs of negotiating, preparing and executing this agreement and the Lease and performance of the parties' respective obligations therein.

**7. Whole Agreement**

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This agreement and the Lease contain the entire agreement between the parties other than as specifically recorded in this agreement or the Lease, the parties do not rely on any representation or warranty of any nature; and have not been induced to enter into this Agreement or the Lease by any representation verbal or otherwise or as a consequence of any conduct of any person which is not set out in this agreement or the Lease.

**8. Governing law and jurisdiction**

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This agreement is governed by the laws in force in:

The state of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that State and the Federal Court of Australia and any other courts that may hear appeals from those courts about any proceedings in connection with this agreement.


**9. Lessor's Right to assign:**

The Lessor may, without requiring the consent of the Lessee assign its rights under this Agreement for Lease to a third party. The Lessor must notify the Lessee of any assignment pursuant to this Clause and the Lessee must execute any documents as may be reasonably required to give effect to the

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Lessor's rights under this Clause within 3 Business Days of receiving a written request from the Lessor.

**Agreement for Lease Schedule**

Item 1 Lessor	<b>INGLWD PTY LTD (ACN 622 141 931)</b>
Item 2 Premises	Address:
	<p><b>22 High Street, Rushworth VIC 3612</b> and more particularly described in Certificates of Title or bearing title reference:</p> <p>Volume 08524 Folio 773, being Lot 1 on Title Plan 431133N (formerly known as part of Crown Allotment 1 Section 5 Township of Rushworth Parish of Moora).</p>
Item 3 Latest Date for Commencement of Lease	<p><del>30<sup>th</sup> June 2019</del>  <i>31 December 2019</i> </p>
Item 4 Building Insurance Amount	\$1,000,000.00

Execution page

SIGNED AS AN AGREEMENT

<p><b>Executed by</b></p> <p><b>INGLWD PTY LTD (ACN 622 141 931)</b> in accordance with Section 127 of the Corporations Act 2001 (Cth):</p> <p><i>[Signature]</i></p> <p>Witness <u>Fay Mcclawson</u></p>	<p><i>[Signature]</i></p> <p><b>Konfir Kabo</b> 55 St Georges Road, Toorak VIC 3142</p>
---	---

<p><b>Executed by</b></p> <p><b>DIB GROUP PTY. LIMITED (ACN 002 889 474)</b> in accordance with Section 127 of the Corporations Act 2001 (Cth):</p> <p><b>Ha Hai Thi Tran</b> A Justice of the Peace in and for the State of New South Wales Reg. No. 205127</p> <p>Witness <i>[Signature]</i></p>	<p><i>[Signature]</i></p> <p><b>Sole Director and Company Secretary</b></p> <p>Print Name <u>JOHN DIB</u></p> <p>Print usual address <u>9 ENSLEY</u> <u>1.10000000 NSW 2111</u></p>
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### **Annexure A: Lessor's Works**

Provision and Installation of 1x 60,000 litre tank to replace old tank.  
Provision and Installation of 2 pumps (4 products/ 8 hose) to replace the old pumps  
Installation of Shelving of up to \$5,000 (including material and installation charges)  
Installation of counter  
New canopy of up to 4.5 metres subject to Council's approval; or such other height as approved by Council  
Automatic Glass door  
Shower in the toilet as required  
Concrete cutting at the forecourt to a depth of approximately 30cm to make provisions for flame proof cables and conduits (to be installed by the Lessee) and run to the console  
Vinyl tiles  
Painting (as required)  
Ceiling (as required)  
CCTV (as required)  
Electricals (as required)





**KABO LAWYERS**

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MARN 0208288  
P.O BOX 18330  
Collins Street East  
Victoria, 8003  
AUSTRALIA

## Lease of Real Estate

---

Landlord:~ INGLWD PTY LTD (ACN 622 141 931)

Tenant:~ DIB GROUP PTY. LIMITED (ACN 002 889 474)

Premises:~ 22 High Street, Rushworth VIC 3612

Noweid Ali

*Solicitor*

*Telephone +61 3 9663 3337*

**Kabo Lawyers**

Level 5, 100 Collins Street

Melbourne Vic 3000

Email: [Noweid.ali@kabolawyers.com](mailto:Noweid.ali@kabolawyers.com)

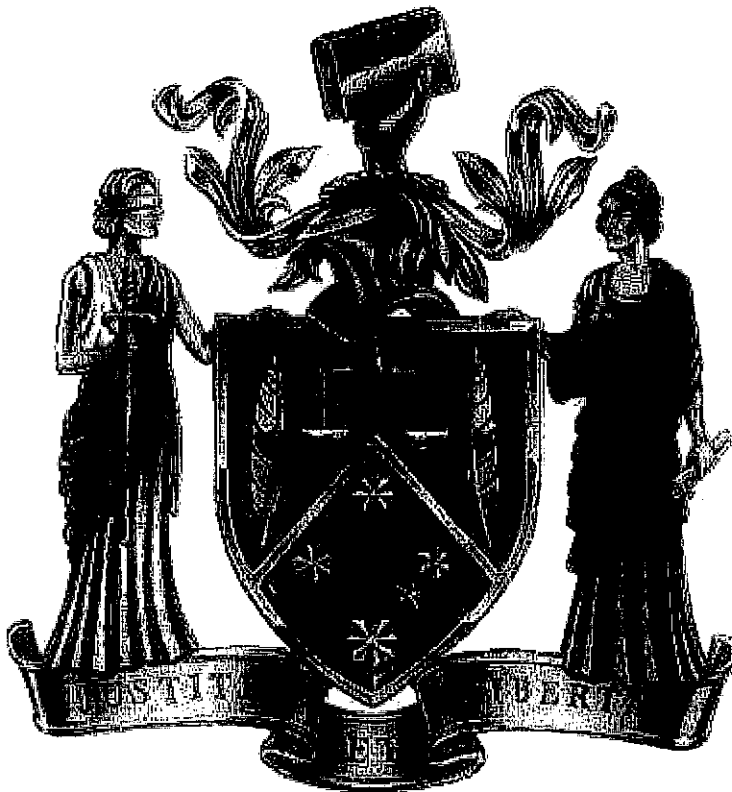
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# LEASE OF REAL ESTATE

## COPYRIGHT

Law Institute of Victoria  
November 2012 Revision



### - Important Notices To The Person Preparing This Lease -

This lease is in a standard form. You may need to make changes to record the agreement of the landlord, tenant, and any guarantor. You should carefully check the whole document and make appropriate deletions, alterations, and/or additions so it agrees with the instructions you have received. You should note the warranty in clause 21 and record any alterations to the lease conditions in schedule item 22 and not in the lease conditions.

If the lease is one to which the Retail Leases Act 2003 (Vic) applies, the parties should refer to that Act for important rights and obligations that are not set out in this lease.<sup>2</sup>

**LEASE OF REAL ESTATE**  
**(WITH GUARANTEE & INDEMNITY)**

*(Commercial Property)*

**INDEX**

<b>1.</b>	<b>DEFINITIONS AND INTERPRETATION</b>	<b>3</b>
<b>2.</b>	<b>TENANT'S PAYMENT, USE AND INSURANCE OBLIGATIONS</b>	<b>6</b>
	2.1 Payment and use obligations	
	2.2 Negative use obligations	
	2.3 Tenant's insurance	
<b>3.</b>	<b>REPAIRS, MAINTENANCE, FIRE PREVENTION AND REQUIREMENTS OF AUTHORITIES</b>	<b>7</b>
	3.1 Tenant's general repair obligations	
	3.2 Tenant's specific repair obligations	
	3.3 Exceptions to tenant's obligations	
<b>4.</b>	<b>LEASE TRANSFERS AND SUBLETTING</b>	<b>9</b>
	4.1 No transfer or subletting	
	4.2 Landlord's consent	
	4.3 Request for consent	
	4.4 Deemed consent	
	4.5 Execution of documentation	
	4.6 Payment of landlord's expenses	
	4.7 No licence or sharing arrangements	
	4.8 Obligations of transferor after transfer	
<b>5.</b>	<b>GENERAL AGREEMENTS BETWEEN LANDLORD AND TENANT</b>	<b>10</b>
	5.1 Yield up at end of term	
	5.2 Indemnity by tenant	
	5.3 Release by tenant	
	5.4 Building outgoings	
	5.5 Transfer of premises by landlord	
<b>6.</b>	<b>LANDLORD'S OBLIGATIONS</b>	<b>11</b>
	6.1 Quiet possession	
	6.2 Landlord's insurance	
	6.3 Mortgagee's consent	
	6.4 Landlord's repair obligations	
<b>7.</b>	<b>EVENTS OF DEFAULT AND LANDLORD'S RIGHTS</b>	<b>11</b>
	7.1 Termination by landlord for default	
	7.2 Damages	
	7.3 Section 146 Property Law Act 1958	
	7.4 Notice before termination in case of rent	
	7.5 Essential terms	
	7.6 Notice before termination for repudiation	
	7.7 Effect of non-enforcement	
<b>8.</b>	<b>DESTRUCTION OR DAMAGE</b>	<b>12</b>
	8.1 Abatement in case of damage	
	8.2 Reinstatement where premises not substantially destroyed	
	8.3 Substantial destruction	
	8.4 Insurance cover denied due to tenant act or omission	
	8.5 Resolution of disputes	
<b>9.</b>	<b>CONSENTS AND WARRANTIES BY THE PARTIES</b>	<b>13</b>
	9.1 Consents and approvals	
	9.2 Whole agreement	
<b>10.</b>	<b>OVERHOLDING AND ABANDONMENT OF THE PREMISES</b>	<b>13</b>
	10.1 Holding over	
	10.2 Certain conduct not waiver	
<b>11.</b>	<b>RENT REVIEWS TO MARKET</b>	<b>14</b>
	11.1 Market review procedure	

11.2	Determination binding	
11.3	Valuer's fee	
11.4	Rent pending determination	
11.5	Delay in market review	
<b>12.</b>	<b>FURTHER TERM(S)</b>	<b>15</b>
12.1	Exercise of option to renew	
12.2	Terms of renewed lease	
12.3	Directors' guarantees	
<b>13.</b>	<b>SECURITY DEPOSIT</b>	<b>15</b>
13.1	Payment of security deposit	
13.2	Interest on security deposit	
13.3	Use of security deposit	
13.4	Refund of unused security deposit	
13.5	Bank guarantee as security deposit	
13.6	Replacement guarantee on change of landlord	
<b>14.</b>	<b>NOTICES</b>	<b>15</b>
14.1	Service of notices	
14.2	Time notices served	
14.3	Notices received after 5.00pm	
<b>15.</b>	<b>OBLIGATIONS OF GUARANTOR(S) UNDER GUARANTEE AND INDEMNITY</b>	<b>16</b>
15.1	Guarantee and indemnity	
15.2	Guarantee and indemnity not affected by certain events	
15.3	Insolvency of tenant	
15.4	Unenforceability of tenant's obligations	
<b>16.</b>	<b>DISPUTE RESOLUTION</b>	<b>17</b>
16.1	Provision for mediation	
16.2	Mediation procedure	
16.3	Mediator's fees	
16.4	Terms of settlement	
16.5	Mediation confidential	
16.6	Release of mediator	
16.7	Mediator not bound by natural justice	
16.8	VCAT proceedings	
<b>17.</b>	<b>GST</b>	<b>17</b>
17.1	Terms used	
17.2	Amounts GST exclusive	
17.3	Recipient of supply to pay amount for GST	
17.4	Reimbursements	
17.5	Tax invoice	
<b>18.</b>	<b>CONSUMER PRICE INDEX</b>	<b>18</b>
18.1	CPI formula	
18.2	Delay in publications of index	
18.3	Change in CPI basis	
18.4	CPI discontinued	
18.5	No decrease unless Act applies	
<b>19.</b>	<b>IF PREMISES ONLY PART OF THE LETTABLE AREA OF THE BUILDING</b>	<b>18</b>
19.1	Application of clause	
19.2	Naming rights and logos	
19.3	External surfaces and outside areas	
19.4	Landlord reserves certain rights	
19.5	No obstruction of common areas	
19.6	Building rules	
<b>20.</b>	<b>ADDITIONAL PROVISIONS</b>	<b>19</b>
<b>21.</b>	<b>LANDLORD WARRANTY</b>	<b>19</b>

The landlord leases the premises to the tenant for the term and at the rent and on the conditions set out in this lease together with all necessary access over any common areas.

The guarantor, if any, agrees to be bound by the guarantor's obligations set out in this lease.

## LEASE CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1 The listed expressions in bold print have the meaning set out opposite them -

EXPRESSION	MEANING
------------	---------

<b>accounting period</b>	the period of 12 months ending 30 June or other period of 12 months adopted by the landlord in respect of this lease for recovery of <b>building outgoings</b> and includes any broken periods at the start and end of the term
--------------------------	---

<b>Act</b>	the <i>Retail Leases Act 2003</i> (Vic)
------------	---

<b>building</b>	any building in which the premises are located, including the landlord's installations
-----------------	--

<b>building outgoings</b>	any of the following expenses (excluding capital expenses and expenses whose recovery from the tenant would be contrary to applicable legislation) incurred in respect of the land, the building, the premises or any premises in the building which include the premises -
---------------------------	---

(a)	rates, levies and assessments imposed by any relevant authorities;
-----	--

(b)	taxes including land tax (unless the Act applies), calculated on the basis that the land is the only land of the landlord liable to tax and is not subject to a trust but excluding income tax and capital gains tax;
-----	---

(c)	the costs of maintaining and repairing the building and the landlord's installations and carrying out works as required by relevant authorities (but excluding any amount recovered in respect of maintenance or repair by the landlord from its insurer);
-----	--

(d)	premiums and charges for the following insurance policies taken out by the landlord -
-----	---

(i)	damage to and destruction of the premises for their replacement value for the risks listed in item 11,
-----	--

(ii)	removal of debris,
------	--------------------

(iii)	breakdown of landlord's installations,
-------	--

(iv)	breakage of glass,
------	--------------------

(v)	public risk for any single event for the amount stated in item 12 (if none is stated, \$10 million) or other amount reasonably specified from time to time by the landlord, and
-----	---

(vi)	loss of rent and outgoings for the period stated in item 13 or, if none is stated, 12 months,
------	---

and excesses paid or payable on claims,

and, if the premises occupy only a part of the lettable area of the building, the following further items -

(e)	costs incurred in providing services to the building and the land including -
-----	---

	(i) heating,
	(ii) cooling,
	(iii) air-conditioning,
	(iv) cleaning,
	(v) pest control,
	(vi) waste collection,
	(vii) lighting,
	(viii) landscaping and garden maintenance,
	(ix) security, and
	(x) fire safety prevention, detection and control;
	(f) accountancy and audit fees; and
	(g) costs of whatever description, reasonably incurred by the landlord in the administration, management or operation of the building and the land,
	whether incurred by the landlord directly or as owners corporation levies, at cost to the landlord on the basis that an expense is deemed to have been paid at the time it fell due for payment
<b>building rules</b>	any rules adopted from time to time for the building, including the rules of any owners corporation affecting the premises
<b>common areas</b>	areas in the building or on the land that are under the control of the landlord and are used or intended for use -
	(a) by the public; or
	(b) in common by tenants of premises in the building in relation to the carrying on of businesses on those premises,
	other than areas which are let or licensed, or intended to be let or licensed, other than on a casual basis
<b>Consumer Price Index</b>	the consumer price index published by the Australian Government Statistician under the heading All Groups, Melbourne
<b>CPI review date</b>	a date specified in item 16(b)
<b>fixed review date</b>	a date specified in item 16(c)
<b>GST</b>	GST within the meaning of the GST Act
<b>GST Act</b>	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>
<b>guarantor</b>	the person named in item 3
<b>item</b>	an item in the schedule to this lease
<b>land</b>	the parcel of land on which the building is erected and which is described in item 4(b)
<b>landlord</b>	the person named in item 1, or any other person who will be entitled to possession of the premises when this lease ends
<b>landlord's installations</b>	the installations of the landlord in the premises or the building or on the land and those installed by the landlord after the lease starts and including the installations listed in item 5
<b>lettable area</b>	unless the Act applies and requires otherwise -
	(a) in relation to the premises, the area let; and
	(b) in relation to the building, the total area of the building that is let or licensed or intended to be let or licensed, other than on a casual basis.

When it is necessary to measure the **lettable area** of the building or any part of the building, the measurement is to be carried out using the most recent revision of the relevant Property Council of Australia method of measurement

<b>market review date</b>	a date specified in <b>item 16(a)</b>
<b>permitted use</b>	the use specified in <b>item 15</b>
<b>premises</b>	the premises described in <b>item 4(a)</b> and fixed improvements and the <b>landlord's installations</b> within the <b>premises</b>
<b>rent</b>	the amount in <b>item 6</b> , as varied in accordance with this lease
<b>review date</b>	a date specified in <b>item 16</b>
<b>start of the lease</b>	the first day of the <b>term</b> but, if this lease is a renewal under an option in an earlier lease (whether or not this lease is on terms that are materially different to those contemplated by the earlier lease), the starting date of the first lease to contain an option for renewal.
<b>tenant</b>	the person named in <b>item 2</b> , or any person to whom the lease has been transferred
<b>tenant's agents</b>	the <b>tenant's</b> employees, agents, contractors, customers and visitors to the <b>premises</b>
<b>tenant's installations</b>	the installations listed in <b>item 7</b> and those installed by the <b>tenant</b> after the lease starts
<b>term</b>	the period stated in <b>item 8</b>
<b>valuer</b>	a person holding the qualifications or experience specified under section 13DA(2) of the <i>Valuation of Land Act 1960 (Vic)</i> and, if the Act applies, a specialist retail valuer.

- 1.2 References to laws include statutes, regulations, instruments and by-laws and all other subordinate legislation or orders made by any authority with jurisdiction over the premises. Illegal means contrary to a law as defined in this sub-clause.
- 1.3 This lease must be interpreted so that it complies with all laws applicable in Victoria. If any provision of this lease does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of the lease.
- 1.4 The law of Victoria applies to this lease.
- 1.5 Any change to this lease must be in writing and signed by the parties.
- 1.6 If a party consists of more than one person –
- (a) the acts and omissions of any of them bind all of them; and
  - (b) an obligation imposed by this lease on or in favour of more than one person binds or benefits them separately, together and in any combination.
- 1.7 The use of one gender includes the others and the singular includes the plural and vice versa.
- 1.8 If the landlord, tenant or guarantor is an individual, this lease binds that person's legal personal representative. If any of them is a corporation, this lease binds its transferees.
- 1.9 This lease, including all guarantees and indemnities, is delivered and operates as a deed.
- 1.10 The tenant is bound by and answerable for the acts and omissions of the tenant's agents.
- 1.11 If there is a conflict between a provision in the schedule and one of these lease conditions then the provision in the schedule is to prevail.
- 1.12 "Include" and every form of that word is to be read as if followed by "(without limitation)".
- 1.13 This lease includes the schedule.
- 1.14 The parties consider that the application of the Act to this lease is as specified in item 15 and, if item 15 states that the Act does not apply, that the reason is as specified in item 15.

## 2. TENANT'S PAYMENT, USE AND INSURANCE OBLIGATIONS

### 2.1 The tenant must -

- 2.1.1 pay the rent without any set-off (legal or equitable) or deduction whatever to the landlord on the days and in the way stated in item 9 without the need for a formal demand. The landlord may direct in writing that the rent be paid to another person. The rent is reviewed on each review date specified in item 16 -
- (a) on a market review date, the rent is reviewed in accordance with clause 11,
  - (b) on a CPI review date, the rent is reviewed in accordance with clause 18, and
  - (c) on a fixed review date, the rent is either increased by the fixed percentage or changed by or to the fixed amount, in either case as specified in item 16 in respect of that fixed review date.
- 2.1.2 produce receipts for paid building outgoings within 7 days of a request.
- 2.1.3 pay when due all charges for the provision of services to the premises including gas, electricity, water and telephone.
- 2.1.4 remove regularly from the premises all rubbish and waste generated by the tenant's operations.
- 2.1.5 pay the proportion of the building outgoings specified in item 10 in accordance with clause 5.4.
- 2.1.6 pay or reimburse within 7 days of a request all increases in insurance premiums paid or payable by the landlord as the result of the tenant's use of the premises.
- 2.1.7 pay within 7 days of a request interest at the rate stated in item 14 on any rent or other money which the tenant has not paid within 7 days of the due date. Interest is to be calculated daily from the due date, continues until the overdue money is paid and is capitalised monthly.
- 2.1.8 pay within 7 days of a request the landlord's reasonable expenses and legal costs in respect of -
- (a) the negotiation, preparation, settling, execution and stamping (if applicable) of this lease,
  - (b) change to this lease requested by the tenant whether or not the change occurs,
  - (c) the surrender or ending of this lease (other than by expiration of the term) requested by the tenant, whether or not the lease is surrendered or ended,
  - (d) the transfer of this lease or subletting of the premises or proposed transfer or sub-letting whether or not the transfer or subletting occurs,
  - (e) a request by the tenant for consent or approval, whether or not consent or approval is given,
  - (f) any breach of this lease by the tenant, or
  - (g) the exercise or attempted exercise by the landlord of any right or remedy against the tenant,
- but, if the Act applies, only to the extent to which the Act permits recovery.
- 2.1.9 pay any stamp duty on this lease, on any renewal, and any additional stamp duty after a review of rent.
- 2.1.10 subject to clause 3.3.2, comply with all laws relating to the use or occupation of the premises.
- 2.1.11 carry on the business of the permitted use efficiently and, subject to all applicable laws, keep the premises open during the business hours which are normal for the permitted use and not suspend or discontinue the operation of the business.



- 2.1.12 comply with the landlord's reasonable requirements in relation to the use of the landlord's installations and any services provided by the landlord.
- 2.1.13 subject to clause 3.3.2, comply with the laws and requirements of relevant authorities relating to essential safety measures, occupational health and safety and disability discrimination relevant to the premises or the building.
- 2.2 The tenant must not, and must not let anyone else -
  - 2.2.1 use the premises except for the permitted use, but the tenant agrees that the landlord has not represented that the premises may be used for that use according to law or that the premises are suitable for that use.
  - 2.2.2 use the premises for any illegal purpose.
  - 2.2.3 carry on any noxious or offensive activity on the premises.
  - 2.2.4 do anything which might cause nuisance, damage or disturbance to a tenant, occupier or owner of any adjacent property.
  - 2.2.5 conduct an auction or public meeting on the premises.
  - 2.2.6 use radio, television or other sound-producing equipment at a volume that can be heard outside the premises.
  - 2.2.7 do anything which might affect any insurance policy relating to the premises by causing -
    - (a) it to become void or voidable,
    - (b) any claim on it being rejected, or
    - (c) a premium to be increased.
  - 2.2.8 keep or use chemicals, inflammable fluids, acids, or other hazardous things on the premises except to the extent necessary for the permitted use, or create fire hazards.
  - 2.2.9 do anything which might prejudicially affect the essential safety measures or the occupational health and safety or disability discrimination status of the premises or the building.
  - 2.2.10 place any sign on the exterior of the premises without the landlord's written consent.
  - 2.2.11 make any alteration or addition to the premises without the landlord's written consent. Consent is entirely at the landlord's discretion.
  - 2.2.12 install any fixtures or fittings, except those necessary for the permitted use, without the landlord's written consent.
  - 2.2.13 bring onto the premises any object which by its nature or weight might cause damage to the premises, without the landlord's written consent.
  - 2.2.14 except in an emergency, interfere with any of the services or equipment in the premises or in any property of which the premises form part.
- 2.3 The tenant must -
  - 2.3.1 take out and keep current an insurance cover in the name of the tenant and noting the interest of the landlord, for public risk for any single event for the amount stated in item 12 or, if none is stated, for \$10 million, with an extension which includes the indemnities given by the tenant to the landlord in clauses 5.2 and 5.3.2 of this lease to the extent that such an extension is procurable on reasonable terms in the Australian insurance market.
  - 2.3.2 maintain the insurance cover with an insurer approved by the landlord.
  - 2.3.3 produce satisfactory evidence of insurance cover on written request by the landlord.

### 3. REPAIRS, MAINTENANCE, FIRE PREVENTION AND REQUIREMENTS OF AUTHORITIES

- 3.1 Subject to clause 3.3, the tenant must -
  - 3.1.1 keep the premises in the same condition as at the start of the lease, except for fair wear and tear; and

- 3.1.2 comply with all notices and orders affecting the premises which are issued during the term except any notices or orders that applicable legislation makes the responsibility of the landlord.
- 3.2 In addition to its obligations under clause 3.1, the tenant must -
- 3.2.1 repaint or refinish all painted or finished surfaces in a workmanlike manner with as good quality materials as previously at least once every 5 years during the term and any further term viewed as one continuous period.
- 3.2.2 keep the premises properly cleaned and free from rubbish, keep waste in proper containers and have it removed regularly.
- 3.2.3 immediately replace glass which becomes cracked or broken with glass of the same thickness and quality.
- 3.2.4 immediately repair defective windows, light fittings, doors, locks and fastenings, and replace missing or inoperative light-globes and fluorescent tubes, keys and keycards.
- 3.2.5 maintain in working order all plumbing, drainage, gas, electric, solar and sewerage installations.
- 3.2.6 promptly give written notice to the landlord or landlord's agent of -
- (a) damage to the premises or of any defect in the structure of, or any of the services to, the premises,
  - (b) receipt of a notice or order affecting the premises,
  - (c) any hazards threatening or affecting the premises, and
  - (d) any hazards arising from the premises for which the landlord might be liable.
- 3.2.7 immediately make good damage caused to adjacent property by the tenant or the tenant's agents.
- 3.2.8 permit the landlord, its agents or workmen to enter the premises during normal business hours, after giving reasonable notice (except in cases of emergency) -
- (a) to inspect the premises,
  - (b) to carry out repairs or agreed alterations, and
  - (c) to do anything necessary to comply with notices or orders of any relevant authority,
- bringing any necessary materials and equipment.
- 3.2.9 carry out repairs within 14 days of being served with a written notice of any defect or lack of repair which the tenant is obliged to make good under this lease. If the tenant does not comply with the notice, the landlord may carry out the repairs and the tenant must repay the cost to the landlord within 7 days of a request.
- 3.2.10 only use persons approved by the landlord to repair and maintain the premises but, if the Act applies, only use persons who are suitably qualified.
- 3.2.11 comply with all reasonable directions of the landlord or the insurer of the premises as to the prevention, detection and control of fire.
- 3.2.12 on vacating the premises, remove all signs and make good any damage caused by installation or removal.
- 3.2.13 take reasonable precautions to secure the premises and their contents from theft, keep all doors and windows locked when the premises are not in use and comply with the landlord's directions for the use and return of keys or keycards.
- 3.2.14 permit the landlord or its agent access to the premises at reasonable times by appointment to show the premises -
- (a) to valuers and to the landlord's consultants,
  - (b) to prospective purchasers at any time during the term, and

- (c) to prospective tenants within 3 months before the end of the **term** (unless the **tenant** has exercised an option to renew this lease) and to affix "for sale" or "to let" signs in a way that does not unduly interfere with the **permitted use**.
  - 3.2.15 maintain any grounds and gardens of the **premises** in good condition, tidy, free from weeds and well-watered.
  - 3.2.16 maintain and keep in good repair any heating, cooling or air conditioning equipment exclusively serving the **premises**.
- 3.3 The **tenant** is not obliged -
  - 3.3.1 to repair damage against which the **landlord** must insure under clause 6.2 unless the **landlord** loses the benefit of the insurance because of acts or omissions by the **tenant** or the **tenant's agents**.
  - 3.3.2 to carry out structural or capital repairs or alterations or make payments of a capital nature unless the need for them results from -
    - (a) negligence by the **tenant** or the **tenant's agents**,
    - (b) failure by the **tenant** to perform its obligations under this lease,
    - (c) the **tenant's** use of the **premises**, other than reasonable use for the **permitted use**, or
    - (d) the nature, location or use of the **tenant's installations**, in which case the repairs, alterations or payments are the responsibility of the **tenant**.
  - 3.3.3 to carry out any work that applicable legislation makes the responsibility of the **landlord**.

#### 4. LEASE TRANSFERS AND SUBLETTING

- 4.1 The **tenant** must not transfer this lease or sublet the **premises** without the **landlord's** written consent, and section 144 of the *Property Law Act 1958 (Vic)* and clause 9.1 do not apply.
- 4.2 The **landlord** -
  - 4.2.1 subject to sub-clause 4.2.2, must not unreasonably withhold consent to a transfer of this lease or a sublease of the **premises** if the **tenant** has complied with the requirements of clause 4.3. If the **Act** applies, the **landlord** may only withhold consent to a transfer of this lease in accordance with the **Act**.
  - 4.2.2 may withhold consent at the **landlord's** discretion if the **Act** does not apply, and a transfer of this lease would result in the **Act** applying, or applying if this lease is renewed for a further term.
- 4.3 To obtain the **landlord's** consent to a transfer or sublease the **tenant** must -
  - 4.3.1 ask the **landlord** in writing to consent to the transfer or sublease,
  - 4.3.2 give the **landlord** -
    - (a) in relation to each proposed new tenant or sub-tenant such information as the **landlord** reasonably requires about its financial resources and business experience and if the **Act** does not apply, any additional information reasonably required by the **landlord** to enable it to make a decision, and
    - (b) a copy of the proposed document of transfer or sublease, and
  - 4.3.3 remedy any breach of the lease which has not been remedied and of which the **tenant** has been given written notice.
- 4.4 If the **Act** applies and -
  - 4.4.1 the **tenant** has asked the **landlord** to consent to a transfer and complied with clause 4.3 and section 61 of the **Act**, and
  - 4.4.2 the **landlord** fails to respond by giving or withholding consent to the transfer within 28 days,
 then the **landlord** is to be taken as having consented.
- 4.5 If the **landlord** consents to the transfer or sublease, the **landlord**, **tenant** and new tenant or sub-tenant and the **guarantor** must execute the documents submitted

- under sub-clause 4.3.2(b). The directors of the new tenant (if it is a corporation) must execute a guarantee and indemnity in the terms of clause 15.
- 4.6 The tenant must pay the landlord's reasonable expenses incurred in connection with an application for consent or the granting of consent and the completion of the documents, as well as any stamp duty on the documents.
- 4.7 Except by a transfer or sublease to which the landlord has consented, the tenant must not give up possession or share occupancy of the premises or grant a licence to anyone else or mortgage or charge its interest under this lease or enter into any arrangement that gives a person the right to enter into occupation of the premises without the landlord's written consent. Consent is at the landlord's discretion.
- 4.8 Subject to the Act, if it applies, the obligations to the landlord of every tenant who has transferred this lease continue until this lease ends. They do not continue into any period of overholding after this lease ends, nor into any renewed term: at those times they are the responsibility only of the tenant in possession. This clause does not prevent the landlord from enforcing rights which arise before this lease ends.

## 5. GENERAL AGREEMENTS BETWEEN LANDLORD AND TENANT

- 5.1 When the term ends, the tenant must -
- 5.1.1 return the premises to the landlord clean and in the condition required by this lease, and
- 5.1.2 remove the tenant's installations and other tenant's property from the premises and make good any damage caused in installing or removing them.
- If the tenant leaves any tenant's installations or other tenant's property on the premises after the end of the lease, unless the landlord and tenant agree otherwise -
- 5.1.3 all items of tenant's installations and tenant's property will be considered abandoned and will become the property of the landlord, but the landlord may remove any of the tenant's installations or other property of the tenant and recover the costs of removal and making good as a liquidated debt payable on demand; and
- 5.1.4 the parties intend that clause 5.1.3 operate in relation to tenant's installations and tenant's property in place of any legislation that might otherwise apply to goods remaining on the premises.
- 5.2 The tenant indemnifies the landlord against any claim resulting from any act or failure to act by the tenant or the tenant's agents while using the premises.
- 5.3 The tenant -
- 5.3.1 uses and occupies the premises at its own risk, and
- 5.3.2 releases the landlord from and indemnifies the landlord against all claims resulting from accidents occurring on the premises except to the extent that the accident is caused by the landlord or a person for whom the landlord is responsible.
- 5.4 In relation to building outgoings, the parties agree -
- 5.4.1 the landlord must pay the building outgoings when they fall due for payment but may require the tenant to pay when due a building outgoing for which the tenant receives notice directly and to reimburse the landlord within 7 days of a request all building outgoings for which notices are received by the landlord.
- 5.4.2 the tenant must pay or reimburse the landlord the proportion specified in item 10.
- 5.4.3 at least 1 month before the start of an accounting period, the landlord may (but if the Act applies, the landlord must) give the tenant an estimate of building outgoings for the accounting period.
- 5.4.4 despite clause 5.4.1, the tenant, if the landlord requires it, must pay its share of the estimated building outgoings by equal monthly instalments during the accounting period on the days on which rent is payable

- (after allowing for **building outgoings** paid directly or separately reimbursed by the **tenant**).
- 5.4.5 if the **Act** applies, the **landlord** must make a statement of **building outgoings** available during each **accounting period** as required by the **Act**.
- 5.4.6 within three months after the end of an **accounting period**, the **landlord** must give the **tenant** a statement of the actual **building outgoings** for the **accounting period** (if the **Act** applies and requires that the statement be accompanied by a report by a registered company auditor, the statement must be accompanied by a report complying with section 47(5); if the **Act** applies but does not require that the statement be accompanied by a report by a registered company auditor, the statement must be accompanied by the items specified in section 47(6)(b)).
- 5.4.7 the **tenant** must pay the amount short paid or the **landlord** must repay the amount over paid for **building outgoings**, as the case may be, within 1 month after a statement is provided under clause 5.4.6 or within 4 months after the end of the **accounting period**, whichever is earlier.
- 5.4.8 an appropriate adjustment must be made in relation to a **building outgoing** incurred in respect of a period beginning before the start of the **term** or extending beyond the end of the **term**.
- 5.5 If the freehold of the **premises** (or the **building**) is transferred, the transferor **landlord** is released from all lease obligations falling due for performance on or after the date of the instrument of transfer.

## 6. LANDLORD'S OBLIGATIONS

- 6.1 The **landlord** must give the **tenant** quiet possession of the **premises** without any interruption by the **landlord** or anyone connected with the **landlord** as long as the **tenant** does what it must under this lease.
- 6.2 The **landlord** must take out at the start of the **term** and keep current policies of insurance for the risks listed in **Item 11** against -
- 6.2.1 damage to and destruction of the **building**, for its replacement value,
- 6.2.2 removal of debris,
- 6.2.3 breakdown of **landlord's** installations, and
- 6.2.4 breakage of glass, for its replacement value.
- 6.3 The **landlord** must give to the **tenant** the written consent to this lease of each mortgagee whose interest would otherwise have priority over this lease by endorsement on this lease in the terms set out following the 'execution and attestation' section.
- 6.4 The **landlord** must keep the structure (including the external faces and roof) of the **building** and the **landlord's** installations in a condition consistent with their condition at the start of the lease, but is not responsible for repairs which are the responsibility of the **tenant** under clauses 3.1, 3.2 and 3.3.2.

## 7. EVENTS OF DEFAULT AND LANDLORD'S RIGHTS

- 7.1 The **landlord** may terminate this lease, by re-entry or notice of termination, if -
- 7.1.1 the **rent** is unpaid after the day on which it falls due for payment,
- 7.1.2 the **tenant** does not meet its obligations under this lease,
- 7.1.3 the **tenant** is a corporation and -
- (a) an order is made or a resolution is passed to wind it up except for reconstruction or amalgamation,
- (b) goes into liquidation,
- (c) is placed under official management,
- (d) has a receiver, including a provisional receiver, or receiver and manager of any of its assets or an administrator appointed,
- (e) without the **landlord's** written consent, there is a different person in effective control of the **tenant** as a result of changes in -
- (i) membership of the company or its holding company,
- (ii) beneficial ownership of the shares in the company or its holding company, or

(iii) beneficial ownership of the business or assets of the company,

but this paragraph does not apply if the tenant is a public company listed on the Australian Stock Exchange, or a subsidiary of one.

"Effective control" means the ability to control the composition of the board of directors or having more than 50% of the shares giving the right to vote at general meetings,

- 7.1.4 a warrant issued by a court to satisfy a judgement against the tenant or a guarantor is not satisfied within 30 days of being issued,
- 7.1.5 a guarantor is a natural person and -
- (a) becomes bankrupt,
  - (b) takes or tries to take advantage of Part X of the *Bankruptcy Act* 1966 (Cth),
  - (c) makes an assignment for the benefit of their creditors, or
  - (d) enters into a composition or arrangement with their creditors,
- 7.1.6 a guarantor is a corporation and one of the events specified in (a) to (e) of clause 7.1.3 occurs in relation to it, or
- 7.1.7 the tenant, without the landlord's written consent -
- (a) discontinues its business on the premises, or
  - (b) leaves the premises unoccupied for 14 days.
- 7.2 Termination by the landlord ends this lease, but the landlord retains the right to sue the tenant for unpaid money or for damages (including damages for the loss of the benefits that the landlord would have received if the lease had continued for the full term) for breaches of its obligations under this lease.
- 7.3 For the purpose of section 146(1) of the *Property Law Act* 1958 (Vic), 14 days is fixed as the period within which the tenant must remedy a breach capable of remedy and pay reasonable compensation for the breach.
- 7.4 Before terminating this lease under clause 7.1 for an event to which section 146(1) of the *Property Law Act* 1958 (Vic) does not extend, the landlord must give the tenant the same notice that it would be required to give if that section did extend to a termination for that event.
- 7.5 Breach by the tenant of any of the following clauses of this lease is a breach of an essential term and constitutes repudiation: 2.1.1, 2.1.5, 2.1.6, 2.1.10, 2.1.11, 2.2.1, 2.2.2, 2.2.7, 2.2.8, 2.2.9, 2.2.11, 2.2.13, 2.3, 3.2.11, 4.1, 4.7, 5.4.2, 5.4.7, 13 and 17. Other tenant obligations under this lease may also be essential.
- 7.6 Before terminating this lease for repudiation (including repudiation consisting of the non-payment of rent), the landlord must give the tenant written notice of the breach and a period of 14 days in which to remedy it and to pay reasonable compensation for it. A notice given in respect of a breach amounting to repudiation is not an affirmation of the lease.
- 7.7 Even though the landlord does not exercise its rights under this lease on one occasion, it may do so on any later occasion.

#### 8. DESTRUCTION OR DAMAGE

- 8.1 If the premises or the building are damaged so that the premises cannot be used or accessed for the permitted use -
- 8.1.1 a fair proportion of the rent and building outgoings is to be suspended until the premises are again wholly fit and accessible for the permitted use, and
  - 8.1.2 the suspended proportion of the rent and building outgoings must be proportionate to the nature and extent of the damage or inaccessibility.
- 8.2 If the premises or the building are partly destroyed, but not substantially destroyed, the landlord must reinstate the premises or the building as soon as reasonably practicable.
- 8.3 If the premises or the building are wholly or substantially destroyed -

- 8.3.1 the landlord is not obliged to reinstate the premises or the building, and
- 8.3.2 if the reinstatement does not start within 3 months, or is not likely to be completed within 9 months, the landlord or the tenant may end this lease by giving the other written notice.
- 8.4 The tenant will not be entitled to suspension of rent or building outgoings under sub-clause 8.1.1 nor to end the lease under sub-clause 8.3.2 and the landlord will not be obliged to reinstate the premises or the building under clause 8.2 if payment of an insurance claim is properly refused in respect of the damage or destruction because of any act or omission by the tenant or the tenant's agents.
- 8.5 If the Act does not apply and there is a dispute under this clause, either party may request the President of the Australian Property Institute, Victorian Division, to nominate a practising valuer member of that Institute to determine the dispute or the parties may refer the dispute to mediation under clause 16 unless item 21 states that the mediation procedure does not apply to this lease. The valuer acts as an expert and not as an arbitrator and the determination is binding.

## 9. CONSENTS AND WARRANTIES BY THE PARTIES

- 9.1 Subject to the Act (if it applies), the landlord must not unreasonably withhold its consent or approval to any act by the tenant or matter which needs consent or approval unless any other clause provides otherwise, but -
  - 9.1.1 the landlord may impose reasonable conditions on any consent or approval, and
  - 9.1.2 the tenant must reimburse the landlord's reasonable expenses resulting from an application for its consent or approval, including fees paid to consultants.
- 9.2 This lease, together with (if the Act applies) any disclosure statement, contains the whole agreement of the parties. Neither party is entitled to rely on any warranty or statement in relation to -
  - 9.2.1 the conditions on which this lease has been agreed,
  - 9.2.2 the provisions of this lease, or
  - 9.2.3 the premises
 which is not contained in those documents.

## 10. OVERHOLDING AND ABANDONMENT OF THE PREMISES

- 10.1 If the tenant remains in possession of the premises without objection by the landlord after the end of the term -
  - 10.1.1 the tenant, without any need for written notice of any kind, is a monthly tenant on the conditions in this lease, modified so as to apply to a monthly tenancy,
  - 10.1.2 either party may end the tenancy by giving one month's written notice to the other which may expire on any day of the month,
  - 10.1.3 the monthly rent starts at one-twelfth of the annual rent which the tenant was paying immediately before the term ended unless a different rent has been agreed, and
  - 10.1.4 the landlord may increase the monthly rent by giving the tenant one month's written notice.
- 10.2 If the tenant vacates the premises during the term, whether or not it ceases to pay rent -
  - 10.2.1 the landlord may -
    - (a) accept the keys,
    - (b) enter the premises to inspect, maintain or repair them, or
    - (c) show the premises to prospective tenants or purchasers,
 without this being re-entry or an acceptance of repudiation or a waiver of the landlord's rights to recover rent or other money under this lease.
  - 10.2.2 this lease continues until a new tenant takes possession of the premises, unless the landlord -
    - (a) accepts a surrender of the lease, or

- (b) notifies the tenant in writing that the landlord accepts the tenant's repudiation of the lease, or
- (c) ends the lease in accordance with clause 7.1.

## 11. RENT REVIEWS TO MARKET

11.1 In this clause "review period" means the period following each market review date until the next review date or the end of this lease.

The review procedure on each market review date is -

11.1.1 each review of rent may be initiated by either party unless item 17 states otherwise but, if the Act applies, review is compulsory.

11.1.2 a party may initiate a review by giving the other party a written notice stating the current market rent which it proposes as the rent for the review period. Unless the Act applies, if the party receiving the notice does not object in writing to the proposed rent within 14 days, it becomes the rent for the review period.

11.1.3 If -

(a) the Act does not apply and the party receiving the notice serves an objection to the proposed rent within 14 days and the parties do not agree on the rent within 14 days after the objection is served, or

(b) the Act applies and the parties do not agree on what the rent is to be for the review period,

the parties must appoint a valuer to determine the current market rent.

If the Act does not apply and if the parties do not agree within 28 days after the objection is served on the name of the valuer, the valuer must be nominated by the President of the Australian Property Institute, Victorian Division, at the request of either party. If the Act applies, the valuer is to be appointed by agreement of the parties, or failing agreement, by the Small Business Commissioner.

11.1.4 In determining the current market rent for the premises the valuer must:

(a) consider any written submissions made by the parties within 21 days of their being informed of the valuer's appointment, and

(b) determine the current market rent as an expert

and, whether or not the Act applies, must make the determination in accordance with the criteria set out in section 37(2) of the Act.

11.1.5 The valuer must make the determination of the current market rent and inform the parties in writing of the amount of the determination and the reasons for it as soon as possible after the end of the 21 days allowed for submissions by the parties.

11.1.6 If -

(a) no determination has been made within 45 days (or such longer period as is agreed by the landlord and the tenant or, if the Act applies, as is determined in writing by the Small Business Commissioner) of the parties

(i) appointing the valuer, or

(ii) being informed of the valuer's appointment, or

(b) the valuer resigns, dies, or becomes unable to complete the valuation,

then the parties may immediately appoint a replacement valuer in accordance with sub-clause 11.1.3.

11.2 The valuer's determination binds both parties.

11.3 The landlord and tenant must bear equally the valuer's fee for making the determination and if either pays more than half the fee, the difference may be recovered from the other.

11.4 Until the determination is made by the valuer, the tenant must continue to pay the same rent as before the market review date. Within 7 days of being informed of the valuer's determination, the parties must make any necessary adjustments.



- 11.5 If the **Act** does not apply, a delay in starting a market review does not prevent the review from taking place and being effective from the **market review date** but if the market review is started more than 12 months after the **market review date**, the review takes effect only from the date on which it is started.

## 12. FURTHER TERM(S)

- 12.1 The **tenant** has an option to renew this lease for the further term or terms stated in **item 18** and the **landlord** must renew this lease for that further term or those further terms if -
- 12.1.1 there is no unremedied breach of this lease by the **tenant** of which the **landlord** has given the **tenant** written notice,
  - 12.1.2 the **tenant** has not persistently committed breaches of this lease of which the **landlord** has given written notice during the **term**, and
  - 12.1.3 the **tenant** has requested the renewal in writing not more than 6 months nor less than 3 months before the end of the **term**. The latest date for exercising the option is stated in **item 19**.
- 12.2 The renewed lease -
- 12.2.1 starts on the date after this lease ends,
  - 12.2.2 has a starting rent determined in accordance with clause 11 as if the first day of the further term were specified as a **market review date** in **item 16(a)**, and
  - 12.2.3 must contain the same terms as this lease but with no option for renewal after the last option for a further term stated in **item 18** has been exercised, including any provisions appearing in this document that may have been read down or severed to comply with any applicable law that has ceased to be applicable as if they had not been read down or severed.
- 12.3 If the **tenant** is a corporation and was required to provide directors' guarantees for this lease, the **tenant** must provide guarantees of its obligations under the renewed lease by its directors in the terms of clause 15.

## 13. SECURITY DEPOSIT

- 13.1 The **tenant** must pay a security deposit to the **landlord** of the amount stated in **item 20** and must maintain the deposit at that amount.
- 13.2 Any security deposit not in the form of a guarantee must be invested in an interest bearing deposit and all interest accruing on it is treated as a supplementary payment of security deposit. When the **term** starts, the **tenant** must provide the **landlord** with the **tenant's** tax file number.
- 13.3 The **landlord** may use the deposit to make good the cost of remedying breaches of the **tenant's** obligations under this lease (or any of the events specified in clause 7.1) and the **tenant** must pay whatever further amount is required to bring the deposit back to the required level.
- 13.4 As soon as practicable after this lease has ended and the **tenant** has vacated the **premises** and performed all of its obligations under the lease, the **landlord** must refund the unused part of the deposit.
- 13.5 The **tenant** may, and if the **landlord** requires must, provide the security deposit by means of a guarantee by an ADI within the meaning of the *Banking Act 1959* (Cth).
- 13.6 If the freehold of the **premises** is transferred:
- 13.6.1 the **tenant** must provide a replacement guarantee in exchange for the existing guarantee if requested by the **landlord** in writing to do so, but the **landlord** must pay the reasonable fees charged by the ADI for the issue of the replacement guarantee, and
  - 13.6.2 the **landlord** must transfer any security deposit held under this lease to the transferee.

## 14. NOTICES

- 14.1 A notice given under this lease may be given -
- 14.1.1 by post,

- 14.1.2 by facsimile, or
- 14.1.3 by delivery
- to the party's last known address, or
- 14.1.4 registered office, or
- 14.1.5 if to the tenant, at the premises.
- 14.2 Posted notices will be taken to have been received 72 hours after posting unless proved otherwise.
- 14.3 Notices delivered or sent by facsimile after 5.00p.m. will be taken to have been received at 9.00a.m. on the next business day at the place where it is received.
- 15. **OBLIGATIONS OF GUARANTOR(S) UNDER GUARANTEE AND INDEMNITY**
  - 15.1 The guarantor in consideration of the landlord having entered into this lease at the guarantor's request —
    - 15.1.1 guarantees that the tenant will perform all its obligations under this lease for the term and any renewed term or terms and during any period of overholding after the end of the term,
    - 15.1.2 must pay on demand any amount which the landlord is entitled to recover from the tenant under this lease whether in respect of the term, any further term or further terms or any period of overholding, and
    - 15.1.3 indemnifies the landlord against all loss resulting from the landlord's having entered into this lease whether from the tenant's failure to perform its obligations under it or from this lease being or becoming unenforceable against the tenant and whether in respect of the term, any renewed term or terms or any period of overholding.
  - 15.2 The liability of the guarantor will not be affected by -
    - 15.2.1 the landlord granting the tenant or a guarantor time or any other indulgence, or agreeing not to sue the tenant or another guarantor,
    - 15.2.2 failure by any guarantor to sign this document,
    - 15.2.3 transfer (except in accordance with the Act, if the Act applies) or variation of this lease, but if this lease is transferred the guarantor's obligations, other than those which have already arisen, end when the term ends and do not continue into a term renewed by a new tenant nor a period of overholding by a new tenant,
    - 15.2.4 the fact that this lease is subsequently registered at the Land Registry or not registered, or, for any reason, is incapable of registration, or
    - 15.2.5 transfer of the freehold of the premises.
  - 15.3 The guarantor agrees that —
    - 15.3.1 the landlord may retain all money received including dividends from the tenant's bankrupt estate, and need allow the guarantor a reduction in its liability under this guarantee only to the extent of the amount received,
    - 15.3.2 the guarantor must not seek to recover money from the tenant to reimburse the guarantor for payments made to the landlord until the landlord has been paid in full,
    - 15.3.3 the guarantor must not prove in the bankruptcy or winding up of the tenant for any amount which the landlord has demanded from the guarantor, and
    - 15.3.4 the guarantor must pay the landlord all money which the landlord refunds to the tenant's liquidator or trustee in bankruptcy as preferential payments received from the tenant.
  - 15.4 If any of the tenant's obligations are unenforceable against the tenant, then this clause is to operate as a separate indemnity and the guarantor indemnifies the landlord against all loss resulting from the landlord's inability to enforce performance of those obligations. The guarantor must pay the landlord the amount of the loss resulting from the unenforceability.
  - 15.5 If there is more than one guarantor, this guarantee binds them separately, together and in any combination.

15.6 Each of the events referred to in clauses 7.1.5 and 7.1.6 is deemed to be a breach of an essential term of this lease.

## 16. DISPUTE RESOLUTION

16.1 Unless the Act applies, if the words "The mediation procedure applies to this lease" are included in item 21, the mediation procedure applies to this lease. In that event the parties must attempt to resolve any dispute by the mediation procedure, except disputes about -

16.1.1 unpaid rent and interest charged on it,

16.1.2 review of rent, and

16.1.3 a dispute to be resolved in another way prescribed by any other provision of this lease.

16.2 The mediation procedure is -

16.2.1 a party may start mediation by serving a mediation notice on the other party.

16.2.2 the notice must state that a dispute has arisen and identify what the dispute is.

16.2.3 the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 7 days of service of the mediation notice, either party may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator.

16.2.4 once the mediator has accepted the appointment the parties must comply with the mediator's instructions.

16.2.5 if the dispute is not resolved within 30 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.

16.3 The mediator may fix the charges for the mediation which must be paid equally by the parties.

16.4 If the dispute is settled, all parties must sign the terms of agreement and these terms are binding on the parties.

16.5 The mediation is confidential and -

16.5.1 statements made by the mediator or the parties, and

16.5.2 discussions between the participants to the mediation, before after or during the mediation,

cannot be used in any legal proceedings.

16.6 It must be a term of the engagement of the mediator that the parties release the mediator from any court proceedings relating to this lease or the mediation.

16.7 The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.

16.8 If the Act applies, so that a dispute must be referred to the Victorian Civil and Administrative Tribunal, the parties agree that each may be represented by a legal practitioner or legal practitioners of its choice.

## 17. GST

17.1 Expressions used in this clause 17 and in the GST Act have the same meanings as when used in the GST Act.

17.2 Amounts payable and consideration provided under or in respect of this lease (other than under clause 17.3) are GST exclusive.

17.3 The recipient of a taxable supply made under or in respect of this lease must pay to the supplier, at the time the consideration for the supply is due, the GST payable in respect of the supply. This obligation extends to supply consisting of a party's entry into this lease.

17.4 An amount payable by the tenant in respect of a creditable acquisition by the landlord from a third party must not exceed the sum of the value of the landlord's acquisition and the additional amount payable by the tenant under clause 17.3 on account of the landlord's liability for GST.

17.5 A party is not obliged, under clause 17.3, to pay the GST on a taxable supply to it under this lease, until given a valid tax invoice for the supply.

## 18. CONSUMER PRICE INDEX

18.1 On a **CPI review date**, the rent is adjusted by reference to the **Consumer Price Index** using the following formula -

$$AR = R \times \frac{CPIB}{CPIA}$$

Where: "AR" means adjusted rent,  
"R" means rent before adjustment,  
"CPIB" means the **Consumer Price Index** number for the quarter immediately preceding the **CPI review date**, and  
"CPIA" means the **Consumer Price Index** number for the quarter immediately preceding the most recent earlier **review date** or, where there is no earlier **review date**, the quarter immediately preceding the start of the term.

18.2 If **CPIB** is not published until after the **CPI review date**, the adjustment is made when it is published but the adjustment takes effect from the relevant **CPI review date**. In the meantime, the tenant must continue to pay the rent at the old rate and, when the adjustment is made, the tenant must immediately pay the shortfall or the landlord must immediately repay the excess, as the case may be.

18.3 If the base of the **Consumer Price Index** is changed between the two comparison dates an appropriate compensating adjustment must be made so that a common base is used.

18.4 Unless the Act applies and requires otherwise, if the **Consumer Price Index** is discontinued or suspended, then the calculation is to be made using whatever index is substituted for it. If no other index is substituted for it, the calculation is to be made using the index or calculation which the President of the Australian Property Institute, Victorian Division (acting as an expert and not as an arbitrator), determines is appropriate in the circumstances. This determination is binding.

18.5 Unless the Act applies, the adjustment is not made if it would result in a decrease in the rent payable.

## 19. IF PREMISES ONLY PART OF THE LETTABLE AREA OF THE BUILDING

19.1 If the premises are only a part of the lettable area of the building, the provisions of this clause apply.

19.2 The landlord -

19.2.1 may adopt whatever name it chooses for the building and change the name from time to time, and

19.2.2 reserves all proprietary rights to the name of the building and any logo adopted for the building.

19.3 The landlord reserves for itself the use of all external surfaces of the building and areas outside the building.

19.4 The building, common areas and landlord's installations remain under the absolute control of the landlord which may manage them and regulate their use as it considers appropriate. In particular the landlord has the right -

19.4.1 to close off the common areas as often as the landlord reasonably considers appropriate to prevent rights of way or user arising in favour of the public or third parties,

19.4.2 to exclude persons whose presence the landlord considers undesirable,

19.4.3 to grant easements over any parts of the land which do not materially and adversely affect the tenant's use,

19.4.4 to install, repair and replace, as necessary, the pipes and conduits necessary or desirable for the provision of services to the various parts of the building, and

19.4.5 to repair, renovate, alter or extend the building but, in doing so, the landlord must not cause more inconvenience to the tenant than is reasonable in the circumstances.

If the Act applies, these rights may only be exercised in a manner consistent with the Act.

- 19.5 The tenant must not obstruct the common areas or use them for any purpose other than the purposes for which they were intended.
- 19.6 The tenant must comply with the building rules. The landlord may change the building rules from time to time and the tenant will be bound by a change when it receives written notice of it. The landlord must not adopt a building rule or change the building rules in a way that is inconsistent with this lease. To the extent that a building rule is inconsistent with this lease, the lease prevails.

**20. ADDITIONAL PROVISIONS**

Any additional provisions set out in item 22 -

20.1 bind the parties, and

20.2 if inconsistent with any other provisions of this lease, override them.

**21. LANDLORD WARRANTY**

The landlord warrants that clauses 1 to 20 appearing in this lease are identical to clauses 1 to 20 of the copyright Law Institute of Victoria Lease of Real Estate November 2012 Revision and that any modifications to them are set out as additional provisions in item 22.

• • • • •

## SCHEDULE

### Important Notice to the Person Completing This Schedule

This lease is in a standard form. You may need to make changes to record the agreement of the landlord, tenant and any guarantor. You should carefully check the whole document and make appropriate deletions, alterations and/or additions so it agrees with the instructions you have received. You should note the warranty in clause 21 and record any deletions, alterations and/or additions to the standard lease conditions as additional provisions in item 22 and not in the lease conditions.

- Item 1**                      **Landlord**  
[1.1]                         INGLWD PTY LTD (ACN 622 141 931)
- Item 2**                      **Tenant**  
[1.1]                         DIB GROUP PTY. LIMITED (ACN 002 889 474)
- Item 3**                      **Guarantors**  
[1.1]                         Not applicable.
- Item 4**                      **Premises**  
[1.1]                         The property located at 22 High Street, Rushworth VIC 3612 and more particularly  
                                      described in Certificates of Title or bearing title reference:  
  
                                      Volume 08524 Folio 773, being Lot 1 on Title Plan 431133N (formerly known as part of Crown Allotment 1 Section 5 Township of Rushworth Parish of Moora).  
  
                                      (referred to as "Leased Premises").  
  
                                      Land with Title Particulars:  
                                      Volume 08524 Folio 773
- Item 5**                      **Landlord's installations**  
[1.1]                         As identified in the Annexure and labelled "Landlord's Installations"
- Item 6**                      **Rent:**  
[1.1]                         \$108,000.00 plus GST per annum
- Item 7**                      **Tenant's installations**  
[1.1]                         As identified in the Annexure and labelled "Tenant's Installations"

**Item 8**

**Term of the lease**

[1.1] 15 years, commencing on \_\_\_\_\_ "Commencement Date".

**Item 9**

**How rent is to be paid**

[2.1.1] Monthly instalments in advance on or before the 1st day of each month by electronic funds transfer into the account as nominated by the landlord's agent. For the first month (commencing immediately upon the expiration of the rent free period) and last month only, if the Lease starts on any day of a month that is not the 1st of that month, the Rent must be paid on a pro rata basis, with the rent otherwise due for the first 3 months immediately after the Commencement Date, being waived by the Landlord ("Rent Free Period") subject to the Tenant complying with Clause 25A (the "Refurbishment Clause").

**Item 10**

**Building outgoings which the tenant must pay or reimburse: -**

[1.1, 2.1.2, 2.1.5 & 5.4]

The Tenant will pay throughout this Lease for any building and statutory charges, rates, outgoings, contribution, electricity, power, fuel, gas, oil, water, telephone, garbage removal, waste disposal, and other services or utilities provided by public local or other authorities or suppliers to the Leased Premises charged separately in respect of the Leased Premises, to the supplier of the service or utility. For the avoidance of doubt, the Tenant is not liable to pay or reimburse land tax or Landlord's building insurance.

Premises consist of the entire lettable area of the building - All building and statutory charges relating to the premises, including council and water authority rates and levies, owners corporation fees, gas, electricity, telephone and water consumption and any other outgoings which the tenant is to pay: 100% of all building outgoings commencing from the start of the lease, being the Commencement Date.

**Item 11**

**Risks which the insurance policies must cover:**

[1.1 & 6.2]

- . Public risk
- . Plate glass insurance

and such other risks as the Landlord reasonably requires from time to time.

**Item 12**

**Amount of public risk insurance cover:**

- [1.1 & 2.3.1]                    \$20,000,000.00 or other amount reasonably specified from time to time by the  
**Landlord**
- Item 13**                            **Period of loss of rent and outgoings insurance**  
[1.1]                                Not Applicable.
- Item 14**                            **Interest rate on overdue money:**  
[2.1.7]                            The rate from time to time fixed by the *Penalty Interest Rates Act 1983 (Vic)*
- Item 15**                            **Permitted use**  
[2.2.1]                            Service station outlet for the sale of automotive fuel approved by the relevant  
statutory authority, convenience store, liquor shop and café.
- [1.13]                            **Application of Act**  
The Act does not apply, 15 year lease.
- Item 16**                            **Review date(s): Annual**  
[2.1.1, 11, 18]
- Term**
- (a) Market review date(s): Not Applicable.
- (b) CPI review date(s):    Not Applicable.
- (c) Fixed review date:      3.3% increase on each anniversary of the start of  
the lease or **Commencement Date**
- Further term**
- (a) Market review date(s): Not Applicable.
- (b) CPI review date(s):    Not Applicable.
- (c) Fixed review date:      5% at the Commencement of each Further Term  
and 3.3% on each anniversary of the  
commencement of the further term thereafter.



Fixed Review Date (On the anniversary of the Commencement Date based on estimated lease Commencement date)	Fixed Percentage	Fixed Review Date (On the anniversary of the Commencement Date)	Fixed Percentage
2019	3.3%	2039	3.3%
2020	3.3%	2040	3.3%
2021	3.3%	2041	3.3%
2022	3.3%	2042	3.3%
2023	3.3%	2043	5%
2024	3.3%	2044	3.3%
2025	3.3%	2045	3.3%
2026	3.3%	2046	3.3%
2027	3.3%	2047	3.3%
2028	3.3%	2048	5%
2029	3.3%		
2030	3.3%		
2031	3.3%		
2032	3.3%		
2033	5%		
2034	3.3%		
2035	3.3%		
2036	3.3%		
2037	3.3%		
2038	5%		

Item 17  
[2.1.1, 11, 18]

**Who may initiate reviews**

Market review: Not Applicable.

CPI review: Not applicable

Fixed review: In accordance with clause 2.1.1(c) of the lease conditions.

Item 18

Further term(s)

[12]

Three (3) further terms of 5 years each

Item 19

**Latest date for exercising option for renewal**

[12]

Three (3) months prior to the expiration of the Term or any extension thereof.

Item 20

**Security Deposit**

[13]

Not Applicable

Item 21

**The mediation procedure applies to this Lease**

[16.1]

Item 22

**Additional provisions**

[20]

**22. Additional Provisions for the purposes of Clause 20**

The following clauses are additional provisions pursuant to clause 20.

**23. Essential Terms for the purposes of Clause 7.5**

The following additional provisions are all essential terms for the purposes of clause 7.5:

**24. Intentionally Deleted**

**25. Tenant's Works**

25.1 Subject always to the prior written approval of the Landlord under Clause 29.1:

- (a) the Tenant must obtain, at its own cost, all necessary approvals and permits required to enable any alterations to be lawfully completed and to supply copies of all permits and certificates of occupancy to the Landlord; and
- (b) Subject further to Clause 25.1 (a), the Landlord permits the Tenant to complete works at the Leased Premises, at its cost, provided works are conducted by registered tradespersons.

This clause 25 does not apply to the Refurbishment Works.

**25A Tenant's Refurbishment Works**

The Landlord and Tenant hereby agree that the Tenant is entitled to the Rent Free Period subject to the Tenant carrying out the following refurbishment work at the Tenant's costs and risks with the Tenant's Works to commence immediately after the Commencement Date:

The Landlord and Tenant hereby agree that the Tenant must carry out the following refurbishment work at the Tenant's costs and risks with the Tenant's Works to commence immediately after the Commencement Date:

- (a) Signage works:

- (i) Metro vinyl fascia;
- (ii) Metro's signage in accordance with the Annexed Plan for canopy, ID sign and 2 price board;
- (iii) Metro decal;
- (iv) 4 metre LED price board
- (v) 2 x promotional bollards;
- (vi) 4 x pump dressings;
- (vii) 3 x canopy light boxes;
- (viii) Your zone vinyl to perimeter of inside

(b) Renovation works

- (i) additional new lighting throughout store and under canopy (as required);
- (ii) Fog lights required for forecourt (if required as determined by the Tenant);
- (iii) Tenant to remove existing point of sale system and installing new point of sale system;

(c) Petroleum works (if required)

- (i) Supply and install 8850;
- (ii) Program 8850;
- (iii) Install self-serve capabilities.
- (iv) Supply and install high hose mast with long hose.

(together the "Refurbishment Works").

**25. Parties' Insurance Obligations:**

26.1 Notwithstanding any other provision to the contrary, the Landlord must, throughout the term of this Lease and any period of holding over maintain a comprehensive insurance policy for:

- (a) full insurable and replacement value of the building together with:
  - (i) the Landlord's Installations; and
  - (ii) any other fixtures, fittings, machinery, plant and equipment that is the property of the Landlord;
- (b) loss or damage by fire, storm, tempest, earthquake, lightning, explosion, and other risks usually covered under a comprehensive insurance policy for fire and related risks.

Together the "Landlord's Insurance".

26.2 Notwithstanding any other provision to the contrary, the Tenant must, throughout the term of the Lease and any period of holding over maintain the following insurance:

- (a) a public risk insurance policy from a reputable insurer:
  - (A) for the amount specified in Item 12 in respect of any single event or accident or for such higher amount as the Landlord, acting reasonably may require from time to time;

- (B) relating to the Tenant's liability for death, personal injuries and property damage arising from the Tenant's occupation and use of the Leased Premises and/or use of the building;
- (b) insurance for full replacement value for breakage or damage to any plate and other fixed glass in the Leased Premises including windows, doors, shopfront, and display cases;
- (c) comprehensive policy for replacement value for all Tenant's Installations, fixtures, fittings, any tanks, lineworks owned by the Tenant and stock in trade in the Leased Premises;
- (d) comprehensive insurance against loss or damage by fire, storm, tempest, earthquake, lightning, explosion, burglary and other risks usually covered under a comprehensive insurance policy for fire and related risks.
- (e) workers' compensation insurance policy, providing unlimited cover.

Together the "Tenant's Insurance".

- 26.3 For the Landlord's Insurance, the Landlord remains liable to pay for all premiums and excess (if applicable at the time of making a claim) and maintain those insurances during the term of the Lease and any period of holding over. The Landlord is however not required to pay any excess relating to a claim; and/or pay for any increase in insurance premiums which arises out of, or is contributed to by, the Tenant's negligent and/or willful act or omission and the Tenant must pay for any such excess or increase in premiums.
- 26.4 For the Tenant's Insurance, the Tenant remains liable to pay for all premiums and excess (if applicable at the time of making a claim) and maintain those insurances during the term of the Lease and any period of holding over. The Tenant is however not required to pay any excess relating to a claim; and/or pay for any increase in insurance premiums which arises out of, or is contributed to by, the Landlord's negligent and/or willful act or omission and the Landlord must pay for any such excess or increase in premiums.
- 26.5 If one of the parties to this Lease suffers any loss or damage as a consequence of the other party breaching or defaulting in its obligations under this Clause, then the party in default or breach must indemnify the other party for any loss and damage suffered.

**27. Compliance with Laws:**

- 27.1 The Tenant must not, without the Landlord's prior written consent and subject only to Clause 52, use the Leased Premises for any purpose other than the Permitted Use.
- 27.2 The Tenant shall at its expense obtain, observe and comply with all laws, requirements and conditions thereof, relating to:
- (a) the Tenant's use and occupation of the Leased Premises:
    - (i) for the Permitted Use in this Lease or;
    - (ii) if the Landlord consents to a change in the Permitted Use pursuant to Clause 27.1, then that permitted use.
  - (b) the Leased Premises and facilities by reason of the number and the sex of the Tenant's employees and other persons working in or entering the Leased Premises;

- (c) the fixtures, fittings, machinery, plant and equipment in the Leased Premises;
- (d) occupational health and safety and environmental matters;
- (e) any other regulations or Act that may affect the Leased Premises or any use thereof from time to time;
- (f) Environmental Law as defined in Clause 41;
- (g) the ownership and maintenance of the Tenant's Installations.

27.3 The Tenant shall comply with any notices or requirements of an authority except to carry out structural alterations or capital cost works to the Leased Premises, which shall be the responsibility of the Landlord .

~~28.~~ Intentionally Deleted

28A Tenant's Signage:

28A.1 The Tenant must not erect, maintain or display signage anywhere within the Leased Premises without the prior written consent of the Landlord **except** where such signage relates to Metro's own brand signage, in which particular case no consent is required from the Landlord.

28A.2 The Tenant must ensure that all of the Tenant's Signage and any pylons comply with the relevant laws, rules, regulations (including health and safety), statute codes, standards (including safety standards) and requirements of any authority.

28A.3 The Tenant indemnifies the Landlord for any claims arising from any failure of the Tenant to comply with this Clause.

28A.4 It is the Tenant's obligation to maintain the Tenant's Signage and any pylons.

28A.5 The Landlord acknowledges that all the Tenant's Signage relating to business name, product and product price are the property of the Tenant or one of its related companies collectively referred to as "the Dib Group".

28A.6 The Tenant shall throughout the term of this Lease and any period of be responsible for the repair and maintenance of all signs and pylons that form the Tenant's Signage.

29 Alterations to Leased Premises:

29.1 The Tenant shall not, without the prior written consent of the Landlord do any of the following:

- (a) make or permit to be made any alterations or additions in or to the Leased Premises;
- (b) install, or make any additions or alterations to any electrical, gas, water, plumbing and other services, fixtures, or appliances, or any other equipment or appliances for heating, cooling, ventilating or air conditioning or any pumps, tanks or lineworks;
- (c) install any additional tanks, lineworks or pumps. Notwithstanding the Landlord consenting to the installation of these additional tanks and lineworks, the Tenant remains liable for any defect in the tanks and lineworks arising from the Tenant's additional works and releases the Landlord from all liability and/or Claim arising from them. The Tenant further indemnifies the Landlord against any claims arising from these

tanks and lineworks and any leakage, overflow or Contamination caused by them.

29.2 For the works stipulated in Clause 29.1 the Tenant must:

- (a) obtain, at its own cost, all necessary approvals and permits required to enable any alterations to be lawfully completed and to supply copies of all permits to the Landlord; and
- (b) engage only registered tradespersons to conduct those works.

**31 No warranty by Landlord**

31.1 The Tenant acknowledges that the Landlord has not nor has anyone on behalf of the Landlord made any representation or warranty as to:

- (a) the fitness of the Leased Premises for any particular purpose including the Permitted Use; or
- (b) the present or future suitability or adequacy of:
  - (i) the Leased Premises; or
  - (ii) the building, Landlord's Installations, Landlord's Underground Tank and Linework, any fixtures, fittings, furnishings, plant, machinery, equipment, services and facilities provided by the Landlord for the Permitted Use or the Tenant's intended use and the business intended to be conducted by the Tenant on the Leased Premises.
- (c) the compliance of any structures on the Leased Premises with any building legislation or regulations and the Tenant expressly releases the Landlord and/or his servants and agents, to the extent permitted by law any claims or demands in those respects;

31.2 Any warranties implied under the general law or by statute are excluded under this Lease and negated to the extent permitted by law.

31.3 The Tenant hereby warrants that prior to signing this Lease or any agreement or document in respect of the Leased Premises, which is legally binding upon or intended legally to bind the Tenant, the Tenant was given adequate and sufficient opportunity to:

- (a) obtain and study and make all relevant inquiries in respect of the planning controls and restrictions that apply to the Leased Premises;
- (b) read and understand this Lease, the Agreement to Lease and the Schedules and appendices therein;
- (c) inspect the Leased Premises for any Contamination and conduct all necessary enquiries relating to any Contamination on the Leased Premises; and
- (d) obtain independent legal advice;

31.4 The Tenant warrants and covenants that:

- (a) other than as specifically recorded in writing, the Tenant

- i. does not rely on any representation or warranty of any nature; and
- ii. has not been induced to enter into this Lease:
  - (A) by any representation verbal or otherwise;
  - (B) as a consequence of any conduct of any person

which is not set out in writing and signed by the Landlord and Tenant.

~~31.5 The Landlord makes no warranty (to the extent permitted at law) as to the suitability of any of the Landlord's Installations or Landlord's Installations that the Tenant Must maintain for:~~

- ~~(a) any particular use or purpose;~~
- ~~(b) the purpose for which items of that type are ordinarily used.~~

### 32 Tenant's Responsibility for Approvals:

32.1 The Tenant has satisfied itself, before entering into this Lease, regarding the need for and the availability and existence of all approvals, services, consents and licences required for using the Leased Premises for its business and for the Permitted Use.

32.2 The Tenant has full responsibility, at its expense, to ensure that all approvals, consents and licences (and any conditions thereof) required by the Tenant for the conduct of the business, use of the Leased Premises for the Permitted Use and any refurbishment are obtained, maintained and complied with, throughout the term of this Lease and any period of holding over. The Tenant must indemnify the Landlord for any loss or damage arising from any breach of this obligation.

### 33 Tenant's obligation to continue trading

33.1 The Tenant covenants to continue operating the Tenant's business on the Leased Premises throughout the term of this Lease, except:

- (a) when the Tenant is prevented from trading in the Leased Premises in circumstances beyond the Tenant's control;
- (b) when the business is closed for annual holidays.

### 34 Tenant's general obligations

34.1 The Tenant hereby acknowledges and covenants that, during the term of this Lease and any period of holding over, the Tenant will:

- (a) not use or store or permit to be used or stored at the Leased Premises any radioactive, toxic or hazardous chemicals, wastes or substances, except in concentrations and quantities permitted by the relevant authorities and in accordance with any licenses, permits or authorisations required by law and in accordance with the conditions thereof;
- (b) not permit any petroleum product, oil, grease or any noxious, dangerous or poisonous chemical or substance to be discharged through the pipes of the water or sewerage service at the Leased Premises or into any nearby stream or river or into or under the soil, and to discharge them only as permitted by the relevant statutory authorities, as required by law and in accordance with any conditions thereof.

- (c) be responsible for:
- (i) devising a system for detecting and monitoring leaks in accordance with the Underground Petroleum Storage Systems provisions of The Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008 ("UPSS"); and
  - (ii) devising a program to test groundwater monitoring wells at sensitive locations; and
  - (iii) preparing and maintaining an Environment Protection Plan ("EPP") for the Leased Premises; and
  - (iv) devising a systems for record keeping, reporting of leaks and for notifying the local council when a UPSS is decommissioned including but not limited to the construction and maintenance of groundwater wells pursuant to the Regulations;
  - (v) monitoring and compliance with the provisions of the UPSS and any applicable laws, regulations guidelines as amended from time to time, for detecting and monitoring leaks within the UPSS, including but not limited to:
    - (A) compliance with the provisions of Part 5 of the Regulations; and
    - (B) the provision and storage of records, which must be provided to the Landlord within 5 days of being requested to do so by the Landlord.
  - (vi) complying with the provisions of the UPSS including but not limited to:
    - (A) carrying out and recording on a daily basis, dips and stock reconciliation in respect of all fuel storage tanks on the Leased Premises (regardless of whether it is owned by the Landlord or the Tenant);
    - (B) providing the Landlord with copies of the records every 6 months upon request by the Landlord;
    - (C) carrying out the daily dips the Tenant must use appropriate methods and products on a daily basis to check for water contamination;
  - (vii) utilizing the Statistical Inventory Reconciliation Analysis (SIRA) system to detect leaks; and
  - (viii) maintaining regularly, monitoring and reporting as required under the SIRA system; and
  - (ix) promptly notifying the Landlord of any leak detected under the SIRA system; and
  - (x) promptly taking all relevant action in response to any leaks detected under the SIRA system, provided that the leak was not directly caused by the negligence or misuse by the Landlord, its agents, employees or contractors.
- (d) Notwithstanding the requirements of Clause 34.1 (c), notifying the



Landlord of any leak or apparent leak in any of the underground tanks or of any event likely to indicate presence of a leak, such as (but not limited to) loss or gain in fuel stocks and/or the failure to reconcile fuel stocks or any variation with purchases and sales;

- (e) notifying the Landlord of any shortage or loss caused by faulty fuel pumps or other dispensing equipment forthwith, irrespective of whether the Landlord or the Tenant is responsible for the maintenance;
- (f) using the existing tanks and at the Leased Premises only for their existing designated purposes and not for other purposes, such as storage of other materials for which they were not designed;
- (g) ensuring that appropriate emergency switches are installed, clearly identified and maintained in good working condition at all times;
- (h) controlling and restricting the emission of smoke or odours at and from the Leased Premises in accordance with the applicable legislation, regulations and the requirements of statutory authorities;
- (i) ensuring that the Leased Premises is not used in an excessively noisy or noxious or offensive manner;
- (j) ensuring that the plant or machinery in the Leased Premises is not used in a manner that may constitute a nuisance or disturbance to neighbors, due to noise, vibration, odors or otherwise;
- (k) notifying the Landlord within fourteen (14) days after receiving any demand or notice from a regulatory authority in respect of contamination of the Leased Premises;
- (l) ensuring that the Leased Premises is not used for any illegal, immoral, noxious, dangerous or offensive purpose, activity or occupation;
- (m) ensuring that no part of the Leased Premises is used as sleeping quarters or for residence;
- (n) ensuring that no animals are kept on the Leased Premises;
- (o) ensuring that the Leased Premises are not used in a way that may breach any laws, regulations or conditions of any permits affecting the Leased Premises;
- (p) ensuring that the Leased Premises is not used in a manner that may cause damage, nuisance or disturbance to the Landlord, to other tenants of the building, or to the owners or occupiers of adjoining properties;
- (q) trade or display merchandise outside the Leased Premises;
- (r) abiding by the rules of any owners corporation affecting the Leased Premises;
- (s) ensuring that any covenants, permits, requirements under any Act, regulation or rule affecting the Leased Premises, the use of the Leased Premises or any building or structure contained therein are not breached.

34.2 If the Tenant breaches any of its obligation or covenant in Clause 34.1, the Tenant must indemnify the Landlord against any liability, loss, damage, expense or claim which the Landlord may incur as a consequence of the breach by the Tenant, including but not limited to fines, legal costs, consultant's fees, rectification costs and remediation costs.

**35 Maintenance Obligation:**

- 35.1** Notwithstanding any other provision contained herein and subject to Clause 35.5 the Landlord is and shall be responsible for the maintenance, repair and replacement of the Landlord's Installations (excluding any Landlord's Installation that the Tenant must Maintain which shall be maintained and repaired by the Tenant) unless the need for repair, maintenance or replacement arises out of, or is contributed to by, the Tenant's negligent and/or wilful act or omission.
- 35.2** Subject to Clause 35.5, the Landlord must ensure that all and any of the Landlord's Installations are not damaged in any way by any act or omission of the Landlord, its agents, employees or contractors and that any such damage, is made good promptly by the Landlord at the Landlord's cost.
- 35.3** The Tenant is and shall be responsible for maintenance and repair of:
- (a) plant and equipment which are the Tenant's property;
  - (b) Tenant's Fitout Works;
  - (c) any other property of the Tenant;
- that are the property of the Tenant (together "Tenant's Installations").
- 35.3A** During the term of the Lease, any further term and any period of holding over in addition to the Tenant's Installations, the Tenant is and shall be responsible for maintenance; repair and replacement of the Landlord's Installations that the Tenant must Maintain as required.
- 35.3B** The Tenant shall not require the Landlord to maintain the Landlord's Installations that the Tenant must Maintain or to rectify any defects or bear the cost or any part thereof for doing so unless arising from or contributed to by the Landlord's negligent and/or wilful act or omission.
- 35.3C** For the avoidance of doubt, the Landlord's Installations that the Tenant must Maintain or any replacements thereof pursuant to Clause 35.3A shall remain the property of the Landlord and at the end of the Lease the Tenant must hand over the Landlord's Installations that the Tenant must Maintain in a condition and state of repair that is fit for purpose and suitable for continued use and operation in a service station.
- 35.4** The Tenant shall not be responsible for works of a capital or structural nature unless the works arise as a result of damage; misuse; or negligence caused by the Tenant, its agent, employee, contractor, or any other person acting for or under instructions from the Tenant.
- 35.5** The Landlord is not obliged to repair the Landlord's Installations or any part thereof where the need for repair arises out of:
- (a) damage; or
  - (b) misuse; or
  - (c) negligence
- caused by the Tenant, its agent, employee, contractor, or any other person acting for or under instructions from the Tenant.

**35.6** A list of the items to be considered: **515**

- (a) Landlord's Installations: and

- (b) Tenant's Installations; and
- (c) Landlord's Installations that the Tenant must Maintain

are identified in the Schedule to this Lease and labelled "Landlord's Installations" and "Tenant's Installations" and "Landlord's Installation that the Tenant must Maintain".

35.7 The Landlord and Tenant further agree that some items on the Leased Premises may be owned by a third party which shall remain the property of that third party. These items are identified in the Schedule to this Lease and labelled "Third Party Items".

35.8 The Tenant warrants and agrees that:

- (a) the Landlord is not responsible for or provides no warranty as to the:
  - (i) state of repair or condition; or
  - (ii) fitness for purpose;
 for any Third Party Items; and
- (b) the Landlord has no obligation to maintain or repair the Third Party Items; and
- (c) the Landlord has no liability in relation to any claims arising from the Third Party Items and the Tenant holds the Landlord harmless against any claims arising from them.

### 36 Tenant's Maintenance:

36.1 The Tenant shall keep the Leased Premises and chattels situated in the Leased Premises and Tenant's Plants and Equipment and Tenant's Installations and Landlord's Installation that the Tenant must Maintain (excluding the Landlord's Installations), in good repair and working condition throughout this Lease and shall on expiry or termination of this Lease yield up the Leased Premises to the Landlord and restore the Leased Premises to a condition and state of repair that is consistent with the continued use and operation of a service station immediately after the Tenant vacates the Leased Premises; and replace all items removed excluding the Tenant's Installations with items of a similar nature and quality that are fit for the purpose that is consistent with the continued use and operation of a service station.

36.2 In addition to any other repair or maintenance obligations of the Tenant, the Tenant must also:

- (a) promptly repair or replace all damaged, broken or faulty light, power points, light switches, heating, lighting and wiring in the Leased Premises;
- (c) promptly repair and keep in proper working order all drains, water pipes, sewerage pipes, toilets and sinks and allow for the unobstructed passage of services to the Leased Premises;
- (d) maintain and repair all door and window locks and fittings in the Leased Premises;
- (e) repair any damage or breakage to:
  - (i) the Leased Premises;

- (ii) the Landlord's Installations;
- (iii) any other items on the Leased Premises owned by the Landlord or a third party;
- (iv) the fixtures in the Leased Premises;
- (v) any services and/or facilities in the Leased Premises

caused by lack of care or misuse by the Tenant, its agent, employee, contractor, or any other person acting for or under instructions from the Tenant;

- (f) if any part of the Leased Premises has wallpaper, replace that wallpaper once every two years.

**37 Tenant's Repair and Maintenance Obligations:**

- 37.1 For the avoidance of doubt, the Tenant's repair, maintenance and additional obligations in Clause 34, 35 and 36 ("Additional Clauses") are in addition to the Tenant's repairs, maintenance, fire prevention and requirements of authorities set out in General Condition 3 ("General Condition 3 Clauses") and if there is a direct conflict between anything contained in the Additional Clauses and the General Condition 3 Clauses, the terms of the Additional Clauses will prevail to the extent of any such inconsistency.
- 37.2 To comply with its obligations under the Additional Clauses, the Tenant shall:
- (a) only use persons who are suitably qualified;
  - (b) if items are to be replaced or repaired, use fittings and materials of similar style and quality;
  - (c) obtain, maintain and comply with all required consent or approval and any conditions thereof, of any statutory authority to carry out the work;
  - (d) carry out the work without creating excessive noise, nuisance or interference.
- 37.3 The Tenant, its agent, employee, contractor, sub-contractor, or any other person acting for or under instructions from the Tenant must not make any claims against the Landlord and the Tenant holds the Landlord harmless for any loss, damage, injury or death arising out of any works carried out on the Leased Premises by the Tenant, unless it was caused or contributed to by the Landlord. The Tenant is responsible for obtaining all relevant insurance for any person carrying out the Tenant's repairs and works on the Leased Premises.
- 37.4 If the Tenant breaches any of its obligations under the Additional Clauses:
- (a) the Landlord may, provided that the matter is not an emergency and does not pose a safety risk:
    - (i) notify the Tenant in writing of the breach and allow the Tenant fourteen (14) days to rectify the breach; and
    - (ii) after the expiration of the fourteen (14) days if the Tenant fails to rectify the breach and comply with the notice and the Tenant's obligations under the Additional Clauses

The Landlord may elect to carry out the necessary works required under the Additional Clauses at the Tenant's risk and cost. The Tenant must reimburse the Landlord for those costs as soon as reasonably practical; or

- (b) if the Landlord elects not to carry out the works, the Tenant must indemnify the Landlord for any loss or damage suffered by the Landlord as a result of the Tenant's breach.

37.4 In the case of an emergency or a safety risk no notice is required.

### **38 Indemnity**

38.1 In addition to any other provision contained in this Lease, the Tenant agrees to indemnify the Landlord from and against any liability, loss, damage, expense or claim, which the Landlord may incur, including to a third party, during or after the term of this Lease, in respect of or arising from:

- (a) loss, damage or injury to property or person occurring within the Building or the Leased Premises, caused or contributed to by the Tenant's failure (including through the Tenant's agents or employees) to comply with the obligations imposed under this Lease; or
- (b) the negligent use or misuse by the Tenant (and by its agents or employees) of any services or facilities in the Building or in the Leased Premises; or
- (c) the overflow, leakage or escape of water, gas, electricity, fire, or other materials or substances in or from the Leased Premises, caused or contributed to by the Tenant (and by its agents or employees) negligence; or
- (d) loss, damage or injury to property or person, caused or contributed to by the Tenant's negligence arising out of the Tenant's use of the Leased Premises or any of the Landlord's Installations; or
- (e) loss, damage or injury to property or persons, caused or contributed to by the defective installation of:
  - (i) plant; fixtures and equipment; or
  - (ii) additional tank or linework; or
  - (iii) Tenant's Installations in the Leased Premisesby or on behalf of the Tenant;
- (f) the Tenant's failure to notify the Landlord regarding any defect in the facilities or Services in the Leased Premises; or
- (g) the Tenant's failure to comply with Clause 34.1(c) - (s) inclusive.

### **39 Damages for breach or for repudiation**

39.1 In the event that the Tenant's conduct (whether acts or omissions) constitutes:

- (a) a repudiation of this Lease (or of the Tenant's obligations under this Lease);
- (b) a breach of any Lease covenants;
- (c) a breach of an essential term of this Lease;

the Tenant covenants to compensate the Landlord for the loss or damage suffered by the Landlord as a consequence of the repudiation or breach, whether this Lease is or is not terminated for the repudiation, breach or on any other ground.

39.2 The Landlord's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Lease.

39.3 The Landlord is entitled to recover damages against the Tenant in respect of the repudiation or breach of covenant or essential term for the loss suffered by the Landlord during the term of this Lease, including the periods before and after termination of this Lease.

39.4 The Landlord's entitlement to recover damages is not affected or limited by any of the following:

- (a) if the Tenant abandons or vacates the Leased Premises;
- (b) if the Landlord elects to re-enter or to terminate the Lease;
- (c) if the Landlord accepts the Tenant's repudiation;
- (d) if the parties' conduct constitutes a surrender by operation of law.

40

Landlord's Right to assign:

The Landlord may, <sup>without</sup> requiring the consent of the Tenant assign its rights under this Lease to a third party. The Landlord must notify the Tenant of any assignment pursuant to this Clause and the Tenant must execute any documents as may be reasonably required to give effect to the Landlord's rights under this Clause within 3 Business Days of receiving a written request from the Landlord.

41

Environmental Laws:

41.1 For the purposes of this Deed:

- (a) "Environmental Law" means a law relating to the Environment and includes law governing land use, planning, environmental assessment, heritage, water catchment, air or water pollution, contamination, chemical, hazardous, noxious and dangerous materials and substances, waste, building regulations, occupation health and safety and fire hazards or any similar law relating to the Environment whether made or enforced before or after the date of this Lease;
- (b) "Containment" or "Contamination" means anything (including a solid, a liquid, a gas, an odour, temperature, sound, vibration or radiation) which makes or may make the Property or the Environment:
  - (i) unsafe or unfit for human or animals;
  - (ii) degraded in any way, including its capacity to support plant life; or
  - (iii) materially diminished in value; or
  - (iv) hazardous to health or could otherwise give rise to a risk of non-compliance or breach of any Environmental Law;
- (c) "Environment" has all meanings given to it or any similar terms in the laws of Victoria and includes all aspects of human surroundings and includes ecosystems and parts of an ecosystem, including people, communities, natural and physical resources and qualities or characteristics of locations, places, locality, biological diversity and aesthetic and cultural conditions.

41.2 The Tenant must in relation to the Leased Premises:

- (a) comply with Environmental Law;
  - (b) do all things necessary to prevent a breach of any Environmental Law;
  - (c) promptly notify the Landlord of any breach of any Environmental Law and of details of notices received by or proceedings commenced under an Environmental Law:
    - (i) relating to a breach or alleged breach of an Environmental Law; or
    - (ii) requiring any works to be carried out in relation to the Leased Premises or any land adjoining the Leased Premises or any Contaminant affecting the Premises or adjoining lands
  - (d) take all necessary and reasonable steps to ensure that the Tenant does not cause or permit any Contamination; and
  - (e) maintain an environmental register where required by any Public Authority.
- 41.3 The Tenant must at all times and on reasonable notice permit the Landlord and its duly authorised consultants to:
- (a) monitor the Tenant's compliance with Environmental Laws; and
  - (b) enter upon the Leased Premises for that purpose and to inspect, take samples and make tests to determine if there is any Contaminant or Contamination present;
  - (c) inspect any environmental register required to be maintained at any time; and
- 41.4 In exercising the rights under this clause the Landlord and its duly authorised consultants must:
- (a) give reasonable prior notice to the Tenant of the Landlord's intention to exercise its rights under the clause;
  - (b) cause as little inconvenience as possible to the Tenant in its use and occupation of the Leased Premises; and
  - (c) make good all damage caused by their entry on the Land and by any testing carried out by them.
- 41.5 When the Tenant vacates the Leased Premises, the Tenant must ensure that there is no breach by it of any Environmental Law.
- 41.6 The Tenant indemnifies and shall keep indemnified the Landlord against all claims, suits, actions, liability or loss whatsoever which the Landlord may suffer or incur arising directly from:
- (a) any breach by the Tenant of any Environmental Laws in respect of the Leased Premises;
  - (b) the presence of any Contaminant on the Leased Premises or any adjoining land arising out of the Tenant's use and occupation of the Leased Premises during the Term of this Lease; except to the extent that such liability or loss is or was caused by the Landlord or its duly authorised consultants; or existed before the Date of Commencement or was caused by an event which occurred before the Date of Commencement.

- 41.7 In the event of the Tenant failing to comply with the requirements of any Public Authority, or the guidelines of or any notice issued by any such Public Authority which are required to be complied with by the Tenant pursuant to the terms of this Lease, or breaching its obligations under Clause 34.1(c)-(s) inclusive, the Landlord may at the Tenant's expense carry out the required work and any other necessary remedial works. The Tenant must reimburse the Landlord for such remediation work and indemnify the Landlord against all risks, damages and claims arising from it.

## **42 Site Remediation**

- 42.1 The Landlord will arrange for an environmental report on the condition of the Leased Premises prior to the Tenant commencing the Lease (the Report). The Report will be conclusive evidence of the existence of the matters contained in it at the date of it. The contents will be confidential between the parties and must remain confidential even after the after the expiration of this Lease except where the Report must be produced at Law or in relation to any court proceedings. The Report shall be attached to this Lease.
- 42.2 Upon expiration or termination of the Lease and any period of holding over, the Tenant must remediate the Leased Premises to an acceptable condition and standard for ongoing use as a General Store and Service Station and Liquor shop and café.
- 42.3 The Tenant must use all reasonable endeavors to remediate the Leased Premises (if required) to a condition that is suitable for ongoing use as a service station within six months of the Termination Date of this Lease or, if the parties enter into a lease for a Further Term, within six months of the termination date of the last lease for a Further Term.
- 42.4 In carrying out remediation of the Leased Premises the Tenant will not be obliged to:
- (a) remediate any part of the Leased Premises which is beneath any structures which may be existing on the Leased Premises;
  - (b) remediate any part of the Leased Premises where the source of the contamination was the Tanks or Linework not owned by the Tenant (excluding, to avoid doubt, any additional Tanks and Linework installed by the Tenant);
  - (c) remediate any part of the Leased Premises where the source of the Contamination is any adjoining land; or
  - (d) remediate the Leased Premises or any part of the Leased Premises beyond the condition as set out in the Report.
- 42.5 In carrying out remediation of the Leased Premises under clause 42.2, the Tenant must remove any Tanks and Linework owned by the Tenant and any additional Tanks and Linework installed by the Tenant at the cost of the Tenant unless otherwise agreed by the Landlord and Tenant.
- 42.6 If the Tenant, acting reasonably, requires more than six (6) months to comply with its obligations under this clause, then it may extend the six month period referred to in clause 42.3 by notice in writing to the Landlord by a reasonable period having regard to the works that remain to be performed.
- 42.7 The Landlord grants to the Tenant a licence to enter the Leased Premises for all purposes connected with the remediation of the Leased Premises by the Tenant for a period of six (6) months commencing on the Termination Date of this Lease or, if the Parties enter into a lease for a Further Term, the termination date



of the last lease for a Further Term.

42.8 The Landlord must not cause any interference to the Tenant during the Tenant's remediation of the Leased Premises and must ensure that any person deriving title to the Leased Premises through the Landlord causes no interference to the Tenant during the Tenant's remediation of the Leased Premises.

42.9 The Landlord agrees that the Tenant will pay a monthly licence fee equal to one-twelfth of the annual rate of Rent payable immediately prior to the Date of Termination and pay or reimburse the Landlord for all Outgoings and pay all Costs for all Services during the period of remediation of the Leased Premises.

42.10 The Tenant agrees that it will not trade or operate any business on the Leased Premises during the period of remediation of the Leased Premises without the Landlord's prior Consent.

42.11 The Tenant may at any time by notice in writing to the Landlord terminate the licence referred to in clause 42.7 when the Tenant is of the opinion that the remediation of the Leased Premises referred to in clause 42.3 has been completed.

42.12 This clause 42 survives termination or expiration of this Lease.

#### 43 Outgoings:

For the avoidance of doubt, Outgoings as defined in Clause 1.1 expressly excludes land tax and Landlord's building insurance regardless of whether the Act applies.

#### 44. Legal Costs

Each party will be responsible for its own legal costs relating to the preparation, negotiation, and execution of this Lease, but the Tenant will be responsible for the Landlord's legal costs in connection to providing consent to any assignment of the Lease or any Sub-lease.

#### 45. INTENTIONALLY DELETED.

#### 46. Personal Property Securities Act

(a) In this additional provision, 'PPSA' means the *Personal Property Securities Act 2009* (Cth).

(b) In this lease, the definition of Landlord's Installations is amended to read:

'means any property of the Landlord, other than land or fixtures, from time to time in the Premises or on the Land and includes the property listed in Item 5' .

(c) Expressions used in this additional provision that are defined in the PPSA have the meanings given to them in the PPSA.

(d) The Landlord may, at any time, register a financing statement with respect to any security interest arising out of or evidenced by this Lease over any or all of –

(i) the Landlord's Installations,

(ii) any security deposit provided by the Tenant, and

(iii) Tenant's Installations and other Tenant's property left on the Premises after the end of the lease, 522

that are personal property, and must identify the property affected by the financing statement in the free text field of the statement. The Tenant waives the right to receive notice under section 157(1) of the PPSA.

(e) When this Lease:

- (i) ends and the Tenant has vacated the Premises and performed all of its obligations under the Lease, or
- (ii) is transferred,

the Landlord must register a financing change statement with respect to any security interest for which the Landlord has registered a financing statement other than those to which sub-clause (d)(iii) of this additional provision relates.

(f) The Tenant must sign any documents and do anything necessary to enable the Landlord to register the statements referred to in the preceding sub-clause and to enforce its rights and perform its obligations under this clause and the PPSA. In particular, if the Tenant is a natural person, the Tenant must provide the Landlord with the Tenant's date of birth and a certified copy of a Victorian driver's licence (or other evidence acceptable to the Landlord) to confirm the Tenant's date of birth. The Landlord must keep the Tenant's date of birth and any evidence provided to it secure and confidential.

(g) The Tenant must not register, or permit to be registered, a financing statement in favour of any person other than the Landlord, with respect to any security deposit provided by the Tenant or any of the Landlord's Installations.

(h) The Tenant must pay the Landlord's reasonable expenses and legal costs in respect of anything done or attempted by the Landlord in the exercise of its rights or performance of its obligations under this additional provision or the PPSA, except the Landlord's costs of registering a financing statement under paragraph (d) which are to be borne by the Landlord.

(i) In accordance with sub-section 275(6)(a) of the PPSA, the parties agree that neither of them will disclose information of the kind mentioned in sub-section 275(1) of the PPSA.

(j) Subject to any requirement to the contrary in the PPSA, notices under this additional provision or the PPSA may be served in accordance with clause 14 of the Lease.

**47 Abatement:**

For the purposes of General Condition 8.1 of the Lease, the Landlord and Tenant covenant that the abatement of the rent and building outgoings do not extend to the Tenant's obligations to pay insurance for which the Tenant is liable under the Lease where non-payment of such insurance will or is likely to adversely affect the Landlord's ability to claim under an insurance policy. If the Tenant breaches this obligation, the Tenant must indemnify the Landlord for all loss and damage suffered by the Landlord arising from the Tenant's breach.

**48 Outgoings:**

(a) It is hereby agreed that in respect of outgoings listed in Item 10:

A request for payment can be made after the Landlord has:

- (i) paid the outgoing;
- (ii) received an assessment or account for the payment of the outgoing;
- (iii) provided a copy of the assessment or account for the payment of the outgoing;

- (iv) issued a tax invoice to the Tenant for the payment of the outgoing; and
- (v) provided to the Tenant evidence of payment of the outgoing.

(together the "Items Relating to Outgoings")

- (b) Upon provision of the Items Relating to Outgoings, the Tenant must within 7 days pay to the Landlord any such amounts relating to outgoings that are the Tenant's responsibility under the Lease.

**49. Guarantee:**

It is hereby agreed that Clause 15 (Obligations of Guarantor(s) Under Guarantee and Indemnity) is deleted.

**50. Indemnity**

It is hereby agreed to the fullest extent permitted by law, each party indemnifies the other against all and any liability, death or injury or loss, claims, cross claims, damages, contributions, costs (including legal costs and disbursements on an indemnity basis), fines, penalties, remediation fees and duties however described arising from, or incurred in connection with, any breach by the defaulting party its servants, agents, contractors, subcontractors or visitors of its obligations under this Lease.

**51. Sublease and Licence**

It is hereby agreed that, despite Clause 4 and only while the Tenant is DIB Group Pty Ltd or any Related Body Corporate, the Tenant may grant a sublease or licence without the prior written approval of the Landlord, provided that the Tenant notifies the Landlord in writing at least 7 days prior to the sublease or licence.

**52. Change of Permitted Use**

The Tenant may apply to the Landlord for consent to a change of user during the continuance of this Lease which the Landlord shall not unreasonably refuse or withhold, if the following conditions precedent are satisfied:

- a) any other use shall be for the range of uses described in Item 15 in the Lease Schedule;
- b) the Tenant first obtains all planning and other approvals to the use of the Leased Premises for that purpose and subsequently complies with the conditions of approval at the Tenant's expense;
- c) there are no unremedied breaches of the Tenant's obligations under this Lease at the date of the Tenant's application for consent to change of user or whilst that application is considered by the Landlord;
- d) any other consents which are required to the change of user, by mortgagees under this Lease, or others, are obtained before the change of user;
- e) the execution of a deed in a form reasonably required by and prepared on behalf of the Landlord, by the Landlord and Tenant;
- f) the execution by the Landlord and the Tenant of an appropriate instrument varying the lease covenant relating to user, which shall be duly stamped and registered; and
- g) the payment by the Tenant to the Landlord of the Landlord's reasonable costs and disbursements.

**53. Contra proferentem:**

No Clause in this Lease should be interpreted to the detriment of one party on the basis that the party drafted the clause or would otherwise benefit from it.

**54. Severance**

In the event of any part of this Lease being or becoming void or unenforceable or being illegal then that part shall be severed from this contract to the extent that all parts that shall not be or become void, unenforceable or illegal shall remain in full force and effect and be unaffected by such severance. If the ineffective provision is an essential term of this Lease, the Landlord may at any time terminate this Lease by serving on the Tenant not less than seven (7) Business days written notice terminating this Lease.

**55 Joint and several liability**

In the event of there being two or more Landlords or two or more Tenants or two or more Guarantors under this Lease (including whilst the Lease or the reversion is held by legal personal representatives, successors or assigns) each of them is jointly and severally liable to perform the covenants and obligations under this Lease.

**56 Fixed Percentage Review:**

For the avoidance of doubt the Landlord and Tenant agree that:

- (a) during the Term of the Lease, there shall be a 3.3% increase on each anniversary of the Commencement of Lease; and
- (b) for a further term:
  - (i) there shall be a 5% increase for the first year of a further term; and
  - (ii) there shall be a 3.3% increase for all anniversary dates other than that stipulated in Clause 56(b).

**57 Non Merger**

If any right, obligation, duty or liability is capable of being performed after termination or expiration of this Lease, that right, duty or liability does not merge at termination or expiration of this Lease and survives termination or expiration of this Lease.

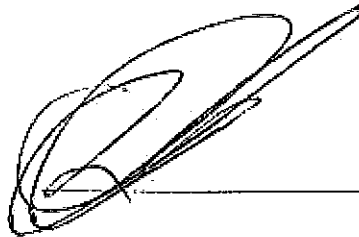
EXECUTED AS A DEED

DATED: 24/5/2018

Executed by )  
INGLWD PTY LTD (ACN 622 141 931) )  
in accordance with Section 127 of the  
Corporations Act 2001 (Cth):



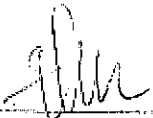
Witness Fay Medawar



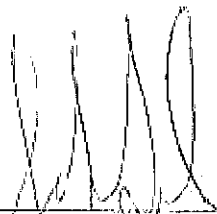
Konfir Kabo  
55 St Georges Road, Toorak VIC 3142

Executed by DIB GROUP PTY. )  
LIMITED (ACN 002 889 474) )

in accordance with Section 127 of the  
Corporations Act 2001 (Cth):



Witness Ha Hai Thi Tran  
A Justice of the Peace in and for  
the State of New South Wales  
Reg. No. 205127



Sole Director and Company Secretary

Print Name JIMMY DIB  
Print usual address 80/81 ST  
LINDENBROOK NSW 1511

---

## **Landlord's Installation**

---

Tanks and Linework

---

## **Tenant's Installation**

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All items that do not form the Landlord's Installations or Landlord's Installations that the Tenant Must Maintain.

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## **Third Party Items**

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Not applicable



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**Landlord's Installation that the Tenant must maintain**

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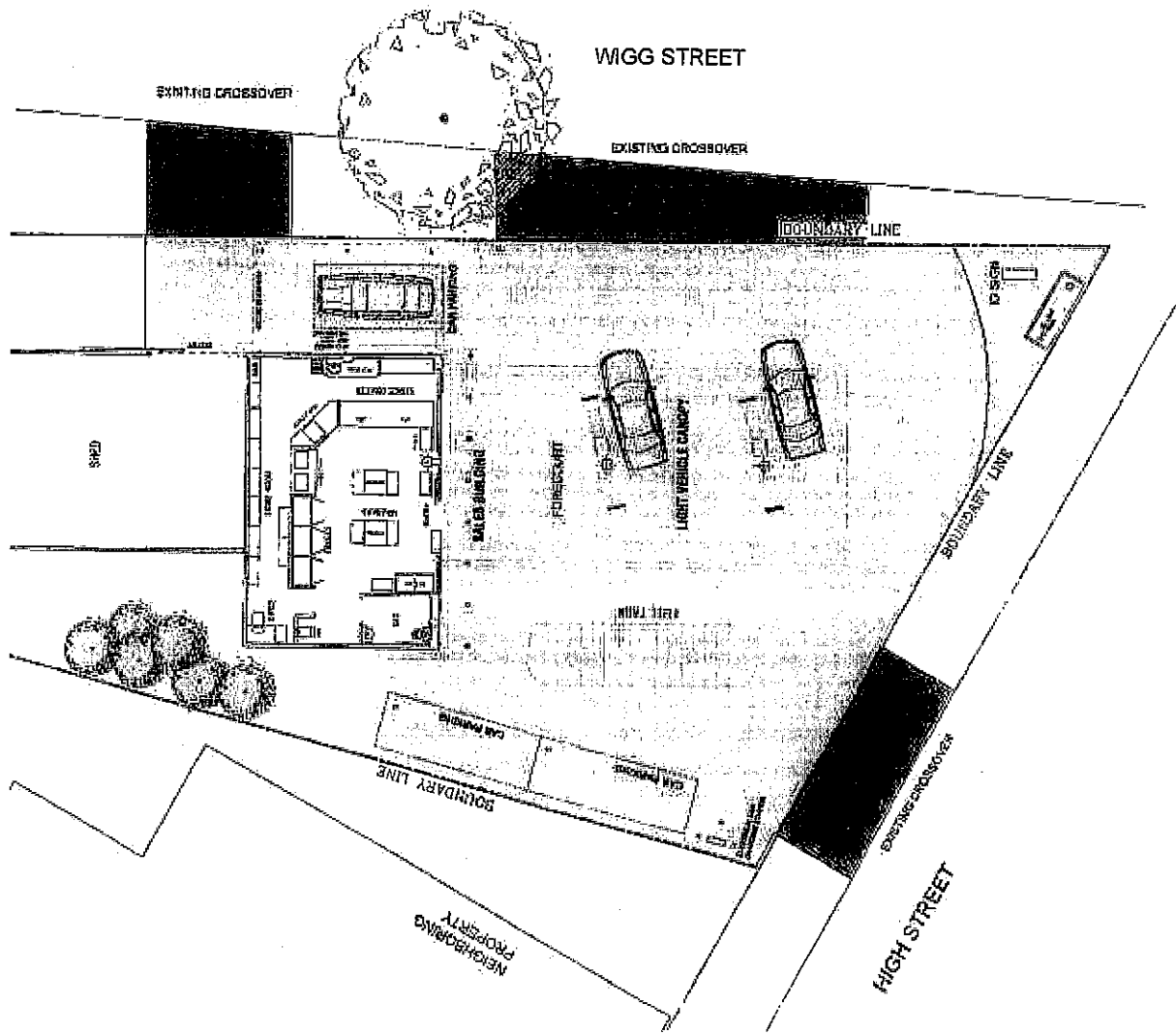
CCTV and any other items of the Landlord except the Landlord's Tank and Lineworks.

Pumps

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**Plan**

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**INTERNAL DISCUSSION ONLY  
NOT FOR CONSTRUCTION**

DATE: 24/04/2018  
BY: [Signature]  
LIBRARIAN: [Signature]

**P-02**  
REVISION - B

**AMENDMENT**  
REVISION, CORRECTION ONLY  
PLANNING PERMIT REF:

**SPECIAL COMMENTS**  
INT. DISCUSSION ONLY  
NOT FOR CONSTRUCTION

**AMENDMENT**  
DATE: 24/04/2018  
DRAWINGS TITLE: RUSHWORTH SERVICE STATION  
SCALE: 1:200 @ A3

**PROJECT:**  
RUSHWORTH SERVICE STATION  
23 High Street  
RUSHWORTH VIC. 3612

PLANNING PERMIT: [Number]  
DATE: [Date]  
BY: [Signature]

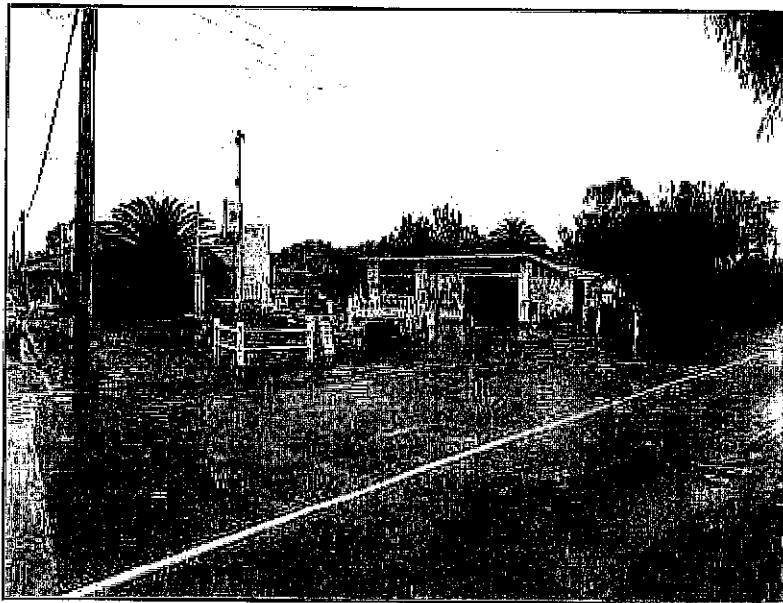
**sara**

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## **ESA Test**

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# Environmental Site Assessment



## Site Name and Address

J&P Auto Repairs  
22 High Street, Rushworth VIC 3612  
Lot 1 TP43113

## Report Number

N3465

## Date

27.05.18

Report Number: N3465

Date: 18.05.18



**PROJECT DETAILS****Business Name:**

NEO Consulting Pty Ltd

**Project Number:** N3465**Project Title:**

Environmental Site Assessment

J &amp; P Auto Repairs Rushworth

22 High Street, Rushworth VIC 3612

**Report Completed by**

NEO Consulting Pty Ltd

ABN: 26 615 633 988

PO Box 279 Riverstone

NSW 2765

e: [admin@neoconsulting.com.au](mailto:admin@neoconsulting.com.au)**Written By**

Shahid Javed

Environmental Engineer

**Reviewed By**

Nick Caltabiano

Project Manager

**Review Date:** 27<sup>th</sup> May 2018**File Name:** N3465**Report Status:** FINAL**Document Details**

<b>Project Number</b>	N3465	<b>Document Number</b>	1
<b>Document Title</b>	Environmental Site Assessment		
<b>Site Address</b>	22 High Street, Rushworth VIC 3612		
<b>Report Prepared for</b>	Aksara Pty Ltd		
<b>File Name</b>	N3465		

**Document status and review**

Revision	Prepared by	Reviewed by	Date issue
0	Shahid Javed	Nick Caltabiano	20.05.2018
1	Shahid Javed	Nick Caltabiano	27.05.2018

**Distribution of copies**

Revision	Electronic	Paper	Issued to
0	1	0	Aksara Pty Ltd (emailed to Turken)
0	1	1	NEO Consulting

Report Number: N3465

Date: 18.05.18



## Executive Summary

NEO Consulting was engaged by Aksara Pty Ltd to undertake a Soil Investigation. The purpose of the Investigation was to determine whether the operation of the service station has resulted in any gross soil contamination.

The Investigation has been undertaken in accordance with the requirements of the Victorian Environmental Protection Authority Publication 888.4\* August, 2015 *The design, installation and management requirements for underground petroleum storage systems (UPSS)*. The guidelines followed throughout the investigation were based on the NEPC (1999) National Environmental Protection (Assessment of Site Contamination) Measure (NEPM) and the subsequent amendment (Amended NEPM, 2013) officially approved by the Standing Council of Environment and Water (SCEW) on 11 April 2013.

NEO Consulting arrived onsite on the 11<sup>th</sup> May 2018 to conduct an Environmental Site Assessment at 22 High Street, Rushworth VIC 3612. Data obtained prior to attending the site consisted of Geology and Hydrology searches, DBYD (job no. 14132535) information.

Data obtained during the Environmental Site Assessment indicates the following:

- The site was in operation at the time of assessment as an automotive repairs business and LPG service outlet. The fuel service was not active though the bowsers are in situ. The site is very long and thin with the slope of the land running from the south west to the north east.
- There are 4 bowsers onsite and 3 UGSTs. The groundcover is concrete at the forecourt and around LPG outlets and asphalt throughout the rest of the areas and driveways. There is a large canal that runs along Wigg street in between the driveways. There is no canopy over the forecourt area. See Attachment A
- 2 soil assessment holes were advanced at the site. All soil assessment holes were located around and adjacent to the UPSS.
- Field observations and analytical results indicate that there are no hydrocarbon impacts within the soil samples taken at the site.
- The soil assessment holes encountered similar geology, described as brown or yellow/orange clay and some rocks, with no hydrocarbon odour;

No soil sample taken whilst doing the field work had any indication of contamination visually or aromatically. Laboratory analysis of each soil sample indicates the site is well within the acceptable contamination and had no evidence of reaching any health based investigation levels.

Based on these results, NEO Consulting finds that this site is suitable to continue as its current land use.

## TABLE OF CONTENTS

- 1 INTRODUCTION**
  - 1.1 OBJECTIVES
  - 1.2 SCOPE OF WORK
- 2 LIMITATIONS OF THIS REPORT**
- 3 SITE DESCRIPTION**
  - 3.1 TABLE
  - 3.2 LAYOUT AND FEATURES
  - 3.3 ADJOINING LAND USES
  - 3.4 SITE TOPOGRAPHY
  - 3.5 SOILS AND HYDROLOGY
  - 3.6 SENSITIVE RECEPTORS
- 4 SITE ASSESSMENT**
  - 4.1 OVERVIEW
  - 4.2 SOIL ASSESSMENT & SAMPLING LOCATIONS
    - 4.2.1 DRILLING AND SOIL SAMPLING METHODOLOGY
    - 4.2.2 SAMPLE ANALYSIS
  - 4.3 FIELD WORK NOTES
- 5 QUALITY ASSURANCE/QUALITY CONTROL (QA/QC)**
  - 5.1 DATA QUALITY OBJECTIVES
  - 5.2 DATA QUALITY INDICATORS
  - 5.3 SAMPLING AND ANALYSIS METHODOLOGY
    - 5.3.1 SOIL SAMPLING METHODS
  - 5.4 ENVIRONMENTAL QUALITY CRITERIA
- 6 ANALYTICAL RESULTS SUMMARY**
- 7 PRELIMINARY CONCEPTUAL SITE MODEL**
- 8 CONCLUSIONS AND RECOMMENDATIONS**

## REFERENCES

## LIST OF ATTACHMENTS

- ATTACHMENT A: FIGURES
- ATTACHMENT B: LABORATORY RESULTS SUMMARY TABLES
- ATTACHMENT C: LABORATORY CERTIFICATES OF ANALYSIS
- ATTACHMENT D: BORELOGS
- ATTACHMENT E: POTENTIAL RECEPTORS & CONTAMINATION ROUTES



## 1 INTRODUCTION

### 1.1 Project Objectives

The objectives of the ESA were as follows:

- Assess the extent of hydrocarbon impacts (if any) at the site related to the storage of petroleum products at the site;
- Assess potential risk of harm to human health posed by any identified contamination at the site from continued use of the site for commercial/Industrial purposes; and
- Assess potential risks to the environment posed by any identified contamination at the site.

### 1.2 Scope of Work

To achieve the objectives outlined in Section 1.1 NEO Consulting conducted the following work:

- Application for Dial Before You Dig Plans.
- Completed Work Clearance Form.
- Conducted a site inspection to establish current site conditions, surrounding land uses and potential human and environmental receptors located near the site.
- Advanced soil assessment holes at 3 locations across the site. All three borehole locations were chosen as they were within close proximity and down gradient of the Underground Storage Tanks. A small trailer-mounted drill rig equipped with solid flight augers was used to advance the holes at the site.
- Collected samples of natural soil and/or fill material from within each soil assessment hole.
- Screened soil samples in the field for the presence of volatile organic compounds using a photoionization detector (PID).
- Analysed 6 primary soil samples in a laboratory for total recoverable hydrocarbons (TRH), benzene, toluene, ethylbenzene and xylenes (BTEX) and Lead;
- Assessed the reported concentrations of potential contaminants of concern in each soil sample against appropriate human health and environmental protection guidelines, and
- Prepared this factual report outlining the findings of the ESA.

## 2 LIMITATIONS OF THIS REPORT

The findings of this report are based on the Scope of Work outlined in Section 1.2. NEO Consulting performed the services in a manner consistent with the normal level of care and expertise exercised by members of the environmental consulting profession. No warranties, express or implied are made.

The results of this assessment are based upon the information documented and presented in this report. All conclusions and recommendations regarding the site are the professional opinions of NEO Consulting personnel involved with the project, subject to the qualifications made above. While normal assessments of data reliability have been made, NEO Consulting assumes no responsibility or liability for errors in any data obtained from regulatory agencies, statements from sources outside of NEO Consulting, or developments resulting from situations outside the scope of this project.

Subject to the Scope of the Work, NEO Consulting assessment is strictly limited to assessing soil and groundwater at the site. Soil and groundwater samples were analysed for common contaminants and/or indicators of contamination only. The absence of targeted contaminants of concern in soil and groundwater samples cannot be interpreted as a guarantee that such materials, or other potentially toxic or hazardous compounds, do not exist at the site.

The results of this assessment are based on the site conditions identified at the time of the site inspection and validation sampling. NEO Consulting will not be liable to revise the report to account for any changes in site characteristics, regulatory requirements, assessment criteria or the availability of additional information, subsequent to the issue date of this report.

NEO Consulting is not engaged in environmental consulting and reporting for the purpose of advertising sales promoting, or endorsement of any client interests, including raising investment capital, recommending investment decisions, or other publicity purposes.

### 3 SITE DESCRIPTION

3.1 Table 1: Summary of Site Details

Description	
Street Address:	22 High Street, Rushworth VIC 3612
Local Government Area:	Campaspe
Lot/Deposited Plan	1/431133
Geographical Coordinates of UPSS:	36.587° South 145.016° East
Approx. land size:	1992.9m <sup>2</sup>

#### 3.2 Site Layout and Features

The site layout is shown Figure 1 Attachment A.

The site is located in a predominantly suburban area of Rushworth.

At the time of the walkover inspection, the site was occupied by an active service business with a single storey building with no canopy. The auto repairers and LPG service was serviced by a concrete forecourt and LPG surrounds and asphalt driveway on the western and southern sides of the site. Three UST's were located in 2 areas; 1 in front of the building and the other 2 near the south west corner of the site after the LPG area. There is a large LPG tank in the western area of the site which has a bowser. Three other bowzers are closer to the building.

#### 3.3 Adjoining Land Uses

At the time of the assessment land uses adjacent to the UPSS at were as follows:

- North – IGA; commercial
- East – roadways/laneways
- West – High Street
- South – Wigg Street

#### 3.4 Site Topography

The site has an elevation range of 148m – 152m asl. The active end of the site is 151m except for the south west corner which is the highest elevation at 152m asl. Downward slope runs from south west to north east along the site.

Surface water drainage from the site would flow off-site down into the canals along the roadway of Wigg Street if not remaining onsite towards the east.

This information was based on both visual information and topographic government mapping facilities. See References for further information on sources.

#### 3.5 Soils and Hydrology

The regional geological map of Bendigo 2001 indicates the site to be underlain by marine deposits; turbidite sandstone beds interbedded with bioturbated siltstones; some conglomerate, in an upward fining succession of units – Waranga Formation.

The regional Water Table Aquifer map of Bendigo 2001 indicates the site is underlain by a water table of the Lachlan Province – local flow systems in Palaeozoic or Mesozoic intrusives.

### 3.6 Sensitive Receptors

The nearest surface water body to the site is 200m NE and is a tributary of Waranga Basin which is the Goulburn Valley and North Victoria's irrigation water. This Basin is 3km away.

The nearest residential property which could have vegetable/fruit growing for human consumption is 40m south across Wigg Street.

Schools in the area: 120m WNW Rushworth Kindergarten & Childcare.

See also Attachment F.

## 4.0 SITE ASSESSMENT

### 4.1 Overview

An environmental technician experienced in the handling of potentially contaminated soil and ground water undertook the fieldwork. The scope of the work included: A site inspection, location of services, collection of samples, reinstatement of all excavations.

### 4.2 Soil Sampling Locations and Assessment

Soil assessment holes were advanced at 3 locations across the site. The sampling locations were selected based on the location of underground infrastructure, accessibility and probability of picking up potential contamination. Figure 1 and Figure 2 of Attachment A show the location of the soil assessment holes at the site.

NEO collected soil samples from each soil assessment hole. Soil samples were collected at various depths within each hole. The depth at which each soil/fill material sample was collected from are shown in the borelogs presented in Attachment D. A total of 15 soil samples were collected at the site.

#### 4.2.1 Drilling Methods and Soil Sampling Methodology

A small trailer-mounted drill rig equipped with 125mm diameter solid flight augers was used to advance 3 soil assessment holes at the site. The soil assessment holes were advanced to a minimum depth of 4.5m below ground level, or until the first water bearing zone was encountered.

See section 5.3.1 for details about the samples being collected in accordance with QA/QC Guidelines.

#### 4.2.2 Sample Analysis

The samples were sent to Envirolab (Chatswood) in accordance with QA/QC Guidelines. See section 5.3.2 for further details.

### 4.3 Fieldwork Notes

The fill material and natural soils encountered in each soil assessment hole are described in the borelogs presented in Attachment D.

**Bore Hole 1** – was advanced in the north of the site; approx. level with the LPG tank. Drilling encountered Asphalt followed by yellow/orange sandy clay to 1.9m then it passed through 10cm of white rock and continued on with the yellow/orange sandy clay till 3.3m where rock was again passed through before the sandy clay returned till 4m. No odour was detected in this hole.

**Bore Hole 2** – was advanced in the south east area of the active service section. Drilling encountered Asphalt followed by brown clay which turned dry and powdery at 1m, then solid brown clay till 1.5m then solid red/brown clay till 4m. No odour was detected in this hole.

Soil samples were screened in the field for volatile organic compounds (VOC's) using a PID. PID readings for each soil sample are noted in the borelogs presented in Attachment D.

## **5 QUALITY ASSURANCE/QUALITY CONTROL QA/QC**

### **5.1 Data Quality Objectives**

The Data Quality Objectives (DQOs) define the quality and quantity of data needed to support decisions relating to the environmental condition of a site. It outlines the defining criteria that a data collection design should satisfy, including when, where, how and how many samples to be collected. The DQO process is a seven (7) step planning approach to outline the project goals, decisions, constraints and an assessment of the project uncertainties and how to address these when they arise.

The DQOs for the sampling and analysis investigations were to:

#### **State the Problem.**

Determine if ground contamination exists across the site and if so, why and what new environmental data, and what resources are available to resolve the problem within the allocated deadlines of the Project.

#### **Identify the Decision.**

Determine the decisions that need to be made on the contamination and the new environmental data required to make them if contamination exists. This includes considering relevant site criteria for each medium (fill, soil and sediment), considering whether a proposed use of the 95% UCL on the mean concentrations or results for all chemicals of potential concern were less than the site criteria.

#### **Identify Inputs to Decision.**

Identification of the information needed to allow informed, defensible decisions and specify which inputs require new environmental measurements.

#### **Define the Study Boundaries.**

Specify the spatial and temporal aspects of the environmental media that the data must represent to support decisions. To identify the boundaries (both spatial and temporal) of the investigation and to identify any restrictions that may hinder the assessment process.

#### **Develop a Decision Rule.**

To define the parameter(s) of interest, specify the action level and provide a logical basis for choosing from alternative actions. This may include defining acceptable limits for chemicals of concern detected in field blanks, volatile-spiked trip samples, laboratory method blanks to ensure the action levels exceed the measurement detection limits.

#### **Specify Limits on Decision Errors.**

Specify the decision-maker's acceptable limits on decision errors, which are used to establish performance goals for limiting uncertainties in the data. Incorrect decisions are caused by using data that is not representative of site conditions because of sampling or analytical error, leading to a conclusion that is inappropriate for the site in question.

#### **Optimise the Design for Obtaining Data.**

Identify a resource-effective sampling and analysis design for general data that are expected to satisfy the DQOs.

## 5.2 DATA QUALITY INDICATORS

DATA QUALITY OBJECTIVE	REQUIREMENT	DATA QUALITY INDICATOR
<b>PRECISION</b>		
Intra-laboratory Duplicates	1 per 20 samples	RPDs <50%
Inter laboratory Duplicates	1 per 20 samples	RPDs <50%
Laboratory Duplicates	Minimum of 1 per batch per analyte	RPDs <50%
<b>ACCURACY</b>		
Laboratory Matrix Spikes	1 per batch per volatile/semi-volatile analyte	Recoveries 50% to 150%
Laboratory Surrogate Spikes	1 per volatile/semi-volatile analyte samples (as appropriate)	Recoveries 70%-130%
Laboratory Method Blanks	At least 1 per batch per analyte tested for	Results <Limit of Reporting
Laboratory Control Samples	At least 1 per batch per analyte tested for	Result <Limit of Reporting
Trip Blanks	1 per lab batch for volatile analytes	Result <Limit of Reporting
Trip Spikes	1 per lab batch for volatile analytes	Recoveries 60-100%
<b>Representatives</b>		
Sampling methodology	Appropriate for the sample type of analytes	Meet Requirement
Samples extracted and analysed within holding times	Specific to each analyte	Meet Requirement
<b>Comparability</b>		
Sampling approach	Consistent for each sample	Meet Requirement
Analysis methodology	Consistent methodology for each sample	Meet Requirement
Handling conditions and sampler	Consistent for each sample	Meet Requirement
Field observations and analytical	Field observations to support analytical results	Meet Requirement
Consistent laboratory Limit of Reporting (LOR)	Consistent between primary and secondary laboratories	Meet Requirement
<b>Completeness</b>		
Chain of Custody Documentation	Appropriately completed	Meet Requirement
Field Sampling Documentation	Appropriately completed	Meet Requirement
Satisfactory quality assurance/quality control procedures	In accordance with relevant guidance	Meet Requirement

### 5.3 QA/QC Sampling and Analysis Methodology

#### 5.3.1 Soil Sampling Methods

The sampler wore a clean pair of disposable nitrile gloves at each sampling location to minimize potential cross contamination of samples. Soil samples were collected using a split spoon sampler. Samples were collected in a 250ml laboratory supplied glass jar and plastic zip lock bags marked with appropriate sample identification.

Care was taken to minimize volatile and semi-volatile organic compound losses during sampling by minimizing the head space in each sample jar. The bagged sample was screened for the presence of volatile organic compounds (VOC's) using a photo-ionisation detector (PID).

The jarred samples were placed on ice in an esky immediately after sampling to minimize potential losses of volatile and semi-volatile compounds during transport.

The soil profile of each borehole was logged in the field to include soil type, colour, moisture conditions, grain size, inclusions, staining, odour and the results of PID screening.

A Chain of Custody (COC) form was completed for the samples. The samples and the COC were sent to Envirolab (Chatswood).

Samples from each soil assessment hole were analysed for TRH, BTEX and Lead. Soil samples were selected for analysis on the basis of field observations and field screening with a PID.

A total of 6 primary soil samples were selected for laboratory analysis. Laboratory analysis was undertaken by Envirolab (Chatswood) using NATA accredited analytical methods. Please see Attachment C for Envirolab's Laboratory Methods used.

#### 5.4 Environmental Quality Criteria

For the purpose of assessing the results of analytical testing of soils at the Site, the following guidelines were considered:

- VIC EPA 888 regulation
- CRC Care (2011) Health Screening Levels for Petroleum Hydrocarbons in Soil and Groundwater, and
- NEPC (1999) National Environmental Protection (Assessment of Site Contamination) Measure (NEPM) and the subsequent amendment (Amended NEPM, 2013) officially approved by the Standing Council of Environment and Water (SCEW) on 11 April 2013.

In accordance with the decision-making process for assessing urban redevelopment sites (Appendix 1, EPA, 2006), soil concentrations were compared against the following soil investigation levels (SILs);

- Health-based criteria for the current and proposed land use: Amended NEPM (2013) Health-based Investigation levels (HILa) for Commercial/Industrial land use, the Health Screening Levels (HSLs) and the CRC Care (2011) Soil Health Screening Levels for Direct Contact (HSLs).
- Environmental Criteria: Amended NEPM (2013) Ecological Screening Levels (ESLs) and Ecological Investigation Levels (EILs) for Commercial/Industrial Land Use.

The National Environment Protection Council (NEPC) has amended the National Environment Protection (Assessment of Site Contamination) Measure 1999 on the 11<sup>th</sup> April 2013. It is understood that the amendment (ASC NEPM, 2013) took effect in each jurisdiction on 16<sup>th</sup> May 2013, the day after it was registered on the Federal Register of Legislative Instruments (FRLI).

NEO has adopted the most recent Amended NEPM (2013) Tier 1 Guidelines over the criteria listed in NSW DEC (2006) as it is the most recent guidance available that has been approved by the NSW EPA under Section 105 of the Contaminated Land Management Act, 1997.

## 6 ANALYTICAL RESULTS SUMMARY

Soil analytical results are summarized and compared to the relevant assessment criteria in Attachment B. The laboratory certificate of analysis for the soil samples collected at the site is presented as Attachment C.

The reported concentration of Benzene was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Toluene - The reported concentration of Toluene was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Ethylbenzene - The reported concentration of Ethylbenzene was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Xylene (total) - The reported concentration of Xylene (total) was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

TPH (C6-C10) Less BTEX (F1) - The reported concentration of TPH (C6-C10) Less BTEX (F1) was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

TPH (>C10-C16) Less Naphthalene (F2) - The reported concentration of TPH (>C10-C16) Less Naphthalene (F2) was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

TPH (>C16-C34)(F3) - The reported concentration of TPH (>C16-C34) was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

TPH (>C34-C40)(F4) - The reported concentration of TPH (>C34-C40) was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Naphthalene - The reported concentration of Naphthalene was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Lead - The reported concentration of Lead was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Total PAHs - The reported concentration of Total PAHs was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Field observations and analytical results indicate that there was no hydrocarbon impact in soil at the site from sample locations above the adopted assessment guidelines.

## 7 PRELIMINARY CONCEPTUAL SITE MODEL

### 7.1 Principal Contaminants of Concern (PCC)

For the purposes of this study the Principal Contaminants of Concern (PCC) were considered to be:

- Lead resulting from the historic use of leaded petrol
- Monocyclic aromatic hydrocarbons (benzene, toluene, ethyl benzene and xylenes – BTEX) associated with the fuel products
- Light, mid and heavy-fraction petroleum hydrocarbons (TPH C6-C36) associated with the fuel and oil products.



**Table: Contamination Fate and Transport** – The fate of the PCC identified above is summarized in the following table:

PCC	FATE & TRANSPORT
Non-volatile contaminants including lead and heavy fraction hydrocarbons.	Non-volatile contaminants are expected to be bound within the fill matrix and are hence less mobile. The mobility of these contaminants would depend on a range of factors including age of the fill, soil porosity, solubility in water and surface water infiltration.
Volatile contaminants including light-fraction TPH and BTEX.	Volatile contaminants are usually more mobile when compared to the non-volatile compounds. The potential for migration of volatile contaminants such as light-fraction TPH is relatively high in sandy soil with a high water table. These contaminants break down rapidly as a result of microbial activity and availability of nutrients including nitrogen, oxygen etc. The mobile contaminants would be expected to move down to the rock surface or groundwater table and migrate down gradient from the source. The mobility would depend on a range of factors like the porosity, confining layers within the aquifer, solubility in groundwater etc.

## 8 CONCLUSIONS AND RECOMMENDATIONS

On the 11<sup>th</sup> May 2018, NEO Consulting conducted an Environmental Site Assessment at 22 High Street, Rushworth VIC 3612. Data obtained during the Environmental Site Assessment indicates the following:

- Field observations and analytical results indicate that there are no hydrocarbon impacts within the soil samples taken at the site.
- The soil assessment holes encountered similar geology, described as brown clay with no hydrocarbon odour.
- NEO Consulting recommends the site is suitable for ongoing fuel service site.
- Statistical Inventory Reconciliation Analysis (SIRA) of deliveries, sales and dips on a monthly basis should be undertaken in accordance with EPA guidelines.

No soil sample taken whilst doing the field work had any indication of contamination visually or aromatically. Laboratory analysis of each soil sample indicates the site is well within the acceptable contamination and had no evidence of reaching any health based investigation levels.

Based on these results, NEO finds that this site is suitable to continue as its current land use.

## REFERENCES

- Geological Survey of VIC, Bendigo 2001 1:250,000 Geological Series Sheet SJ 55-1.  
[www.earthresources.efirst.com.au](http://www.earthresources.efirst.com.au)
- National Maps [www.nationalmap.gov.au](http://www.nationalmap.gov.au)
- VIC EPA 888 regulation
- National Environment Protection (Assessment of Site Contamination) Measure (2013),  
'Schedule B (1) – Guidelines on the Investigation Levels for Soil and Groundwater.'
- NSW EPA (1994) 'Guidelines for Assessing Service Stations.'
- Department of Industries – Resources and Energy [www.resourcesandenergy.gov.au](http://www.resourcesandenergy.gov.au)
- Land Data [www.landata.vic.gov.au](http://www.landata.vic.gov.au)
- [www.services.land.vic.gov.au](http://www.services.land.vic.gov.au)

*Attachment A:  
Figures*

Sampling Date: 11.05.18  
Report Date: 27.05.18  
Report Number: N3465

Aksara Pty Ltd – 22 High Street, Rushworth VIC 3612  
PROJECT NUMBER: N3465

Figure 1: Satellite view of Rushworth town.



Figure 2: Map view of site

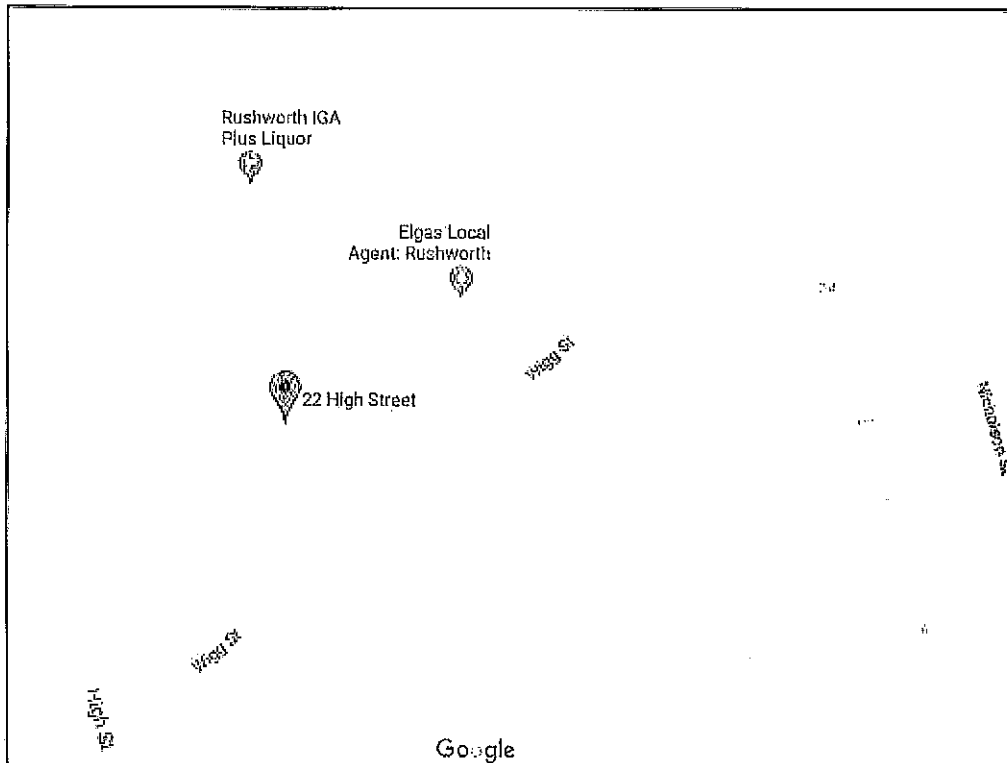
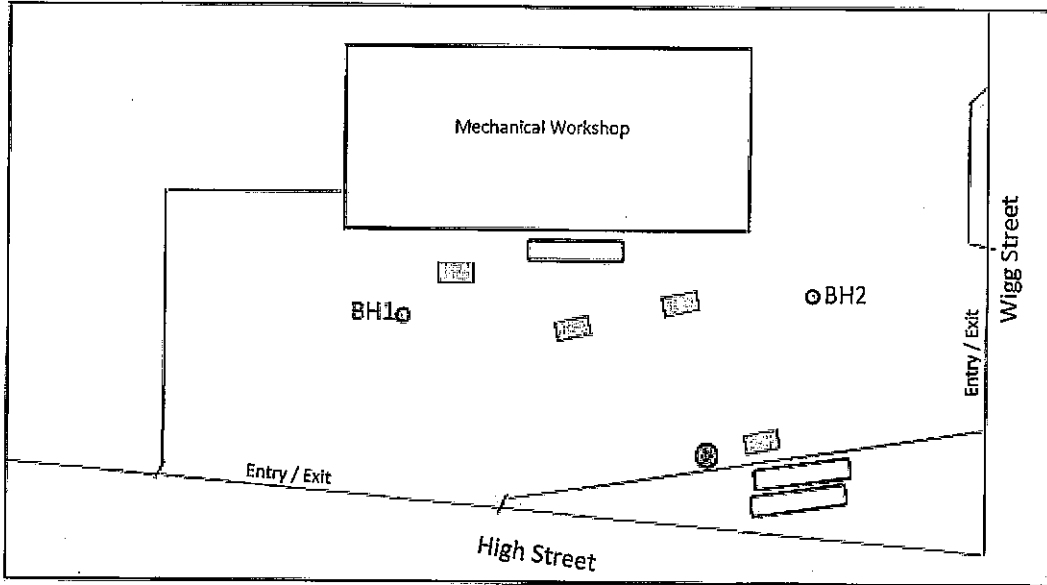
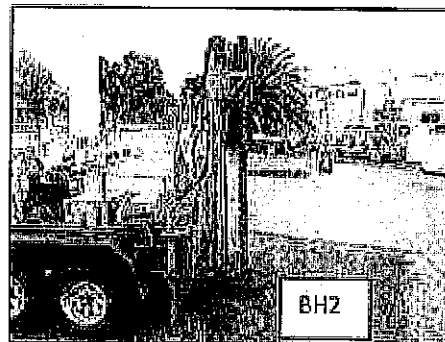
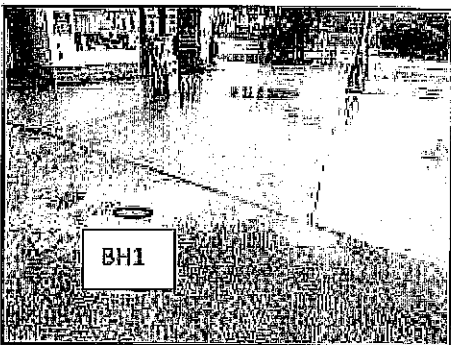


Figure 3: Site plan



Item	Description
	Bore Hole location
	Fuel pump bowser
	Approx location of UST
	Above ground Vertical LPG tank.

Onsite photos:



*Attachment B:  
Laboratory Tables*

Sampling Date: 11.05.18  
Report Date: 27.05.18  
Report Number: N3465

Soil Analytical Summary  
BTEX, TRH and Lead

Sample ID				BH1 1.5	BH1 3	BH1 4.5	BH2 1.5	BH2 3	BH2 4.5
Predominant Soil Texture				Yellow/orange sandy clay	Yellow sandy clay	Orange sandy Clay	Brown clay	Red/brown clay	Red/brown Clay
Sample Date				18.05.18	18.05.18	18.05.18	18.05.18	18.05.18	18.05.18
Contaminant	Health Assessment Criteria		Ecological investigation Guideline Value						
Chloride (via PID)	-	-	-	0.0	0.0	0.0	0.0	0.0	0.0
Chromium (CN)	NEPM Soil HSL D for Vapour intrusion	NEPM Soil HSL for direct contact	NEPM Soil ESL D						
Benzene	3	1100	C: 75 / F: 95	<0.2	<0.2	<0.2	<0.2	<0.2	<0.2
Toluene	-	120000	135	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
o-xylene	-	85000	C: 165 / F: 185	<1	<1	<1	<1	<1	<1
m,p-Xylene	230	130000	C: 180 / F: 95	<1	<1	<1	<1	<1	<1
NEPM HSL	NEPM Soil HSL D for Vapour intrusion	NEPM Soil HSL for direct contact	NEPM Soil ESL D						
F1	<1m: 260; 1-2m: 370	82000	215	<25	<25	<25	<25	<25	<25
F2	-	62000	170	<50	<50	<50	<50	<50	<50
F3	-	85000	C: 1700 / F: 2500	<100	<100	<100	<100	<100	<100
F4	-	120000	C: 3300 / F: 6600	<100	<100	<100	<100	<100	<100
Metals	NEPM HSL D		EIL						
Lead	1500	-	Generic EIL: 1100	26	21	13	71	1	9

Notes - Highlighting denotes an exceedance of the guideline. - denotes 'not analysed' or 'at guideline value'

*Attachment C:  
Laboratory Results*

Sampling Date: 11.05.18  
Report Date: 27.05.18  
Report Number: N3465





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**CERTIFICATE OF ANALYSIS 191582**

Client Details	
Client	NEO Consulting Pty Ltd
Attention	Nick Caltablano
Address	PO Box 279, Riverstone, NSW, 2765

Sample Details	
Your Reference	<b>N3465</b>
Number of Samples	6 Soil
Date samples received	14/05/2018
Date completed instructions received	14/05/2018

**Analysis Details**

Please refer to the following pages for results, methodology summary and quality control data.  
 Samples were analysed as received from the client. Results relate specifically to the samples as received.  
 Results are reported on a dry weight basis for solids and on an as received basis for other matrices.  
 Please refer to the last page of this report for any comments relating to the results.

Report Details	
Date results requested by	21/05/2018
Date of Issue	18/05/2018
NATA Accreditation Number 2901. This document shall not be reproduced except in full. Accredited for compliance with ISO/IEC 17025 - Testing. Tests not covered by NATA are denoted with *	

**Results Approved By**

Jeremy Faircloth, Organics Supervisor  
 Ken Nguyen, Senior Chemist  
 Nancy Zhang, Assistant Lab Manager  
 Nick Sarlamis, Inorganics Supervisor  
 Steven Luong, Senior Chemist

**Authorised By**

Jacinta Hurst, Laboratory Manager



Client Reference: N3465

VOCs in soil		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	16/05/2018
Dichlorodifluoromethane	mg/kg	<1
Chloromethane	mg/kg	<1
Vinyl Chloride	mg/kg	<1
Bromomethane	mg/kg	<1
Chloroethane	mg/kg	<1
Trichlorofluoromethane	mg/kg	<1
1,1-Dichloroethene	mg/kg	<1
trans-1,2-dichloroethene	mg/kg	<1
1,1-dichloroethane	mg/kg	<1
cis-1,2-dichloroethene	mg/kg	<1
bromochloromethane	mg/kg	<1
chloroform	mg/kg	<1
2,2-dichloropropane	mg/kg	<1
1,2-dichloroethane	mg/kg	<1
1,1,1-trichloroethane	mg/kg	<1
1,1-dichloropropene	mg/kg	<1
Cyclohexane	mg/kg	<1
carbon tetrachloride	mg/kg	<1
Benzene	mg/kg	<0.2
dibromomethane	mg/kg	<1
1,2-dichloropropane	mg/kg	<1
trichloroethene	mg/kg	<1
bromodichloromethane	mg/kg	<1
trans-1,3-dichloropropene	mg/kg	<1
cis-1,3-dichloropropene	mg/kg	<1
1,1,2-trichloroethane	mg/kg	<1
Toluene	mg/kg	<0.5
1,3-dichloropropane	mg/kg	<1
dibromochloromethane	mg/kg	<1
1,2-dibromoethane	mg/kg	<1
tetrachloroethene	mg/kg	<1
1,1,1,2-tetrachloroethane	mg/kg	<1
chlorobenzene	mg/kg	<1
Ethylbenzene	mg/kg	<1

Client Reference: N3465

VOCs in soil		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
bromoform	mg/kg	<1
m+p-xylene	mg/kg	<2
styrene	mg/kg	<1
1,1,2,2-tetrachloroethane	mg/kg	<1
o-Xylene	mg/kg	<1
1,2,3-trichloropropane	mg/kg	<1
isopropylbenzene	mg/kg	<1
bromobenzene	mg/kg	<1
n-propyl benzene	mg/kg	<1
2-chlorotoluene	mg/kg	<1
4-chlorotoluene	mg/kg	<1
1,3,5-trimethyl benzene	mg/kg	<1
tert-butyl benzene	mg/kg	<1
1,2,4-trimethyl benzene	mg/kg	<1
1,3-dichlorobenzene	mg/kg	<1
sec-butyl benzene	mg/kg	<1
1,4-dichlorobenzene	mg/kg	<1
4-isopropyl toluene	mg/kg	<1
1,2-dichlorobenzene	mg/kg	<1
n-butyl benzene	mg/kg	<1
1,2-dibromo-3-chloropropane	mg/kg	<1
1,2,4-trichlorobenzene	mg/kg	<1
hexachlorobutadiene	mg/kg	<1
1,2,3-trichlorobenzene	mg/kg	<1
Surrogate Dibromofluorometha	%	103
Surrogate aaa-Trifluorotoluene	%	96
Surrogate Toluene-da	%	98
Surrogate 4-Bromofluorobenzene	%	94

Client Reference: N3465

TRH(C6-C10) BTEXN in Soil						
Our Reference		191582-1	191582-2	191582-3	191582-4	191582-5
Your Reference	UNITS	BH1 1.5	BH1 3.0	BH1 4.5	BH2 1.5	BH2 3.0
Depth		1.5	3.0	4.5	1.5	3.0
Date Sampled		11/05/2018	11/05/2018	11/05/2018	11/05/2018	11/05/2018
Type of sample		Soil	Soil	Soil	Soil	Soil
Date extracted	-	15/05/2018	15/05/2018	15/05/2018	15/05/2018	15/05/2018
Date analysed	-	17/05/2018	17/05/2018	17/05/2018	16/05/2018	17/05/2018
TRH C6 - C8	mg/kg	<25	<25	<25	<25	<25
TRH C8 - C10	mg/kg	<25	<25	<25	<25	<25
vTPH C6 - C10 less BTEX (F1)	mg/kg	<25	<25	<25	<25	<25
Benzene	mg/kg	<0.2	<0.2	<0.2	<0.2	<0.2
Toluene	mg/kg	<0.5	<0.5	<0.5	<0.5	<0.5
Ethylbenzene	mg/kg	<1	<1	<1	<1	<1
m+p-xylene	mg/kg	<2	<2	<2	<2	<2
o-Xylene	mg/kg	<1	<1	<1	<1	<1
naphthalene	mg/kg	<1	<1	<1	<1	<1
Total +ve Xylenes	mg/kg	<1	<1	<1	<1	<1
Surrogate aaa-Trifluorotoluene	%	102	98	99	86	98

TRH(C6-C10) BTEXN in Soil		
Our Reference		191582-6
Your Reference	UNITS	BH2 4.5
Depth		4.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	17/05/2018
TRH C6 - C8	mg/kg	<25
TRH C8 - C10	mg/kg	<25
vTPH C6 - C10 less BTEX (F1)	mg/kg	<25
Benzene	mg/kg	<0.2
Toluene	mg/kg	<0.5
Ethylbenzene	mg/kg	<1
m+p-xylene	mg/kg	<2
o-Xylene	mg/kg	<1
naphthalene	mg/kg	<1
Total +ve Xylenes	mg/kg	<1
Surrogate aaa-Trifluorotoluene	%	93

Client Reference: N3465

svTRH (C10-C40) in Soil						
Our Reference		191582-1	191582-2	191582-3	191582-4	191582-5
Your Reference	UNITS	BH1 1.5	BH1 3.0	BH1 4.5	BH2 1.5	BH2 3.0
Depth		1.5	3.0	4.5	1.5	3.0
Date Sampled		11/05/2018	11/05/2018	11/05/2018	11/05/2018	11/05/2018
Type of sample		Soil	Soil	Soil	Soil	Soil
Date extracted	-	15/05/2018	15/05/2018	15/05/2018	15/05/2018	15/05/2018
Date analysed	-	17/05/2018	17/05/2018	17/05/2018	17/05/2018	17/05/2018
TRH C <sub>10</sub> - C <sub>14</sub>	mg/kg	<50	<50	<50	<50	<50
TRH C <sub>15</sub> - C <sub>28</sub>	mg/kg	<100	<100	<100	<100	<100
TRH C <sub>29</sub> - C <sub>38</sub>	mg/kg	<100	<100	<100	<100	<100
TRH >C <sub>10</sub> -C <sub>16</sub>	mg/kg	<50	<50	<50	<50	<50
TRH >C <sub>10</sub> - C <sub>16</sub> less Naphthalene (F2)	mg/kg	<50	<50	<50	<50	<50
TRH >C <sub>18</sub> -C <sub>34</sub>	mg/kg	<100	<100	<100	<100	<100
TRH >C <sub>34</sub> -C <sub>40</sub>	mg/kg	<100	<100	<100	<100	<100
Total +ve TRH (>C10-C40)	mg/kg	<50	<50	<50	<50	<50
Surrogate o-Terphenyl	%	89	88	89	92	89

svTRH (C10-C40) in Soil		
Our Reference		191582-6
Your Reference	UNITS	BH2 4.5
Depth		4.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	17/05/2018
TRH C <sub>10</sub> - C <sub>14</sub>	mg/kg	<50
TRH C <sub>15</sub> - C <sub>28</sub>	mg/kg	<100
TRH C <sub>29</sub> - C <sub>38</sub>	mg/kg	<100
TRH >C <sub>10</sub> -C <sub>16</sub>	mg/kg	<50
TRH >C <sub>10</sub> - C <sub>16</sub> less Naphthalene (F2)	mg/kg	<50
TRH >C <sub>18</sub> -C <sub>34</sub>	mg/kg	<100
TRH >C <sub>34</sub> -C <sub>40</sub>	mg/kg	<100
Total +ve TRH (>C10-C40)	mg/kg	<50
Surrogate o-Terphenyl	%	89

Client Reference: N3465

PAHs in Soil		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	16/05/2018
Naphthalene	mg/kg	<0.1
Acenaphthylene	mg/kg	0.1
Acenaphthene	mg/kg	<0.1
Fluorene	mg/kg	<0.1
Phenanthrene	mg/kg	1.5
Anthracene	mg/kg	0.4
Fluoranthene	mg/kg	2.0
Pyrene	mg/kg	1.8
Benzo(a)anthracene	mg/kg	0.8
Chrysene	mg/kg	0.7
Benzo(b,j+k)fluoranthene	mg/kg	1
Benzo(a)pyrene	mg/kg	0.80
Indeno(1,2,3-c,d)pyrene	mg/kg	0.4
Dibenzo(a,h)anthracene	mg/kg	0.1
Benzo(g,h,i)perylene	mg/kg	0.5
Total +ve PAH's	mg/kg	10
Benzo(a)pyrene TEQ calc (zero)	mg/kg	1.2
Benzo(a)pyrene TEQ calc(half)	mg/kg	1.2
Benzo(a)pyrene TEQ calc(PQL)	mg/kg	1.2
Surrogate p-Terphenyl-d14	‰	100

Client Reference: N3465

063 In Soil NERM		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	17/05/2018
alpha-BHC	mg/kg	<0.1
HCB	mg/kg	<0.1
beta-BHC	mg/kg	<0.1
gamma-BHC	mg/kg	<0.1
Heptachlor	mg/kg	<0.1
delta-BHC	mg/kg	<0.1
Aldrin	mg/kg	<0.1
Heptachlor Epoxide	mg/kg	<0.1
gamma-Chlordane	mg/kg	<0.1
alpha-chlordane	mg/kg	<0.1
Endosulfan I	mg/kg	<0.1
pp-DDE	mg/kg	<0.1
Dieldrin	mg/kg	<0.1
Endrin	mg/kg	<0.1
Endosulfan II	mg/kg	<0.1
pp-DDD	mg/kg	<0.1
Endrin Aldehyde	mg/kg	<0.1
pp-DDT	mg/kg	<0.1
Endosulfan Sulphate	mg/kg	<0.1
Methoxychlor	mg/kg	<0.1
Mirex	mg/kg	<0.5
Total +ve DDT+DDD+DDE	mg/kg	<0.1
Surrogate TCMX	µg	104

Client Reference: N3465

Results in Soil		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	17/05/2018
Aroclor 1016	mg/kg	<0.1
Aroclor 1221	mg/kg	<0.1
Aroclor 1232	mg/kg	<0.1
Aroclor 1242	mg/kg	<0.1
Aroclor 1248	mg/kg	<0.1
Aroclor 1254	mg/kg	<0.1
Aroclor 1260	mg/kg	<0.1
Total +ve PCBs (1016-1260)	mg/kg	<0.1
Surrogate TCLMX	%	104



Client Reference: N3465

Speciated Phenols in Soil		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	16/05/2018
Phenol	mg/kg	<0.2
2-Chlorophenol	mg/kg	<0.2
4-Chloro-3-methylphenol	mg/kg	<1
2-Methylphenol (o-cresol)	mg/kg	<0.2
3/4-Methylphenol (m/p-cresol)	mg/kg	<0.4
2-Nitrophenol	mg/kg	<0.2
2,4 -Dimethylphenol	mg/kg	<0.2
2,4-Dichlorophenol	mg/kg	<0.2
2,6-Dichlorophenol	mg/kg	<0.2
2,4,5-Trichlorophenol	mg/kg	<0.2
2,4,6-Trichlorophenol	mg/kg	<0.2
2,4-Dinitrophenol	mg/kg	<4
4-Nitrophenol	mg/kg	<4
2,3,4,6-Tetrachlorophenol	mg/kg	<0.2
2-methyl-4,6-Dinitrophenol	mg/kg	<2
Pentachlorophenol	mg/kg	<1
Surrogate 2-fluorophenol	%	116
Surrogate Phenol-d <sub>6</sub>	%	123
Surrogate 2,4,6-Tribromophenol	%	108
Surrogate p-Terphenyl-d <sub>14</sub>	%	92

Client Reference: N3465

Acid Extractable metals in soil						
Our Reference		191582-1	191582-2	191582-3	191582-4	191582-5
Your Reference	UNITS	BH1 1.5	BH1 3.0	BH1 4.5	BH2 1.5	BH2 3.0
Depth		1.5	3.0	4.5	1.5	3.0
Date Sampled		11/05/2018	11/05/2018	11/05/2018	11/05/2018	11/05/2018
Type of sample		Soil	Soil	Soil	Soil	Soil
Date prepared	-	15/05/2018	15/05/2018	15/05/2018	15/05/2018	15/05/2018
Date analysed	-	15/05/2018	15/05/2018	15/05/2018	15/05/2018	15/05/2018
Silver	mg/kg				<1	
Arsenic	mg/kg				26	
Cadmium	mg/kg				<0.4	
Copper	mg/kg				13	
Mercury	mg/kg				2.6	
Molybdenum	mg/kg				<1	
Nickel	mg/kg				8	
Lead	mg/kg	20	21	13	71	11
Selenium	mg/kg				<2	
Tin	mg/kg				2	
Zinc	mg/kg				84	

Acid Extractable metals in soil		
Our Reference		191582-6
Your Reference	UNITS	BH2 4.5
Depth		4.5
Date Sampled		11/05/2018
Type of sample		Soil
Date prepared	-	15/05/2018
Date analysed	-	15/05/2018
Lead	mg/kg	8

Client Reference: N3465

Hexavalent Cr		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Hexavalent Chromium, Cr <sup>6+</sup>	mg/kg	<5

Client Reference: N3465

Miscellaneous		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date prepared	-	16/05/2018
Date analysed	-	16/05/2018
pH 1:5 soil:water	pH Units	7.4
Total Fluoride	mg/kg	120

Client Reference: N3465

Misc Soil Analysis		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date prepared	-	15/05/2018
Date analysed	-	15/05/2018
Total Cyanide	mg/kg	<0.5

Client Reference: N3465

Our Reference		191582-1	191582-2	191582-3	191582-4	191582-5
Your Reference	UNITS	BH1 1.5	BH1 3.0	BH1 4.5	BH2 1.5	BH2 3.0
Depth		1.5	3.0	4.5	1.5	3.0
Date Sampled		11/05/2018	11/05/2018	11/05/2018	11/05/2018	11/05/2018
Type of sample		Soil	Soil	Soil	Soil	Soil
Date prepared	-	15/05/2018	15/05/2018	15/05/2018	15/05/2018	15/05/2018
Date analysed	-	16/05/2018	16/05/2018	16/05/2018	16/05/2018	16/05/2018
Moisture	%	7.5	9.9	7.9	7.1	12

Our Reference		191582-6
Your Reference	UNITS	BH2 4.5
Depth		4.5
Date Sampled		11/05/2018
Type of sample		Soil
Date prepared	-	15/05/2018
Date analysed	-	16/05/2018
Moisture	%	14

Client Reference: N3465

Method ID	Methodology Summary
Inorg-001	pH - Measured using pH meter and electrode in accordance with APHA latest edition, 4500-H+. Please note that the results for water analyses are indicative only, as analysis outside of the APHA storage times.
Inorg-008	Moisture content determined by heating at 105+/-5 °C for a minimum of 12 hours.
Inorg-014	Cyanide - free, total, weak acid dissociable by segmented flow analyser (in line dialysis with colourimetric finish). Solids are extracted in a caustic media prior to analysis.
Inorg-024	Hexavalent Chromium (Cr6+) - determined colourimetrically.
Inorg-026/53	Fluoride by caustic fusion and determined by ion selective electrode (ISE) analysis.
Metals-020	Determination of various metals by ICP-AES.
Metals-021	Determination of Mercury by Cold Vapour AAS.
Org-003	Soil samples are extracted with Dichloromethane/Acetone and waters with Dichloromethane and analysed by GC-FID. F2 = (>C10-C16)-Naphthalene as per NEPM B1 Guideline on Investigation Levels for Soil and Groundwater (HSLs Tables 1A (3, 4)). Note Naphthalene is determined from the VOC analysis.
Org-003	Soil samples are extracted with Dichloromethane/Acetone and waters with Dichloromethane and analysed by GC-FID.  F2 = (>C10-C16)-Naphthalene as per NEPM B1 Guideline on Investigation Levels for Soil and Groundwater (HSLs Tables 1A (3, 4)). Note Naphthalene is determined from the VOC analysis.  Note, the Total +ve TRH PQL is reflective of the lowest individual PQL and is therefore "Total +ve TRH" is simply a sum of the positive individual TRH fractions (>C10-C40).
Org-005	Soil samples are extracted with dichloromethane/acetone and waters with dichloromethane and analysed by GC with dual ECD's.
Org-005	Soil samples are extracted with dichloromethane/acetone and waters with dichloromethane and analysed by GC with dual ECD's. Note, the Total +ve reported DDD+DDE+DDT PQL is reflective of the lowest individual PQL and is therefore simply a sum of the positive individually report DDD+DDE+DDT.
Org-006	Soil samples are extracted with dichloromethane/acetone and waters with dichloromethane and analysed by GC-ECD.
Org-006	Soil samples are extracted with dichloromethane/acetone and waters with dichloromethane and analysed by GC-ECD. Note, the Total +ve PCBs PQL is reflective of the lowest individual PQL and is therefore "Total +ve PCBs" is simply a sum of the positive individual PCBs.
Org-012	Soil samples are extracted with Dichloromethane/Acetone and waters with Dichloromethane and analysed by GC-MS.

Client Reference: N3465

Method ID	Methodology Summary
Org-012	<p>Soil samples are extracted with Dichloromethane/Acetone and waters with Dichloromethane and analysed by GC-MS. Benzo(a)pyrene TEQ as per NEPM B1 Guideline on Investigation Levels for Soil and Groundwater - 2013.</p> <p>For soil results:-</p> <ol style="list-style-type: none"> <li>1. 'EQ PQL' values are assuming all contributing PAHs reported as &lt;PQL are actually at the PQL. This is the most conservative approach and can give false positive TEQs given that PAHs that contribute to the TEQ calculation may not be present.</li> <li>2. 'EQ zero' values are assuming all contributing PAHs reported as &lt;PQL are zero. This is the least conservative approach and is more susceptible to false negative TEQs when PAHs that contribute to the TEQ calculation are present but below PQL.</li> <li>3. 'EQ half PQL' values are assuming all contributing PAHs reported as &lt;PQL are half the stipulated PQL. Hence a mid-point between the most and least conservative approaches above.</li> </ol> <p>Note, the Total +ve PAHs PQL is reflective of the lowest individual PQL and is therefore "Total +ve PAHs" is simply a sum of the positive individual PAHs.</p>
Org-014	<p>Soil samples are extracted with methanol and spiked into water prior to analysing by purge and trap GC-MS.</p>
Org-016	<p>Soil samples are extracted with methanol and spiked into water prior to analysing by purge and trap GC-MS. Water samples are analysed directly by purge and trap GC-MS. F1 = (C6-C10)-BTEX as per NEPM B1 Guideline on Investigation Levels for Soil and Groundwater.</p>
Org-016	<p>Soil samples are extracted with methanol and spiked into water prior to analysing by purge and trap GC-MS. Water samples are analysed directly by purge and trap GC-MS. F1 = (C6-C10)-BTEX as per NEPM B1 Guideline on Investigation Levels for Soil and Groundwater.</p> <p>Note, the Total +ve Xylene PQL is reflective of the lowest individual PQL and is therefore "Total +ve Xylenes" is simply a sum of the positive individual Xylenes.</p>



Client Reference: N3465

QUALITY CONTROL - VOCs in soil				Duplicate			Spike Recovery %			
Test Description	Units	PQL	Method	Blank	#	Range	Dup.	RPD	LCS-3	[NT]
Date extracted	-	-		15/05/2018					15/05/2018	
Date analysed	-	-		16/05/2018					16/05/2018	
Dichlorodifluoromethane	mg/kg	1	Org-014	<1						
Chloromethane	mg/kg	1	Org-014	<1						
Vinyl Chloride	mg/kg	1	Org-014	<1						
Bromomethane	mg/kg	1	Org-014	<1						
Chloroethane	mg/kg	1	Org-014	<1						
Trichlorofluoromethane	mg/kg	1	Org-014	<1						
1,1-Dichloroethene	mg/kg	1	Org-014	<1						
trans-1,2-dichloroethene	mg/kg	1	Org-014	<1						
1,1-dichloroethane	mg/kg	1	Org-014	<1					81	
cis-1,2-dichloroethene	mg/kg	1	Org-014	<1						
bromochloromethane	mg/kg	1	Org-014	<1						
chloroform	mg/kg	1	Org-014	<1					81	
2,2-dichloropropane	mg/kg	1	Org-014	<1						
1,2-dichloroethane	mg/kg	1	Org-014	<1					73	
1,1,1-trichloroethane	mg/kg	1	Org-014	<1					80	
1,1-dichloropropene	mg/kg	1	Org-014	<1						
Cyclohexane	mg/kg	1	Org-014	<1						
carbon tetrachloride	mg/kg	1	Org-014	<1						
Benzene	mg/kg	0.2	Org-014	<0.2						
dibromomethane	mg/kg	1	Org-014	<1						
1,2-dichloropropane	mg/kg	1	Org-014	<1						
trichloroethene	mg/kg	1	Org-014	<1					77	
bromodichloromethane	mg/kg	1	Org-014	<1					80	
trans-1,3-dichloropropene	mg/kg	1	Org-014	<1						
cis-1,3-dichloropropene	mg/kg	1	Org-014	<1						
1,1,2-trichloroethane	mg/kg	1	Org-014	<1						
Toluene	mg/kg	0.5	Org-014	<0.5						
1,3-dichloropropane	mg/kg	1	Org-014	<1						
dibromochloromethane	mg/kg	1	Org-014	<1					89	
1,2-dibromoethane	mg/kg	1	Org-014	<1						
tetrachloroethene	mg/kg	1	Org-014	<1					81	
1,1,1,2-tetrachloroethane	mg/kg	1	Org-014	<1						
chlorobenzene	mg/kg	1	Org-014	<1						
Ethylbenzene	mg/kg	1	Org-014	<1						
bromoform	mg/kg	1	Org-014	<1						
m+p-xylene	mg/kg	2	Org-014	<2						
styrene	mg/kg	1	Org-014	<1						
1,1,2,2-tetrachloroethane	mg/kg	1	Org-014	<1						
o-Xylene	mg/kg	1	Org-014	<1						

Client Reference: N3465

Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-3	[NT]
1,2,3-trichloropropane	mg/kg	1	Org-014	<1						
Isopropylbenzene	mg/kg	1	Org-014	<1						
bromobenzene	mg/kg	1	Org-014	<1						
n-propyl benzene	mg/kg	1	Org-014	<1						
2-chlorotoluene	mg/kg	1	Org-014	<1						
4-chlorotoluene	mg/kg	1	Org-014	<1						
1,3,5-trimethyl benzene	mg/kg	1	Org-014	<1						
tert-butyl benzene	mg/kg	1	Org-014	<1						
1,2,4-trimethyl benzene	mg/kg	1	Org-014	<1						
1,3-dichlorobenzene	mg/kg	1	Org-014	<1						
sec-butyl benzene	mg/kg	1	Org-014	<1						
1,4-dichlorobenzene	mg/kg	1	Org-014	<1						
4-isopropyl toluene	mg/kg	1	Org-014	<1						
1,2-dichlorobenzene	mg/kg	1	Org-014	<1						
n-butyl benzene	mg/kg	1	Org-014	<1						
1,2-dibromo-3-chloropropane	mg/kg	1	Org-014	<1						
1,2,4-trichlorobenzene	mg/kg	1	Org-014	<1						
hexachlorobutadiene	mg/kg	1	Org-014	<1						
1,2,3-trichlorobenzene	mg/kg	1	Org-014	<1						
Surrogate Dibromofluorometha	%		Org-014	99					100	
Surrogate aaa-Trifluorotoluene	%		Org-014	88					88	
Surrogate Toluene-d <sub>8</sub>	%		Org-014	100					102	
Surrogate 4-Bromofluorobenzene	%		Org-014	97					99	

Client Reference: N3465

QUALITY CONTROL: VTRH(C8-C10)/BTEXN in Soil				Duplicate			Spike Recovery			
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-3	[NT]
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			17/05/2018					16/05/2018	
TRH C <sub>8</sub> - C <sub>9</sub>	mg/kg	25	Org-016	<25					81	
TRH C <sub>8</sub> - C <sub>10</sub>	mg/kg	25	Org-016	<25					81	
Benzene	mg/kg	0.2	Org-016	<0.2					79	
Toluene	mg/kg	0.5	Org-016	<0.5					81	
Ethylbenzene	mg/kg	1	Org-016	<1					83	
m+p-xylene	mg/kg	2	Org-016	<2					81	
o-Xylene	mg/kg	1	Org-016	<1					82	
naphthalene	mg/kg	1	Org-014	<1						
Surrogate aaa-Trifluorotoluene	%		Org-016	106					79	

Client Reference: N3465

QUALITY CONTROL: SVTRH(C10-C40) in Soil										
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	Recovery %
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			16/05/2018					16/05/2018	
TRH C <sub>10</sub> - C <sub>14</sub>	mg/kg	50	Org-003	<50					100	
TRH C <sub>15</sub> - C <sub>28</sub>	mg/kg	100	Org-003	<100					85	
TRH C <sub>29</sub> - C <sub>38</sub>	mg/kg	100	Org-003	<100					77	
TRH >C <sub>10</sub> -C <sub>18</sub>	mg/kg	50	Org-003	<50					100	
TRH >C <sub>18</sub> -C <sub>34</sub>	mg/kg	100	Org-003	<100					85	
TRH >C <sub>34</sub> -C <sub>40</sub>	mg/kg	100	Org-003	<100					77	
Surrogate o-Terphenyl	%		Org-003	88					101	

Client Reference: N3465

QUALITY CONTROL PAHs in Soil			Duplicate				Spike Recovery %			
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	[NT]
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			16/05/2018					16/05/2018	
Naphthalene	mg/kg	0.1	Org-012	<0.1					83	
Acenaphthylene	mg/kg	0.1	Org-012	<0.1						
Acenaphthene	mg/kg	0.1	Org-012	<0.1						
Fluorene	mg/kg	0.1	Org-012	<0.1					84	
Phenanthrene	mg/kg	0.1	Org-012	<0.1					94	
Anthracene	mg/kg	0.1	Org-012	<0.1						
Fluoranthene	mg/kg	0.1	Org-012	<0.1					90	
Pyrene	mg/kg	0.1	Org-012	<0.1					88	
Benzo(a)anthracene	mg/kg	0.1	Org-012	<0.1						
Chrysene	mg/kg	0.1	Org-012	<0.1					78	
Benzo(b,f,k)fluoranthene	mg/kg	0.2	Org-012	<0.2						
Benzo(a)pyrene	mg/kg	0.05	Org-012	<0.05					101	
Indeno(1,2,3-c,d)pyrene	mg/kg	0.1	Org-012	<0.1						
Dibenz(a,h)anthracene	mg/kg	0.1	Org-012	<0.1						
Benzo(g,h,i)perylene	mg/kg	0.1	Org-012	<0.1						
Surrogate p-Terphenyl-d14	%		Org-012	98					133	

Client Reference: N3465

QUALITY CONTROL OCs in Soil NEPM				Duplicate			Spike Recovery %			
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-10	[NT]
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			17/05/2018					17/05/2018	
alpha-BHC	mg/kg	0.1	Org-005	<0.1					82	
HCB	mg/kg	0.1	Org-005	<0.1						
beta-BHC	mg/kg	0.1	Org-005	<0.1					82	
gamma-BHC	mg/kg	0.1	Org-005	<0.1						
Heptachlor	mg/kg	0.1	Org-005	<0.1					88	
delta-BHC	mg/kg	0.1	Org-005	<0.1						
Aldrin	mg/kg	0.1	Org-005	<0.1					89	
Heptachlor Epoxide	mg/kg	0.1	Org-005	<0.1					83	
gamma-Chlordane	mg/kg	0.1	Org-005	<0.1						
alpha-chlordane	mg/kg	0.1	Org-005	<0.1						
Endosulfan I	mg/kg	0.1	Org-005	<0.1						
pp-DDE	mg/kg	0.1	Org-005	<0.1					80	
Dieldrin	mg/kg	0.1	Org-005	<0.1					94	
Endrin	mg/kg	0.1	Org-005	<0.1					85	
Endosulfan II	mg/kg	0.1	Org-005	<0.1						
pp-DDD	mg/kg	0.1	Org-005	<0.1					89	
Endrin Aldehyde	mg/kg	0.1	Org-005	<0.1						
pp-DDT	mg/kg	0.1	Org-005	<0.1						
Endosulfan Sulphate	mg/kg	0.1	Org-005	<0.1					85	
Methoxychlor	mg/kg	0.1	Org-006	<0.1						
Mirex	mg/kg	0.5	Org-012	<0.5						
Surrogate TCMX	%		Org-005	113					121	

Client Reference: N3465

QUALITY CONTROL PCBs in Sol				Blank				Spike Recovery %		
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-10	(NT)
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			17/05/2018					17/05/2018	
Aroclor 1016	mg/kg	0.1	Org-008	<0.1						
Aroclor 1221	mg/kg	0.1	Org-006	<0.1						
Aroclor 1232	mg/kg	0.1	Org-008	<0.1						
Aroclor 1242	mg/kg	0.1	Org-006	<0.1						
Aroclor 1248	mg/kg	0.1	Org-006	<0.1						
Aroclor 1254	mg/kg	0.1	Org-006	<0.1					100	
Aroclor 1260	mg/kg	0.1	Org-006	<0.1						
Surrogate TCLMX	%		Org-006	113					100	

Client Reference: N3465

Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-4	[NT]
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			16/05/2018					16/05/2018	
Phenol	mg/kg	0.2	Org-012	<0.2					102	
2-Chlorophenol	mg/kg	0.2	Org-012	<0.2					96	
4-Chloro-3-methylphenol	mg/kg	1	Org-012	<1						
2-Methylphenol (o-cresol)	mg/kg	0.2	Org-012	<0.2					96	
3/4-Methylphenol (m/p-cresol)	mg/kg	0.4	Org-012	<0.4						
2-Nitrophenol	mg/kg	0.2	Org-012	<0.2						
2,4 -Dimethylphenol	mg/kg	0.2	Org-012	<0.2						
2,4-Dichlorophenol	mg/kg	0.2	Org-012	<0.2						
2,6-Dichlorophenol	mg/kg	0.2	Org-012	<0.2					104	
2,4,5-Trichlorophenol	mg/kg	0.2	Org-012	<0.2						
2,4,6-Trichlorophenol	mg/kg	0.2	Org-012	<0.2						
2,4-Dinitrophenol	mg/kg	4	Org-012	<4						
4-Nitrophenol	mg/kg	4	Org-012	<4					110	
2346-Tetrachlorophenol	mg/kg	0.2	Org-012	<0.2						
2-methyl-4,6-Dinitrophenol	mg/kg	2	Org-012	<2						
Pentachlorophenol	mg/kg	1	Org-012	<1					102	
Surrogate 2-fluorophenol	%		Org-012	123					110	
Surrogate Phenol-d <sub>6</sub>	%		Org-012	133					120	
Surrogate 2,4,6-Tribromophenol	%		Org-012	120					120	
Surrogate p-Terphenyl-d <sub>14</sub>	%		Org-012	126					126	



Client Reference: N3465

QUALITY CONTROL: Acid Extractable metals in soil										
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	Spike Recovery %
Date prepared	-			15/05/2018					15/05/2018	
Date analysed	-			15/05/2018					15/05/2018	
Silver	mg/kg	1	Metals-020	<1					104	
Arsenic	mg/kg	4	Metals-020	<4					106	
Cadmium	mg/kg	0.4	Metals-020	<0.4					99	
Copper	mg/kg	1	Metals-020	<1					109	
Mercury	mg/kg	0.1	Metals-021	<0.1					124	
Molybdenum	mg/kg	1	Metals-020	<1					103	
Nickel	mg/kg	1	Metals-020	<1					104	
Lead	mg/kg	1	Metals-020	<1					103	
Selenium	mg/kg	2	Metals-020	<2					98	
Tin	mg/kg	1	Metals-020	<1					97	
Zinc	mg/kg	1	Metals-020	<1					98	

Client Reference: N3465

Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	[NT]
Hexavalent Chromium, Cr <sup>6+</sup>	mg/kg	1	Inorg-024	<1					104	

Client Reference: N3465

Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	[NT]
Date prepared	-			16/05/2018					16/05/2018	
Date analysed	-			16/05/2018					16/05/2018	
pH 1:5 soil:water	pH Units		Inorg-001						103	
Total Fluoride	mg/kg	53	Inorg-026/53	<50					93	

Client Reference: N3465

Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	[NT]
Date prepared	-			15/05/2018					15/05/2018	
Date analysed	-			15/05/2018					15/05/2018	
Total Cyanide	mg/kg	0.5	Isorg-014	<0.5					118	

Result Definitions	
NT	Not tested
NA	Test not required
INS	Insufficient sample for this test
PQL	Practical Quantitation Limit
<	Less than
>	Greater than
RPD	Relative Percent Difference
LCS	Laboratory Control Sample
NS	Not specified
NEPM	National Environmental Protection Measure
NR	Not Reported

Quality Control Definitions	
Blank	This is the component of the analytical signal which is not derived from the sample but from reagents, glassware etc, can be determined by processing solvents and reagents in exactly the same manner as for samples.
Duplicate	This is the complete duplicate analysis of a sample from the process batch. If possible, the sample selected should be one where the analyte concentration is easily measurable.
Matrix Spike	A portion of the sample is spiked with a known concentration of target analyte. The purpose of the matrix spike is to monitor the performance of the analytical method used and to determine whether matrix interferences exist.
LCS (Laboratory Control Sample)	This comprises either a standard reference material or a control matrix (such as a blank sand or water) fortified with analytes representative of the analyte class. It is simply a check sample.
Surrogate Spike	Surrogates are known additions to each sample, blank, matrix spike and LCS in a batch, of compounds which are similar to the analyte of interest, however are not expected to be found in real samples.

Australian Drinking Water Guidelines recommend that Thermotolerant Coliform, Faecal Enterococci, & E.Coli levels are less than 1cfu/100mL. The recommended maximums are taken from "Australian Drinking Water Guidelines", published by NHMRC & ARMC 2011.

**Laboratory Acceptance Criteria**

Duplicate sample and matrix spike recoveries may not be reported on smaller jobs, however, were analysed at a frequency to meet or exceed NEPM requirements. All samples are tested in batches of 20. The duplicate sample RPD and matrix spike recoveries for the batch were within the laboratory acceptance criteria.

Filters, swabs, wipes, tubes and badges will not have duplicate data as the whole sample is generally extracted during sample extraction.

Spikes for Physical and Aggregate Tests are not applicable.

For VOCs in water samples, three vials are required for duplicate or spike analysis.

Duplicates: <5xPQL - any RPD is acceptable; >5xPQL - 0-50% RPD is acceptable.

Matrix Spikes, LCS and Surrogate recoveries: Generally 70-130% for inorganics/metals; 60-140% for organics (+/-50% surrogates) and 10-140% for labile SVOCs (including labile surrogates), ultra trace organics and speciated phenols is acceptable.

In circumstances where no duplicate and/or sample spike has been reported at 1 in 10 and/or 1 in 20 samples respectively, the sample volume submitted was insufficient in order to satisfy laboratory QA/QC protocols.

When samples are received where certain analytes are outside of recommended technical holding times (THTs), the analysis has proceeded. Where analytes are on the verge of breaching THTs, every effort will be made to analyse within the THT or as soon as practicable.

Where sampling dates are not provided, Envirolab are not in a position to comment on the validity of the analysis where recommended technical holding times may have been breached.

Measurement Uncertainty estimates are available for most tests upon request.

Client Reference: N3465

**Report Comments**

MISC\_INORG\_CRVI: Hexavalent Chromium PQL has been raised due to matrix interference.

*Attachment D:  
Bore logs*

Sampling Date: 11.05.18  
Report Date: 27.05.18  
Report Number: N3465





## Division of Environmental Health & Safety

Client	Aksara Pty Ltd	Job Number	N3465	BORE Number	BH1
Project	Environmental Site Assessment	Commenced		Date	11.05.18
Location	22 High Street, Rushworth VIC 3612	Completed		Date	11.05.18
Driller	NEO Consulting Pty Ltd	Logged By			CC

Borehole Angle: 90° Borehole Size: 100mm

Borehole Location Description: Close to the northern boundary over asphalt.

Depth (m)	Graphic log	Material Description	Field Records / Comments
		Asphalt 25mm	
1		Yellow/orange sandy clay till 4.5m with white rock channels at 1.9m and 3.0m	BH1 1.5
2			
3			BH1 3
4			BH1 4.5
5		END OF LOG	



## Division of Environmental Health & Safety

Client	Aksara Pty Ltd At - J & P Auto Repairs	Job Number	N3465	BORE Number	BH2
Project	Environmental Site Assessment	Commenced		Date	11.05.18
Location	22 High Street, Rushworth VIC 3612	Completed		Date	11.05.18
Driller	NEO Consulting Pty Ltd	Logged By			CC

Borehole Angle: **90°** Borehole Size: **100mm**

Borehole Location Description: **South west of the building front near the driveway.**

Depth (m)	Graphic log	Material Description		Field Records / Comments
		Asphalt 25mm		
1		Brown clay turning red/brown towards last 1m; dry powdery clay around 1m.		BH2 1.5
2				
3				BH2 3
4				BH2 4.5
5			END OF LOG	

*Attachment E:  
Potential Offsite receptors*

Sampling Date: 11.05.18  
Report Date: 27.05.18  
Report Number: N3465

**TABLE: POTENTIAL RECEPTORS AND CONTAMINATION ROUTES**

LOCATION	RECEPTOR	ROUTE
On-site	Human receptors include: <ul style="list-style-type: none"> <li>• Site occupants</li> <li>• Site visitors</li> <li>• Contractors and workers</li> <li>• Future site occupants</li> </ul>	Exposure by direct contact via skin, ingesting and inhaling. Migration and consumption of contaminated groundwater. Migration of soluble contaminants with surface water run-off.
Off-site	Human receptors include: <ul style="list-style-type: none"> <li>• Off-site occupants/residents of their own property</li> <li>• Off-site visitors/customers</li> <li>• Contractors and workers dealing with projects on adjoining land</li> </ul>	Migration of contaminated underground water. Migration of contaminated surface water or similar. Extraction and use of groundwater down-gradient from the site.

# Environmental Site Assessment



## Site Name and Address

J&P Auto Repairs  
22 High Street, Rushworth VIC 3612  
Lot 1 TP43113

## Report Number

N3465

## Date

27.05.18

**PROJECT DETAILS****Business Name:**

NEO Consulting Pty Ltd

**Project Number:** N3465**Project Title:**

Environmental Site Assessment

J &amp; P Auto Repairs Rushworth

22 High Street, Rushworth VIC 3612

**Report Completed by**

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Environmental Engineer

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Project Manager

**Review Date:** 27<sup>th</sup> May 2018**File Name:** N3465**Report Status:** FINAL**Document Details**

<b>Project Number</b>	N3465	<b>Document Number</b>	1
<b>Document Title</b>	Environmental Site Assessment		
<b>Site Address</b>	22 High Street, Rushworth VIC 3612		
<b>Report Prepared for</b>	Aksara Pty Ltd		
<b>File Name</b>	N3465		

**Document status and review**

Revision	Prepared by	Reviewed by	Date issue
0	Shahid Javed	Nick Caltabiano	20.05.2018
1	Shahid Javed	Nick Caltabiano	27.05.2018

**Distribution of copies**

Revision	Electronic	Paper	Issued to
0	1	0	Aksara Pty Ltd (emailed to Turken)
0	1	1	NEO Consulting

## Executive Summary

NEO Consulting was engaged by Aksara Pty Ltd to undertake a Soil Investigation. The purpose of the Investigation was to determine whether the operation of the service station has resulted in any gross soil contamination.

The Investigation has been undertaken in accordance with the requirements of the Victorian Environmental Protection Authority Publication 888.4\* August, 2015 *The design, installation and management requirements for underground petroleum storage systems (UPSS)*. The guidelines followed throughout the investigation were based on the NEPC (1999) National Environmental Protection (Assessment of Site Contamination) Measure (NEPM) and the subsequent amendment (Amended NEPM, 2013) officially approved by the Standing Council of Environment and Water (SCEW) on 11 April 2013.

NEO Consulting arrived onsite on the 11<sup>th</sup> May 2018 to conduct an Environmental Site Assessment at 22 High Street, Rushworth VIC 3612. Data obtained prior to attending the site consisted of Geology and Hydrology searches, DBYD (job no. 14132535) information.

Data obtained during the Environmental Site Assessment indicates the following:

- The site was in operation at the time of assessment as an automotive repairs business and LPG service outlet. The fuel service was not active though the bowsers are in situ. The site is very long and thin with the slope of the land running from the south west to the north east.
- There are 4 bowsers onsite and 3 UGSTs. The groundcover is concrete at the forecourt and around LPG outlets and asphalt throughout the rest of the areas and driveways. There is a large canal that runs along Wigg street in between the driveways. There is no canopy over the forecourt area. See Attachment A
- 2 soil assessment holes were advanced at the site. All soil assessment holes were located around and adjacent to the UPSS.
- Field observations and analytical results indicate that there are no hydrocarbon impacts within the soil samples taken at the site.
- The soil assessment holes encountered similar geology, described as brown or yellow/orange clay and some rocks, with no hydrocarbon odour;

No soil sample taken whilst doing the field work had any indication of contamination visually or aromatically. Laboratory analysis of each soil sample indicates the site is well within the acceptable contamination and had no evidence of reaching any health based investigation levels.

Based on these results, NEO Consulting finds that this site is suitable to continue as its current land use.

## TABLE OF CONTENTS

- 1 INTRODUCTION**
  - 1.1 OBJECTIVES
  - 1.2 SCOPE OF WORK
- 2 LIMITATIONS OF THIS REPORT**
- 3 SITE DESCRIPTION**
  - 3.1 TABLE
  - 3.2 LAYOUT AND FEATURES
  - 3.3 ADJOINING LAND USES
  - 3.4 SITE TOPOGRAPHY
  - 3.5 SOILS AND HYDROLOGY
  - 3.6 SENSITIVE RECEPTORS
- 4 SITE ASSESSMENT**
  - 4.1 OVERVIEW
  - 4.2 SOIL ASSESSMENT & SAMPLING LOCATIONS
    - 4.2.1 DRILLING AND SOIL SAMPLING METHODOLOGY
    - 4.2.2 SAMPLE ANALYSIS
  - 4.3 FIELD WORK NOTES
- 5 QUALITY ASSURANCE/QUALITY CONTROL (QA/QC)**
  - 5.1 DATA QUALITY OBJECTIVES
  - 5.2 DATA QUALITY INDICATORS
  - 5.3 SAMPLING AND ANALYSIS METHODOLOGY
    - 5.3.1 SOIL SAMPLING METHODS
  - 5.4 ENVIRONMENTAL QUALITY CRITERIA
- 6 ANALYTICAL RESULTS SUMMARY**
- 7 PRELIMINARY CONCEPTUAL SITE MODEL**
- 8 CONCLUSIONS AND RECOMMENDATIONS**

### REFERENCES

### LIST OF ATTACHMENTS

- ATTACHMENT A: FIGURES
- ATTACHMENT B: LABORATORY RESULTS SUMMARY TABLES
- ATTACHMENT C: LABORATORY CERTIFICATES OF ANALYSIS
- ATTACHMENT D: BORELOGS
- ATTACHMENT E: POTENTIAL RECEPTORS & CONTAMINATION ROUTES



## 1 INTRODUCTION

### 1.1 Project Objectives

The objectives of the ESA were as follows:

- Assess the extent of hydrocarbon impacts (if any) at the site related to the storage of petroleum products at the site;
- Assess potential risk of harm to human health posed by any identified contamination at the site from continued use of the site for commercial/industrial purposes; and
- Assess potential risks to the environment posed by any identified contamination at the site.

### 1.2 Scope of Work

To achieve the objectives outlined in Section 1.1 NEO Consulting conducted the following work:

- Application for Dial Before You Dig Plans.
- Completed Work Clearance Form.
- Conducted a site inspection to establish current site conditions, surrounding land uses and potential human and environmental receptors located near the site.
- Advanced soil assessment holes at 3 locations across the site. All three borehole locations were chosen as they were within close proximity and down gradient of the Underground Storage Tanks. A small trailer-mounted drill rig equipped with solid flight augers was used to advance the holes at the site.
- Collected samples of natural soil and/or fill material from within each soil assessment hole.
- Screened soil samples in the field for the presence of volatile organic compounds using a photoionization detector (PID).
- Analysed 6 primary soil samples in a laboratory for total recoverable hydrocarbons (TRH), benzene, toluene, ethylbenzene and xylenes (BTEX) and Lead;
- Assessed the reported concentrations of potential contaminants of concern in each soil sample against appropriate human health and environmental protection guidelines, and
- Prepared this factual report outlining the findings of the ESA.

## **2 LIMITATIONS OF THIS REPORT**

The findings of this report are based on the Scope of Work outlined in Section 1.2. NEO Consulting performed the services in a manner consistent with the normal level of care and expertise exercised by members of the environmental consulting profession. No warranties, express or implied are made.

The results of this assessment are based upon the information documented and presented in this report. All conclusions and recommendations regarding the site are the professional opinions of NEO Consulting personnel involved with the project, subject to the qualifications made above. While normal assessments of data reliability have been made, NEO Consulting assumes no responsibility or liability for errors in any data obtained from regulatory agencies, statements from sources outside of NEO Consulting, or developments resulting from situations outside the scope of this project.

Subject to the Scope of the Work, NEO Consulting assessment is strictly limited to assessing soil and groundwater at the site. Soil and groundwater samples were analysed for common contaminants and/or indicators of contamination only. The absence of targeted contaminants of concern in soil and groundwater samples cannot be interpreted as a guarantee that such materials, or other potentially toxic or hazardous compounds, do not exist at the site.

The results of this assessment are based on the site conditions identified at the time of the site inspection and validation sampling. NEO Consulting will not be liable to revise the report to account for any changes in site characteristics, regulatory requirements, assessment criteria or the availability of additional information, subsequent to the issue date of this report.

NEO Consulting is not engaged in environmental consulting and reporting for the purpose of advertising sales promoting, or endorsement of any client interests, including raising investment capital, recommending investment decisions, or other publicity purposes.

### 3 SITE DESCRIPTION

**3.1 Table 1: Summary of Site Details**

Description	
Street Address:	22 High Street, Rushworth VIC 3612
Local Government Area:	Campaspe
Lot/Deposited Plan	1/431133
Geographical Coordinates of UPSS:	36.587° South 145.016° East
Approx. land size:	1992.9m <sup>2</sup>

#### 3.2 Site Layout and Features

The site layout is shown Figure 1 Attachment A.

The site is located in a predominantly suburban area of Rushworth.

At the time of the walkover inspection, the site was occupied by an active service business with a single storey building with no canopy. The auto repairers and LPG service was serviced by a concrete forecourt and LPG surrounds and asphalt driveway on the western and southern sides of the site. Three UST's were located in 2 areas; 1 in front of the building and the other 2 near the south west corner of the site after the LPG area. There is a large LPG tank in the western area of the site which has a bowser. Three other bowzers are closer to the building.

#### 3.3 Adjoining Land Uses

At the time of the assessment land uses adjacent to the UPSS at were as follows:

- North – IGA; commercial
- East – roadways/laneways
- West – High Street
- South – Wigg Street

#### 3.4 Site Topography

The site has an elevation range of 148m – 152m asl. The active end of the site is 151m except for the south west corner which is the highest elevation at 152m asl. Downward slope runs from south west to north east along the site.

Surface water drainage from the site would flow off-site down into the canals along the roadway of Wigg Street if not remaining onsite towards the east.

This information was based on both visual information and topographic government mapping facilities. See References for further information on sources.

#### 3.5 Soils and Hydrology

The regional geological map of Bendigo 2001 indicates the site to be underlain by marine deposits; turbidite sandstone beds interbedded with bioturbated siltstones; some conglomerate, in an upward fining succession of units – Waranga Formation.

The regional Water Table Aquifer map of Bendigo 2001 indicates the site is underlain by a water table of the Lachlan Province – local flow systems in Palaeozoic or Mesozoic intrusives.

### 3.6 Sensitive Receptors

The nearest surface water body to the site is 200m NE and is a tributary of Waranga Basin which is the Goulburn Valley and North Victoria's irrigation water. This Basin is 3km away.

The nearest residential property which could have vegetable/fruit growing for human consumption is 40m south across Wigg Street.

Schools in the area: 120m WNW Rushworth Kindergarten & Childcare.

See also Attachment F.

## 4.0 SITE ASSESSMENT

### 4.1 Overview

An environmental technician experienced in the handling of potentially contaminated soil and ground water undertook the fieldwork. The scope of the work included: A site inspection, location of services, collection of samples, reinstatement of all excavations.

### 4.2 Soil Sampling Locations and Assessment

Soil assessment holes were advanced at 3 locations across the site. The sampling locations were selected based on the location of underground infrastructure, accessibility and probability of picking up potential contamination. Figure 1 and Figure 2 of Attachment A show the location of the soil assessment holes at the site.

NEO collected soil samples from each soil assessment hole. Soil samples were collected at various depths within each hole. The depth at which each soil/fill material sample was collected from are shown in the borelogs presented in Attachment D. A total of 15 soil samples were collected at the site.

#### 4.2.1 Drilling Methods and Soil Sampling Methodology

A small trailer-mounted drill rig equipped with 125mm diameter solid flight augers was used to advance 3 soil assessment holes at the site. The soil assessment holes were advanced to a minimum depth of 4.5m below ground level, or until the first water bearing zone was encountered.

See section 5.3.1 for details about the samples being collected in accordance with QA/QC Guidelines.

#### 4.2.2 Sample Analysis

The samples were sent to Envirolab (Chatswood) in accordance with QA/QC Guidelines. See section 5.3.2 for further details.

### 4.3 Fieldwork Notes

The fill material and natural soils encountered in each soil assessment hole are described in the borelogs presented in Attachment D.

**Bore Hole 1** – was advanced in the north of the site; approx. level with the LPG tank. Drilling encountered Asphalt followed by yellow/orange sandy clay to 1.9m then it passed through 10cm of white rock and continued on with the yellow/orange sandy clay till 3.3m where rock was again passed through before the sandy clay returned till 4m. No odour was detected in this hole.

**Bore Hole 2** – was advanced in the south east area of the active service section. Drilling encountered Asphalt followed by brown clay which turned dry and powdery at 1m, then solid brown clay till 1.5m then solid red/brown clay till 4m. No odour was detected in this hole.

Soil samples were screened in the field for volatile organic compounds (VOC's) using a PID. PID readings for each soil sample are noted in the borelogs presented in Attachment D.

## **5 QUALITY ASSURANCE/QUALITY CONTROL QA/QC**

### **5.1 Data Quality Objectives**

The Data Quality Objectives (DQOs) define the quality and quantity of data needed to support decisions relating to the environmental condition of a site. It outlines the defining criteria that a data collection design should satisfy, including when, where, how and how many samples to be collected. The DQO process is a seven (7) step planning approach to outline the project goals, decisions, constraints and an assessment of the project uncertainties and how to address these when they arise.

The DQOs for the sampling and analysis investigations were to:

#### **State the Problem.**

Determine if ground contamination exists across the site and if so, why and what new environmental data, and what resources are available to resolve the problem within the allocated deadlines of the Project.

#### **Identify the Decision.**

Determine the decisions that need to be made on the contamination and the new environmental data required to make them if contamination exists. This includes considering relevant site criteria for each medium (fill, soil and sediment), considering whether a proposed use of the 95% UCL on the mean concentrations or results for all chemicals of potential concern were less than the site criteria.

#### **Identify Inputs to Decision.**

Identification of the information needed to allow informed, defensible decisions and specify which inputs require new environmental measurements.

#### **Define the Study Boundaries.**

Specify the spatial and temporal aspects of the environmental media that the data must represent to support decisions. To identify the boundaries (both spatial and temporal) of the investigation and to identify any restrictions that may hinder the assessment process.

#### **Develop a Decision Rule.**

To define the parameter(s) of interest, specify the action level and provide a logical basis for choosing from alternative actions. This may include defining acceptable limits for chemicals of concern detected in field blanks, volatile-spiked trip samples, laboratory method blanks to ensure the action levels exceed the measurement detection limits.

#### **Specify Limits on Decision Errors.**

Specify the decision-maker's acceptable limits on decision errors, which are used to establish performance goals for limiting uncertainties in the data. Incorrect decisions are caused by using data that is not representative of site conditions because of sampling or analytical error, leading to a conclusion that is inappropriate for the site in question.

#### **Optimise the Design for Obtaining Data.**

Identify a resource-effective sampling and analysis design for general data that are expected to satisfy the DQOs.

## 5.2 DATA QUALITY INDICATORS

DATA QUALITY OBJECTIVE	REQUIREMENT	DATA QUALITY INDICATOR
<b>PRECISION</b>		
Intra-laboratory Duplicates	1 per 20 samples	RPDs <50%
Inter laboratory Duplicates	1 per 20 samples	RPDs <50%
Laboratory Duplicates	Minimum of 1 per batch per analyte	RPDs <50%
<b>ACCURACY</b>		
Laboratory Matrix Spikes	1 per batch per volatile/semi-volatile analyte	Recoveries 50% to 150%
Laboratory Surrogate Spikes	1 per volatile/semi-volatile analyte samples (as appropriate)	Recoveries 70%-130%
Laboratory Method Blanks	At least 1 per batch per analyte tested for	Results <Limit of Reporting
Laboratory Control Samples	At least 1 per batch per analyte tested for	Result <Limit of Reporting
Trip Blanks	1 per lab batch for volatile analytes	Result <Limit of Reporting
Trip Spikes	1 per lab batch for volatile analytes	Recoveries 60-100%
<b>Representatives</b>		
Sampling methodology	Appropriate for the sample type of analytes	Meet Requirement
Samples extracted and analysed within holding times	Specific to each analyte	Meet Requirement
<b>Comparability</b>		
Sampling approach	Consistent for each sample	Meet Requirement
Analysis methodology	Consistent methodology for each sample	Meet Requirement
Handling conditions and sampler	Consistent for each sample	Meet Requirement.
Field observations and analytical	Field observations to support analytical results	Meet Requirement
Consistent laboratory Limit of Reporting (LOR)	Consistent between primary and secondary laboratories	Meet Requirement
<b>Completeness</b>		
Chain of Custody Documentation	Appropriately completed	Meet Requirement
Field Sampling Documentation	Appropriately completed	Meet Requirement
Satisfactory quality assurance/quality control procedures	In accordance with relevant guidance	Meet Requirement

### 5.3 QA/QC Sampling and Analysis Methodology

#### 5.3.1 Soil Sampling Methods

The sampler wore a clean pair of disposable nitrile gloves at each sampling location to minimize potential cross contamination of samples. Soil samples were collected using a split spoon sampler. Samples were collected in a 250ml laboratory supplied glass jar and plastic zip lock bags marked with appropriate sample identification.

Care was taken to minimize volatile and semi-volatile organic compound losses during sampling by minimizing the head space in each sample jar. The bagged sample was screened for the presence of volatile organic compounds (VOC's) using a photo-ionisation detector (PID).

The jarred samples were placed on ice in an esky immediately after sampling to minimize potential losses of volatile and semi-volatile compounds during transport.

The soil profile of each borehole was logged in the field to include soil type, colour, moisture conditions, grain size, inclusions, staining, odour and the results of PID screening.

A Chain of Custody (COC) form was completed for the samples. The samples and the COC were sent to Envirolab (Chatswood).

Samples from each soil assessment hole were analysed for TRH, BTEX and Lead. Soil samples were selected for analysis on the basis of field observations and field screening with a PID.

A total of 6 primary soil samples were selected for laboratory analysis. Laboratory analysis was undertaken by Envirolab (Chatswood) using NATA accredited analytical methods. Please see Attachment C for Envirolab's Laboratory Methods used.

#### 5.4 Environmental Quality Criteria

For the purpose of assessing the results of analytical testing of soils at the Site, the following guidelines were considered:

- VIC EPA 888 regulation
- CRC Care (2011) Health Screening Levels for Petroleum Hydrocarbons in Soil and Groundwater, and
- NEPC (1999) National Environmental Protection (Assessment of Site Contamination) Measure (NEPM) and the subsequent amendment (Amended NEPM, 2013) officially approved by the Standing Council of Environment and Water (SCEW) on 11 April 2013.

In accordance with the decision-making process for assessing urban redevelopment sites (Appendix 1, EPA, 2006), soil concentrations were compared against the following soil investigation levels (SILs);

- Health-based criteria for the current and proposed land use: Amended NEPM (2013) Health-based Investigation levels (HILa) for Commercial/Industrial land use, the Health Screening Levels (HSLs) and the CRC Care (2011) Soil Health Screening Levels for Direct Contact (HSLs).
- Environmental Criteria: Amended NEPM (2013) Ecological Screening Levels (ESLs) and Ecological Investigation Levels (EILs) for Commercial/Industrial Land Use.

The National Environment Protection Council (NEPC) has amended the National Environment Protection (Assessment of Site Contamination) Measure 1999 on the 11<sup>th</sup> April 2013. It is understood that the amendment (ASC NEPM, 2013) took effect in each jurisdiction on 16<sup>th</sup> May 2013, the day after it was registered on the Federal Register of Legislative Instruments (FRLI).

NEO has adopted the most recent Amended NEPM (2013) Tier 1 Guidelines over the criteria listed in NSW DEC (2006) as it is the most recent guidance available that has been approved by the NSW EPA under Section 105 of the Contaminated Land Management Act, 1997.

## 6 ANALYTICAL RESULTS SUMMARY

Soil analytical results are summarized and compared to the relevant assessment criteria in Attachment B. The laboratory certificate of analysis for the soil samples collected at the site is presented as Attachment C.

The reported concentration of Benzene was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Toluene - The reported concentration of Toluene was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Ethylbenzene - The reported concentration of Ethylbenzene was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Xylene (total) - The reported concentration of Xylene (total) was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

TPH (C6-C10) Less BTEX (F1) - The reported concentration of TPH (C6-C10) Less BTEX (F1) was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

TPH (>C10-C16) Less Naphthalene (F2) - The reported concentration of TPH (>C10-C16) Less Naphthalene (F2) was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

TPH (>C16-C34)(F3) - The reported concentration of TPH (>C16-C34) was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

TPH (>C34-C40)(F4) - The reported concentration of TPH (>C34-C40) was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Naphthalene - The reported concentration of Naphthalene was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Lead - The reported concentration of Lead was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Total PAHs - The reported concentration of Total PAHs was less than the laboratory LOR (limit of reporting –detection limit) to which was less than the adopted assessment criteria.

Field observations and analytical results indicate that there was no hydrocarbon impact in soil at the site from sample locations above the adopted assessment guidelines.

## 7 PRELIMINARY CONCEPTUAL SITE MODEL

### 7.1 Principal Contaminants of Concern (PCC)

For the purposes of this study the Principal Contaminants of Concern (PCC) were considered to be:

- Lead resulting from the historic use of leaded petrol
- Monocyclic aromatic hydrocarbons (benzene, toluene, ethyl benzene and xylenes – BTEX) associated with the fuel products
- Light, mid and heavy-fraction petroleum hydrocarbons (TPH C6-C36) associated with the fuel and oil products.



**Table: Contamination Fate and Transport** – The fate of the PCC identified above is summarized in the following table:

PCC	FATE & TRANSPORT
<p>Non-volatile contaminants including lead and heavy fraction hydrocarbons.</p> <p>Volatile contaminants including light-fraction TPH and BTEX.</p>	<p>Non-volatile contaminants are expected to be bound within the fill matrix and are hence less mobile. The mobility of these contaminants would depend on a range of factors including age of the fill, soil porosity, solubility in water and surface water infiltration.</p> <p>Volatile contaminants are usually more mobile when compared to the non-volatile compounds. The potential for migration of volatile contaminants such as light-fraction TPH is relatively high in sandy soil with a high water table. These contaminants break down rapidly as a result of microbial activity and availability of nutrients including nitrogen, oxygen etc. The mobile contaminants would be expected to move down to the rock surface or groundwater table and migrate down gradient from the source. The mobility would depend on a range of factors like the porosity, confining layers within the aquifer, solubility in groundwater etc.</p>

## 8 CONCLUSIONS AND RECOMMENDATIONS

On the 11<sup>th</sup> May 2018, NEO Consulting conducted an Environmental Site Assessment at 22 High Street, Rushworth VIC 3612. Data obtained during the Environmental Site Assessment indicates the following:

- Field observations and analytical results indicate that there are no hydrocarbon impacts within the soil samples taken at the site.
- The soil assessment holes encountered similar geology, described as brown clay with no hydrocarbon odour.
- NEO Consulting recommends the site is suitable for ongoing fuel service site.
- Statistical Inventory Reconciliation Analysis (SIRA) of deliveries, sales and dips on a monthly basis should be undertaken in accordance with EPA guidelines.

No soil sample taken whilst doing the field work had any indication of contamination visually or aromatically. Laboratory analysis of each soil sample indicates the site is well within the acceptable contamination and had no evidence of reaching any health based investigation levels.

Based on these results, NEO finds that this site is suitable to continue as its current land use.

## REFERENCES

- Geological Survey of VIC, Bendigo 2001 1:250,000 Geological Series Sheet SJ 55-1.  
[www.earthresources.efirst.com.au](http://www.earthresources.efirst.com.au)
- National Maps [www.nationalmap.gov.au](http://www.nationalmap.gov.au)
- VIC EPA 888 regulation
- National Environment Protection (Assessment of Site Contamination) Measure (2013),  
'Schedule B (1) – Guidelines on the Investigation Levels for Soil and Groundwater.'
- NSW EPA (1994) 'Guidelines for Assessing Service Stations.'
- Department of Industries – Resources and Energy [www.resourcesandenergy.gov.au](http://www.resourcesandenergy.gov.au)
- Land Data [www.landata.vic.gov.au](http://www.landata.vic.gov.au)
- [www.services.land.vic.gov.au](http://www.services.land.vic.gov.au)

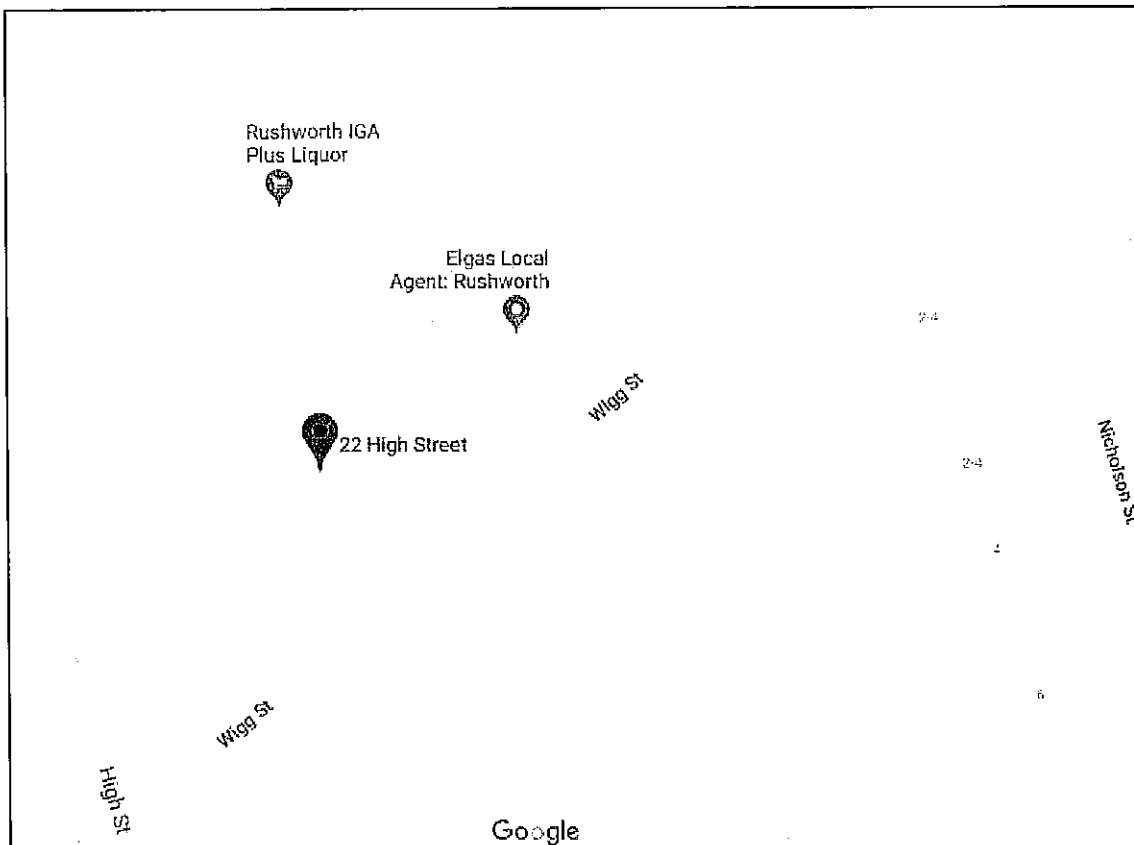
*Attachment A:  
Figures*

Aksara Pty Ltd – 22 High Street, Rushworth VIC 3612  
PROJECT NUMBER: N3465

Figure 1: Satellite view of Rushworth town.

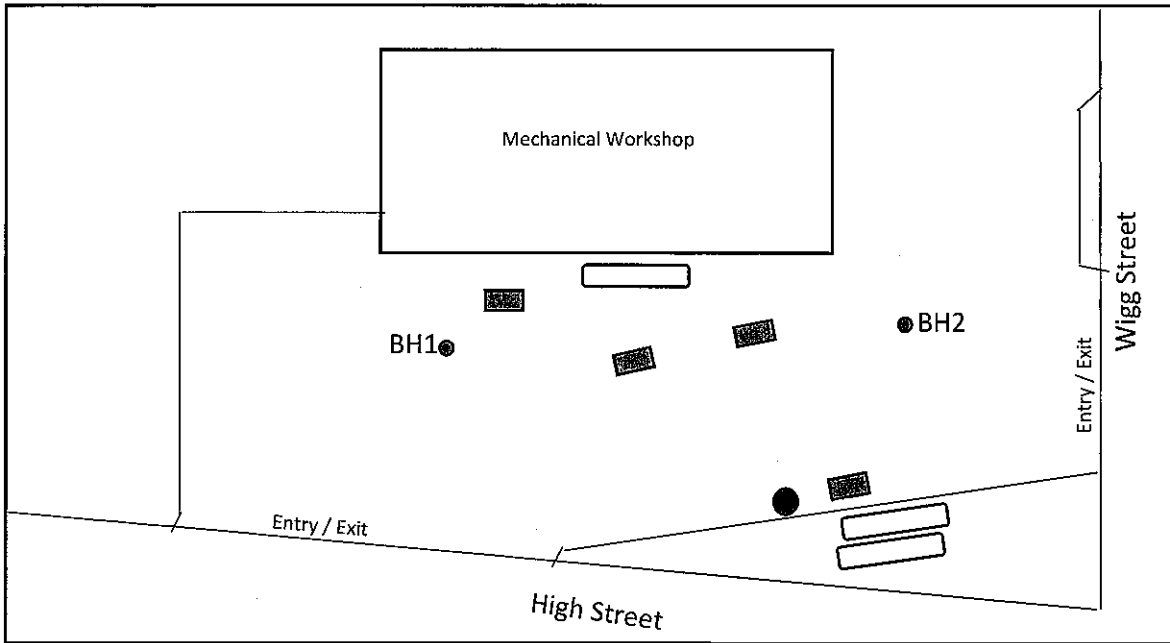


Figure 2: Map view of site



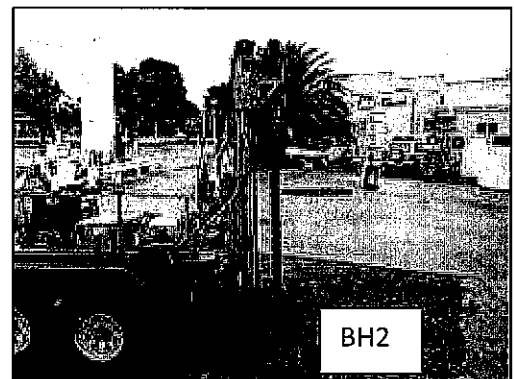
Aksara Pty Ltd – 22 High Street, Rushworth VIC 3612  
 PROJECT NUMBER: N3465

Figure 3: Site plan



Item	Description
●	Bore Hole location
■	Fuel pump bowser
▭	Approx location of UST
●	Above ground Vertical LPG tank.

Onsite photos:



*Attachment B:  
Laboratory Tables*

Soil Analytical Summary  
BTEX, TRH and Lead

Analyte	Sample ID		Ecological investigation Guideline Value	Sample Date					
	Predominant Soil Texture	Health Assessment Criteria		BH1 1.5	BH1 3	BH1 4.5	BH2 1.5	BH2 3	BH2 4.5
VOCs (via PID)	-	-	-	0.0	0.0	0.0	0.0	0.0	0.0
BTEXN	NEPM Soil HSL D for Vapour intrusion	NEPM Soil HSL for direct contact	NEPM Soil ESLD						
Benzene	3	1100	C: 75 / F: 95	<0.2	<0.2	<0.2	<0.2	<0.2	<0.2
Toluene	-	120000	135	<0.5	<0.5	<0.5	<0.5	<0.5	<0.5
Ethylbenzene	-	85000	C: 165 / F: 185	<1	<1	<1	<1	<1	<1
Total Xylene	230	130000	C: 180 / F: 95	<1	<1	<1	<1	<1	<1
NEPM HSL	NEPM Soil HSL D for Vapour intrusion	NEPM Soil HSL for direct contact	NEPM Soil ESLD						
F1	<1m: 260; 1-2m: 370	82000	215	<25	<25	<25	<25	<25	<25
F2	-	62000	170	<50	<50	<50	<50	<50	<50
F3	-	85000	C: 1700 / F: 2500	<100	<100	<100	<100	<100	<100
F4	-	120000	C: 3300 / F: 6600	<100	<100	<100	<100	<100	<100
Metals	NEPM HIL D		EIL						
Lead	1.500	-	Generic EIL: 1100	20	21	13	71	1	9

Notes - Highlighting denotes an exceedance of the guideline - '-' denotes 'not analysed' or 'no guideline value'

*Attachment C:  
Laboratory Results*





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## CERTIFICATE OF ANALYSIS 191582

### Client Details

<b>Client</b>	NEO Consulting Pty Ltd
<b>Attention</b>	Nick Caltabiano
<b>Address</b>	PO Box 279, Riverstone, NSW, 2765

### Sample Details

<b>Your Reference</b>	<u>N3465</u>
<b>Number of Samples</b>	6 Soil
<b>Date samples received</b>	14/05/2018
<b>Date completed instructions received</b>	14/05/2018

### Analysis Details

Please refer to the following pages for results, methodology summary and quality control data.  
Samples were analysed as received from the client. Results relate specifically to the samples as received.  
Results are reported on a dry weight basis for solids and on an as received basis for other matrices.  
**Please refer to the last page of this report for any comments relating to the results.**

### Report Details

<b>Date results requested by</b>	21/05/2018
<b>Date of Issue</b>	18/05/2018

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Accredited for compliance with ISO/IEC 17025 - Testing. **Tests not covered by NATA are denoted with \***

#### Results Approved By

Jeremy Faircloth, Organics Supervisor  
Ken Nguyen, Senior Chemist  
Nancy Zhang, Assistant Lab Manager  
Nick Sarlamis, Inorganics Supervisor  
Steven Luong, Senior Chemist

#### Authorised By

Jacinta Hurst, Laboratory Manager

Client Reference: N3465

VOCs in soil		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	16/05/2018
Dichlorodifluoromethane	mg/kg	<1
Chloromethane	mg/kg	<1
Vinyl Chloride	mg/kg	<1
Bromomethane	mg/kg	<1
Chloroethane	mg/kg	<1
Trichlorofluoromethane	mg/kg	<1
1,1-Dichloroethene	mg/kg	<1
trans-1,2-dichloroethene	mg/kg	<1
1,1-dichloroethane	mg/kg	<1
cis-1,2-dichloroethene	mg/kg	<1
Bromochloromethane	mg/kg	<1
Chloroform	mg/kg	<1
2,2-dichloropropane	mg/kg	<1
1,2-dichloroethane	mg/kg	<1
1,1,1-trichloroethane	mg/kg	<1
1,1-dichloropropene	mg/kg	<1
Cyclohexane	mg/kg	<1
Carbon tetrachloride	mg/kg	<1
Benzene	mg/kg	<0.2
Dibromomethane	mg/kg	<1
1,2-dichloropropane	mg/kg	<1
Trichloroethene	mg/kg	<1
Bromodichloromethane	mg/kg	<1
trans-1,3-dichloropropene	mg/kg	<1
cis-1,3-dichloropropene	mg/kg	<1
1,1,2-trichloroethane	mg/kg	<1
Toluene	mg/kg	<0.5
1,3-dichloropropane	mg/kg	<1
Dibromochloromethane	mg/kg	<1
1,2-dibromoethane	mg/kg	<1
Tetrachloroethene	mg/kg	<1
1,1,1,2-tetrachloroethane	mg/kg	<1
Chlorobenzene	mg/kg	<1
Ethylbenzene	mg/kg	<1

Client Reference: N3465

VOCs in soil		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
bromoform	mg/kg	<1
m+p-xylene	mg/kg	<2
styrene	mg/kg	<1
1,1,2,2-tetrachloroethane	mg/kg	<1
o-Xylene	mg/kg	<1
1,2,3-trichloropropane	mg/kg	<1
isopropylbenzene	mg/kg	<1
bromobenzene	mg/kg	<1
n-propyl benzene	mg/kg	<1
2-chlorotoluene	mg/kg	<1
4-chlorotoluene	mg/kg	<1
1,3,5-trimethyl benzene	mg/kg	<1
tert-butyl benzene	mg/kg	<1
1,2,4-trimethyl benzene	mg/kg	<1
1,3-dichlorobenzene	mg/kg	<1
sec-butyl benzene	mg/kg	<1
1,4-dichlorobenzene	mg/kg	<1
4-isopropyl toluene	mg/kg	<1
1,2-dichlorobenzene	mg/kg	<1
n-butyl benzene	mg/kg	<1
1,2-dibromo-3-chloropropane	mg/kg	<1
1,2,4-trichlorobenzene	mg/kg	<1
hexachlorobutadiene	mg/kg	<1
1,2,3-trichlorobenzene	mg/kg	<1
Surrogate Dibromofluorometha	%	103
Surrogate aaa-Trifluorotoluene	%	96
Surrogate Toluene-d <sub>8</sub>	%	98
Surrogate 4-Bromofluorobenzene	%	94

Client Reference: N3465

<b>TRH(C6-C10)/BTEXN in Soil</b>						
Our Reference		191582-1	191582-2	191582-3	191582-4	191582-5
Your Reference	UNITS	BH1 1.5	BH1 3.0	BH1 4.5	BH2 1.5	BH2 3.0
Depth		1.5	3.0	4.5	1.5	3.0
Date Sampled		11/05/2018	11/05/2018	11/05/2018	11/05/2018	11/05/2018
Type of sample		Soil	Soil	Soil	Soil	Soil
Date extracted	-	15/05/2018	15/05/2018	15/05/2018	15/05/2018	15/05/2018
Date analysed	-	17/05/2018	17/05/2018	17/05/2018	16/05/2018	17/05/2018
TRH C <sub>6</sub> - C <sub>9</sub>	mg/kg	<25	<25	<25	<25	<25
TRH C <sub>6</sub> - C <sub>10</sub>	mg/kg	<25	<25	<25	<25	<25
TPH C <sub>6</sub> - C <sub>10</sub> less BTEX (F1)	mg/kg	<25	<25	<25	<25	<25
Benzene	mg/kg	<0.2	<0.2	<0.2	<0.2	<0.2
Toluene	mg/kg	<0.5	<0.5	<0.5	<0.5	<0.5
Ethylbenzene	mg/kg	<1	<1	<1	<1	<1
m+p-xylene	mg/kg	<2	<2	<2	<2	<2
o-Xylene	mg/kg	<1	<1	<1	<1	<1
naphthalene	mg/kg	<1	<1	<1	<1	<1
Total +ve Xylenes	mg/kg	<1	<1	<1	<1	<1
Surrogate aaa-Trifluorotoluene	%	102	98	99	86	98

<b>TRH(C6-C10)/BTEXN in Soil</b>		
Our Reference		191582-6
Your Reference	UNITS	BH2 4.5
Depth		4.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	17/05/2018
TRH C <sub>6</sub> - C <sub>9</sub>	mg/kg	<25
TRH C <sub>6</sub> - C <sub>10</sub>	mg/kg	<25
TPH C <sub>6</sub> - C <sub>10</sub> less BTEX (F1)	mg/kg	<25
Benzene	mg/kg	<0.2
Toluene	mg/kg	<0.5
Ethylbenzene	mg/kg	<1
m+p-xylene	mg/kg	<2
o-Xylene	mg/kg	<1
naphthalene	mg/kg	<1
Total +ve Xylenes	mg/kg	<1
Surrogate aaa-Trifluorotoluene	%	93

Client Reference: N3465

svTRH (C10-C40) in Soil						
Our Reference		191582-1	191582-2	191582-3	191582-4	191582-5
Your Reference	UNITS	BH1 1.5	BH1 3.0	BH1 4.5	BH2 1.5	BH2 3.0
Depth		1.5	3.0	4.5	1.5	3.0
Date Sampled		11/05/2018	11/05/2018	11/05/2018	11/05/2018	11/05/2018
Type of sample		Soil	Soil	Soil	Soil	Soil
Date extracted	-	15/05/2018	15/05/2018	15/05/2018	15/05/2018	15/05/2018
Date analysed	-	17/05/2018	17/05/2018	17/05/2018	17/05/2018	17/05/2018
TRH C <sub>10</sub> - C <sub>14</sub>	mg/kg	<50	<50	<50	<50	<50
TRH C <sub>15</sub> - C <sub>28</sub>	mg/kg	<100	<100	<100	<100	<100
TRH C <sub>29</sub> - C <sub>36</sub>	mg/kg	<100	<100	<100	<100	<100
TRH >C <sub>10</sub> -C <sub>16</sub>	mg/kg	<50	<50	<50	<50	<50
TRH >C <sub>10</sub> - C <sub>16</sub> less Naphthalene (F2)	mg/kg	<50	<50	<50	<50	<50
TRH >C <sub>16</sub> -C <sub>34</sub>	mg/kg	<100	<100	<100	<100	<100
TRH >C <sub>34</sub> -C <sub>40</sub>	mg/kg	<100	<100	<100	<100	<100
Total +ve TRH (>C10-C40)	mg/kg	<50	<50	<50	<50	<50
Surrogate o-Terphenyl	%	89	88	89	92	89

svTRH (C10-C40) in Soil		
Our Reference		191582-6
Your Reference	UNITS	BH2 4.5
Depth		4.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	17/05/2018
TRH C <sub>10</sub> - C <sub>14</sub>	mg/kg	<50
TRH C <sub>15</sub> - C <sub>28</sub>	mg/kg	<100
TRH C <sub>29</sub> - C <sub>36</sub>	mg/kg	<100
TRH >C <sub>10</sub> -C <sub>16</sub>	mg/kg	<50
TRH >C <sub>10</sub> - C <sub>16</sub> less Naphthalene (F2)	mg/kg	<50
TRH >C <sub>16</sub> -C <sub>34</sub>	mg/kg	<100
TRH >C <sub>34</sub> -C <sub>40</sub>	mg/kg	<100
Total +ve TRH (>C10-C40)	mg/kg	<50
Surrogate o-Terphenyl	%	89

Client Reference: N3465

PAHs in Soil		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	16/05/2018
Naphthalene	mg/kg	<0.1
Acenaphthylene	mg/kg	0.1
Acenaphthene	mg/kg	<0.1
Fluorene	mg/kg	<0.1
Phenanthrene	mg/kg	1.5
Anthracene	mg/kg	0.4
Fluoranthene	mg/kg	2.0
Pyrene	mg/kg	1.9
Benzo(a)anthracene	mg/kg	0.8
Chrysene	mg/kg	0.7
Benzo(b,j+k)fluoranthene	mg/kg	1
Benzo(a)pyrene	mg/kg	0.80
Indeno(1,2,3-c,d)pyrene	mg/kg	0.4
Dibenzo(a,h)anthracene	mg/kg	0.1
Benzo(g,h,i)perylene	mg/kg	0.5
Total +ve PAH's	mg/kg	10
Benzo(a)pyrene TEQ calc (zero)	mg/kg	1.2
Benzo(a)pyrene TEQ calc(half)	mg/kg	1.2
Benzo(a)pyrene TEQ calc(PQL)	mg/kg	1.2
Surrogate p-Terphenyl-d14	%	100

Client Reference: N3465

OC's in Soil NEPM		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	17/05/2018
alpha-BHC	mg/kg	<0.1
HCB	mg/kg	<0.1
beta-BHC	mg/kg	<0.1
gamma-BHC	mg/kg	<0.1
Heptachlor	mg/kg	<0.1
delta-BHC	mg/kg	<0.1
Aldrin	mg/kg	<0.1
Heptachlor Epoxide	mg/kg	<0.1
gamma-Chlordane	mg/kg	<0.1
alpha-chlordane	mg/kg	<0.1
Endosulfan I	mg/kg	<0.1
pp-DDE	mg/kg	<0.1
Dieldrin	mg/kg	<0.1
Endrin	mg/kg	<0.1
Endosulfan II	mg/kg	<0.1
pp-DDD	mg/kg	<0.1
Endrin Aldehyde	mg/kg	<0.1
pp-DDT	mg/kg	<0.1
Endosulfan Sulphate	mg/kg	<0.1
Methoxychlor	mg/kg	<0.1
Mirex	mg/kg	<0.5
Total +ve DDT+DDD+DDE	mg/kg	<0.1
Surrogate TCMX	%	104

Client Reference: N3465

PCBs in Soil		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	17/05/2018
Aroclor 1016	mg/kg	<0.1
Aroclor 1221	mg/kg	<0.1
Aroclor 1232	mg/kg	<0.1
Aroclor 1242	mg/kg	<0.1
Aroclor 1248	mg/kg	<0.1
Aroclor 1254	mg/kg	<0.1
Aroclor 1260	mg/kg	<0.1
Total +ve PCBs (1016-1260)	mg/kg	<0.1
Surrogate TCLMX	%	104



Client Reference: N3465

Speciated Phenols in Soil		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date extracted	-	15/05/2018
Date analysed	-	16/05/2018
Phenol	mg/kg	<0.2
2-Chlorophenol	mg/kg	<0.2
4-Chloro-3-methylphenol	mg/kg	<1
2-Methylphenol (o-cresol)	mg/kg	<0.2
3/4-Methylphenol (m/p-cresol)	mg/kg	<0.4
2-Nitrophenol	mg/kg	<0.2
2,4 -Dimethylphenol	mg/kg	<0.2
2,4-Dichlorophenol	mg/kg	<0.2
2,6-Dichlorophenol	mg/kg	<0.2
2,4,5-Trichlorophenol	mg/kg	<0.2
2,4,6-Trichlorophenol	mg/kg	<0.2
2,4-Dinitrophenol	mg/kg	<4
4-Nitrophenol	mg/kg	<4
2346-Tetrachlorophenol	mg/kg	<0.2
2-methyl-4,6-Dinitrophenol	mg/kg	<2
Pentachlorophenol	mg/kg	<1
Surrogate 2-fluorophenol	%	116
Surrogate Phenol-d <sub>6</sub>	%	123
Surrogate 2,4,6-Tribromophenol	%	108
Surrogate p-Terphenyl-d <sub>14</sub>	%	92

Client Reference: N3465

Acid Extractable metals in soil						
Our Reference		191582-1	191582-2	191582-3	191582-4	191582-5
Your Reference	UNITS	BH1 1.5	BH1 3.0	BH1 4.5	BH2 1.5	BH2 3.0
Depth		1.5	3.0	4.5	1.5	3.0
Date Sampled		11/05/2018	11/05/2018	11/05/2018	11/05/2018	11/05/2018
Type of sample		Soil	Soil	Soil	Soil	Soil
Date prepared	-	15/05/2018	15/05/2018	15/05/2018	15/05/2018	15/05/2018
Date analysed	-	15/05/2018	15/05/2018	15/05/2018	15/05/2018	15/05/2018
Silver	mg/kg				<1	
Arsenic	mg/kg				26	
Cadmium	mg/kg				<0.4	
Copper	mg/kg				13	
Mercury	mg/kg				2.6	
Molybdenum	mg/kg				<1	
Nickel	mg/kg				6	
Lead	mg/kg	20	21	13	71	11
Selenium	mg/kg				<2	
Tin	mg/kg				2	
Zinc	mg/kg				84	

Acid Extractable metals in soil		
Our Reference		191582-6
Your Reference	UNITS	BH2 4.5
Depth		4.5
Date Sampled		11/05/2018
Type of sample		Soil
Date prepared	-	15/05/2018
Date analysed	-	15/05/2018
Lead	mg/kg	9

Client Reference: N3465

Hexavalent Cr		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Hexavalent Chromium, Cr <sup>6+</sup>	mg/kg	<5

Client Reference: N3465

Misc Inorg - Soil		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date prepared	-	16/05/2018
Date analysed	-	16/05/2018
pH 1:5 soil:water	pH Units	7.4
Total Fluoride	mg/kg	120

Client Reference: N3465

Misc Soil - Inorg		
Our Reference		191582-4
Your Reference	UNITS	BH2 1.5
Depth		1.5
Date Sampled		11/05/2018
Type of sample		Soil
Date prepared	-	15/05/2018
Date analysed	-	15/05/2018
Total Cyanide	mg/kg	<0.5

Client Reference: N3465

Moisture						
Our Reference		191582-1	191582-2	191582-3	191582-4	191582-5
Your Reference	UNITS	BH1 1.5	BH1 3.0	BH1 4.5	BH2 1.5	BH2 3.0
Depth		1.5	3.0	4.5	1.5	3.0
Date Sampled		11/05/2018	11/05/2018	11/05/2018	11/05/2018	11/05/2018
Type of sample		Soil	Soil	Soil	Soil	Soil
Date prepared	-	15/05/2018	15/05/2018	15/05/2018	15/05/2018	15/05/2018
Date analysed	-	16/05/2018	16/05/2018	16/05/2018	16/05/2018	16/05/2018
Moisture	%	7.5	9.9	7.9	7.1	12

Moisture		
Our Reference		191582-6
Your Reference	UNITS	BH2 4.5
Depth		4.5
Date Sampled		11/05/2018
Type of sample		Soil
Date prepared	-	15/05/2018
Date analysed	-	16/05/2018
Moisture	%	14

**Client Reference: N3465**

<b>Method ID</b>	<b>Methodology Summary</b>
<b>Inorg-001</b>	pH - Measured using pH meter and electrode in accordance with APHA latest edition, 4500-H+. Please note that the results for water analyses are indicative only, as analysis outside of the APHA storage times.
<b>Inorg-008</b>	Moisture content determined by heating at 105+/-5 °C for a minimum of 12 hours.
<b>Inorg-014</b>	Cyanide - free, total, weak acid dissociable by segmented flow analyser (in line dialysis with colourimetric finish). Solids are extracted in a caustic media prior to analysis.
<b>Inorg-024</b>	Hexavalent Chromium (Cr6+) - determined colourimetrically.
<b>Inorg-026/53</b>	Fluoride by caustic fusion and determined by ion selective electrode (ISE) analysis.
<b>Metals-020</b>	Determination of various metals by ICP-AES.
<b>Metals-021</b>	Determination of Mercury by Cold Vapour AAS.
<b>Org-003</b>	Soil samples are extracted with Dichloromethane/Acetone and waters with Dichloromethane and analysed by GC-FID. F2 = (>C10-C16)-Naphthalene as per NEPM B1 Guideline on Investigation Levels for Soil and Groundwater (HSLs Tables 1A (3, 4)). Note Naphthalene is determined from the VOC analysis.
<b>Org-003</b>	Soil samples are extracted with Dichloromethane/Acetone and waters with Dichloromethane and analysed by GC-FID.  F2 = (>C10-C16)-Naphthalene as per NEPM B1 Guideline on Investigation Levels for Soil and Groundwater (HSLs Tables 1A (3, 4)). Note Naphthalene is determined from the VOC analysis.  Note, the Total +ve TRH PQL is reflective of the lowest individual PQL and is therefore "Total +ve TRH" is simply a sum of the positive individual TRH fractions (>C10-C40).
<b>Org-005</b>	Soil samples are extracted with dichloromethane/acetone and waters with dichloromethane and analysed by GC with dual ECD's.
<b>Org-005</b>	Soil samples are extracted with dichloromethane/acetone and waters with dichloromethane and analysed by GC with dual ECD's. Note, the Total +ve reported DDD+DDE+DDT PQL is reflective of the lowest individual PQL and is therefore simply a sum of the positive individually report DDD+DDE+DDT.
<b>Org-006</b>	Soil samples are extracted with dichloromethane/acetone and waters with dichloromethane and analysed by GC-ECD.
<b>Org-006</b>	Soil samples are extracted with dichloromethane/acetone and waters with dichloromethane and analysed by GC-ECD. Note, the Total +ve PCBs PQL is reflective of the lowest individual PQL and is therefore "Total +ve PCBs" is simply a sum of the positive individual PCBs.
<b>Org-012</b>	Soil samples are extracted with Dichloromethane/Acetone and waters with Dichloromethane and analysed by GC-MS.

Client Reference: N3465

Method ID	Methodology Summary
Org-012	<p>Soil samples are extracted with Dichloromethane/Acetone and waters with Dichloromethane and analysed by GC-MS. Benzo(a)pyrene TEQ as per NEPM B1 Guideline on Investigation Levels for Soil and Groundwater - 2013.</p> <p>For soil results:-</p> <ol style="list-style-type: none"> <li>1. 'EQ PQL' values are assuming all contributing PAHs reported as &lt;PQL are actually at the PQL. This is the most conservative approach and can give false positive TEQs given that PAHs that contribute to the TEQ calculation may not be present.</li> <li>2. 'EQ zero' values are assuming all contributing PAHs reported as &lt;PQL are zero. This is the least conservative approach and is more susceptible to false negative TEQs when PAHs that contribute to the TEQ calculation are present but below PQL.</li> <li>3. 'EQ half PQL' values are assuming all contributing PAHs reported as &lt;PQL are half the stipulated PQL. Hence a mid-point between the most and least conservative approaches above.</li> </ol> <p>Note, the Total +ve PAHs PQL is reflective of the lowest individual PQL and is therefore "Total +ve PAHs" is simply a sum of the positive individual PAHs.</p>
Org-014	<p>Soil samples are extracted with methanol and spiked into water prior to analysing by purge and trap GC-MS.</p>
Org-016	<p>Soil samples are extracted with methanol and spiked into water prior to analysing by purge and trap GC-MS. Water samples are analysed directly by purge and trap GC-MS. F1 = (C6-C10)-BTEX as per NEPM B1 Guideline on Investigation Levels for Soil and Groundwater.</p>
Org-016	<p>Soil samples are extracted with methanol and spiked into water prior to analysing by purge and trap GC-MS. Water samples are analysed directly by purge and trap GC-MS. F1 = (C6-C10)-BTEX as per NEPM B1 Guideline on Investigation Levels for Soil and Groundwater.</p> <p>Note, the Total +ve Xylene PQL is reflective of the lowest individual PQL and is therefore "Total +ve Xylenes" is simply a sum of the positive individual Xylenes.</p>



Client Reference: N3465

QUALITY CONTROL: VOCs in soil				Duplicate				Spike Recovery %		
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-3	[NT]
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			16/05/2018					16/05/2018	
Dichlorodifluoromethane	mg/kg	1	Org-014	<1						
Chloromethane	mg/kg	1	Org-014	<1						
Vinyl Chloride	mg/kg	1	Org-014	<1						
Bromomethane	mg/kg	1	Org-014	<1						
Chloroethane	mg/kg	1	Org-014	<1						
Trichlorofluoromethane	mg/kg	1	Org-014	<1						
1,1-Dichloroethene	mg/kg	1	Org-014	<1						
trans-1,2-dichloroethene	mg/kg	1	Org-014	<1						
1,1-dichloroethane	mg/kg	1	Org-014	<1					81	
cis-1,2-dichloroethene	mg/kg	1	Org-014	<1						
bromochloromethane	mg/kg	1	Org-014	<1						
chloroform	mg/kg	1	Org-014	<1					81	
2,2-dichloropropane	mg/kg	1	Org-014	<1						
1,2-dichloroethane	mg/kg	1	Org-014	<1					73	
1,1,1-trichloroethane	mg/kg	1	Org-014	<1					80	
1,1-dichloropropene	mg/kg	1	Org-014	<1						
Cyclohexane	mg/kg	1	Org-014	<1						
carbon tetrachloride	mg/kg	1	Org-014	<1						
Benzene	mg/kg	0.2	Org-014	<0.2						
dibromomethane	mg/kg	1	Org-014	<1						
1,2-dichloropropane	mg/kg	1	Org-014	<1						
trichloroethene	mg/kg	1	Org-014	<1					77	
bromodichloromethane	mg/kg	1	Org-014	<1					80	
trans-1,3-dichloropropene	mg/kg	1	Org-014	<1						
cis-1,3-dichloropropene	mg/kg	1	Org-014	<1						
1,1,2-trichloroethane	mg/kg	1	Org-014	<1						
Toluene	mg/kg	0.5	Org-014	<0.5						
1,3-dichloropropane	mg/kg	1	Org-014	<1						
dibromochloromethane	mg/kg	1	Org-014	<1					99	
1,2-dibromoethane	mg/kg	1	Org-014	<1						
tetrachloroethene	mg/kg	1	Org-014	<1					81	
1,1,1,2-tetrachloroethane	mg/kg	1	Org-014	<1						
chlorobenzene	mg/kg	1	Org-014	<1						
Ethylbenzene	mg/kg	1	Org-014	<1						
bromoform	mg/kg	1	Org-014	<1						
m+p-xylene	mg/kg	2	Org-014	<2						
styrene	mg/kg	1	Org-014	<1						
1,1,2,2-tetrachloroethane	mg/kg	1	Org-014	<1						
o-Xylene	mg/kg	1	Org-014	<1						

Client Reference: N3465

QUALITY CONTROL: VOCs in soil					Duplicate			Spike Recovery %		
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-3	[NT]
1,2,3-trichloropropane	mg/kg	1	Org-014	<1						
sopropylbenzene	mg/kg	1	Org-014	<1						
romobenzene	mg/kg	1	Org-014	<1						
n-propyl benzene	mg/kg	1	Org-014	<1						
2-chlorotoluene	mg/kg	1	Org-014	<1						
4-chlorotoluene	mg/kg	1	Org-014	<1						
1,3,5-trimethyl benzene	mg/kg	1	Org-014	<1						
tert-butyl benzene	mg/kg	1	Org-014	<1						
1,2,4-trimethyl benzene	mg/kg	1	Org-014	<1						
1,3-dichlorobenzene	mg/kg	1	Org-014	<1						
sec-butyl benzene	mg/kg	1	Org-014	<1						
1,4-dichlorobenzene	mg/kg	1	Org-014	<1						
4-isopropyl toluene	mg/kg	1	Org-014	<1						
1,2-dichlorobenzene	mg/kg	1	Org-014	<1						
n-butyl benzene	mg/kg	1	Org-014	<1						
1,2-dibromo-3-chloropropane	mg/kg	1	Org-014	<1						
1,2,4-trichlorobenzene	mg/kg	1	Org-014	<1						
hexachlorobutadiene	mg/kg	1	Org-014	<1						
1,2,3-trichlorobenzene	mg/kg	1	Org-014	<1						
Surrogate Dibromofluorometha	%		Org-014	99					100	
Surrogate aaa-Trifluorotoluene	%		Org-014	86					88	
Surrogate Toluene-d8	%		Org-014	100					102	
Surrogate 4-Bromofluorobenzene	%		Org-014	97					99	

Client Reference: N3465

QUALITY CONTROL: vTRH(C6-C10)/BTEXN in Soil					Duplicate			Spike Recovery %		
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-3	[NT]
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			17/05/2018					16/05/2018	
TRH C <sub>6</sub> - C <sub>9</sub>	mg/kg	25	Org-016	<25					81	
TRH C <sub>6</sub> - C <sub>10</sub>	mg/kg	25	Org-016	<25					81	
Benzene	mg/kg	0.2	Org-016	<0.2					79	
Toluene	mg/kg	0.5	Org-016	<0.5					81	
Ethylbenzene	mg/kg	1	Org-016	<1					83	
m+p-xylene	mg/kg	2	Org-016	<2					81	
o-Xylene	mg/kg	1	Org-016	<1					82	
naphthalene	mg/kg	1	Org-014	<1						
Surrogate aaa-Trifluorotoluene	%		Org-016	106					79	

Client Reference: N3465

QUALITY CONTROL: svTRH (C10-C40) in Soil					Duplicate			Spike Recovery %		
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	[NT]
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			16/05/2018					16/05/2018	
TRH C <sub>10</sub> - C <sub>14</sub>	mg/kg	50	Org-003	<50					100	
TRH C <sub>15</sub> - C <sub>28</sub>	mg/kg	100	Org-003	<100					85	
TRH C <sub>29</sub> - C <sub>36</sub>	mg/kg	100	Org-003	<100					77	
TRH >C <sub>10</sub> -C <sub>16</sub>	mg/kg	50	Org-003	<50					100	
TRH >C <sub>16</sub> -C <sub>34</sub>	mg/kg	100	Org-003	<100					85	
TRH >C <sub>34</sub> -C <sub>40</sub>	mg/kg	100	Org-003	<100					77	
Surrogate o-Terphenyl	%		Org-003	88					101	

Client Reference: N3465

QUALITY CONTROL: PAHs in Soil				Duplicate			Spike Recovery %			
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	[NT]
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			16/05/2018					16/05/2018	
Naphthalene	mg/kg	0.1	Org-012	<0.1					83	
Acenaphthylene	mg/kg	0.1	Org-012	<0.1						
Acenaphthene	mg/kg	0.1	Org-012	<0.1						
Fluorene	mg/kg	0.1	Org-012	<0.1					84	
Phenanthrene	mg/kg	0.1	Org-012	<0.1					94	
Anthracene	mg/kg	0.1	Org-012	<0.1						
Fluoranthene	mg/kg	0.1	Org-012	<0.1					90	
Pyrene	mg/kg	0.1	Org-012	<0.1					86	
Benzo(a)anthracene	mg/kg	0.1	Org-012	<0.1						
Chrysene	mg/kg	0.1	Org-012	<0.1					78	
Benzo(b,j+k)fluoranthene	mg/kg	0.2	Org-012	<0.2						
Benzo(a)pyrene	mg/kg	0.05	Org-012	<0.05					101	
Indeno(1,2,3-c,d)pyrene	mg/kg	0.1	Org-012	<0.1						
Dibenzo(a,h)anthracene	mg/kg	0.1	Org-012	<0.1						
Benzo(g,h,i)perylene	mg/kg	0.1	Org-012	<0.1						
Surrogate p-Terphenyl-d14	%		Org-012	98					133	

Client Reference: N3465

QUALITY CONTROL: OC's in Soil NEPM					Duplicate		Spike Recovery %			
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-10	[NT]
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			17/05/2018					17/05/2018	
alpha-BHC	mg/kg	0.1	Org-005	<0.1					92	
gamma-PCB	mg/kg	0.1	Org-005	<0.1						
beta-BHC	mg/kg	0.1	Org-005	<0.1					82	
gamma-BHC	mg/kg	0.1	Org-005	<0.1						
Heptachlor	mg/kg	0.1	Org-005	<0.1					88	
delta-BHC	mg/kg	0.1	Org-005	<0.1						
Aldrin	mg/kg	0.1	Org-005	<0.1					89	
Heptachlor Epoxide	mg/kg	0.1	Org-005	<0.1					83	
gamma-Chlordane	mg/kg	0.1	Org-005	<0.1						
alpha-chlordane	mg/kg	0.1	Org-005	<0.1						
Endosulfan I	mg/kg	0.1	Org-005	<0.1						
o,p-DDE	mg/kg	0.1	Org-005	<0.1					90	
Dieldrin	mg/kg	0.1	Org-005	<0.1					94	
Endrin	mg/kg	0.1	Org-005	<0.1					85	
Endosulfan II	mg/kg	0.1	Org-005	<0.1						
o,p-DDD	mg/kg	0.1	Org-005	<0.1					89	
Endrin Aldehyde	mg/kg	0.1	Org-005	<0.1						
o,p-DDT	mg/kg	0.1	Org-005	<0.1						
Endosulfan Sulphate	mg/kg	0.1	Org-005	<0.1					88	
Methoxychlor	mg/kg	0.1	Org-005	<0.1						
Mirex	mg/kg	0.5	Org-012	<0.5						
Surrogate TCMX	%		Org-005	113					121	

Client Reference: N3465

QUALITY CONTROL: PCBs in Soil				Duplicate			Spike Recovery %			
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-10	[NT]
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			17/05/2018					17/05/2018	
Aroclor 1016	mg/kg	0.1	Org-006	<0.1						
Aroclor 1221	mg/kg	0.1	Org-006	<0.1						
Aroclor 1232	mg/kg	0.1	Org-006	<0.1						
Aroclor 1242	mg/kg	0.1	Org-006	<0.1						
Aroclor 1248	mg/kg	0.1	Org-006	<0.1						
Aroclor 1254	mg/kg	0.1	Org-006	<0.1					100	
Aroclor 1260	mg/kg	0.1	Org-006	<0.1						
Surrogate TCLMX	%		Org-006	113					100	

Client Reference: N3465

QUALITY CONTROL: Speciated Phenols in Soil					Duplicate			Spike Recovery %		
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-4	[NT]
Date extracted	-			15/05/2018					15/05/2018	
Date analysed	-			16/05/2018					16/05/2018	
Phenol	mg/kg	0.2	Org-012	<0.2					102	
2-Chlorophenol	mg/kg	0.2	Org-012	<0.2					96	
1-Chloro-3-methylphenol	mg/kg	1	Org-012	<1						
2-Methylphenol (o-cresol)	mg/kg	0.2	Org-012	<0.2					98	
3/4-Methylphenol (m/p-cresol)	mg/kg	0.4	Org-012	<0.4						
2-Nitrophenol	mg/kg	0.2	Org-012	<0.2						
2,4 -Dimethylphenol	mg/kg	0.2	Org-012	<0.2						
2,4-Dichlorophenol	mg/kg	0.2	Org-012	<0.2						
2,6-Dichlorophenol	mg/kg	0.2	Org-012	<0.2					104	
2,4,5-Trichlorophenol	mg/kg	0.2	Org-012	<0.2						
2,4,6-Trichlorophenol	mg/kg	0.2	Org-012	<0.2						
2,4-Dinitrophenol	mg/kg	4	Org-012	<4						
1-Nitrophenol	mg/kg	4	Org-012	<4					110	
2,3,4,6-Tetrachlorophenol	mg/kg	0.2	Org-012	<0.2						
2-methyl-4,6-Dinitrophenol	mg/kg	2	Org-012	<2						
2-pentachlorophenol	mg/kg	1	Org-012	<1					102	
Surrogate 2-fluorophenol	%		Org-012	123					119	
Surrogate Phenol-d6	%		Org-012	133					129	
Surrogate 2,4,6-Tribromophenol	%		Org-012	128					130	
Surrogate p-Terphenyl-d14	%		Org-012	126					126	



Client Reference: N3465

QUALITY CONTROL: Acid Extractable metals in soil				Duplicate				Spike Recovery %		
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	[NT]
Date prepared	-			15/05/2018					15/05/2018	
Date analysed	-			15/05/2018					15/05/2018	
Silver	mg/kg	1	Metals-020	<1					104	
Arsenic	mg/kg	4	Metals-020	<4					106	
Cadmium	mg/kg	0.4	Metals-020	<0.4					99	
Copper	mg/kg	1	Metals-020	<1					109	
Mercury	mg/kg	0.1	Metals-021	<0.1					124	
Molybdenum	mg/kg	1	Metals-020	<1					103	
Nickel	mg/kg	1	Metals-020	<1					104	
Lead	mg/kg	1	Metals-020	<1					103	
Selenium	mg/kg	2	Metals-020	<2					98	
Tin	mg/kg	1	Metals-020	<1					97	
Zinc	mg/kg	1	Metals-020	<1					98	

Client Reference: N3465

QUALITY CONTROL: Hexavalent Cr					Duplicate			Spike Recovery %		
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	[NT]
Hexavalent Chromium, Cr <sup>6+</sup>	mg/kg	1	Inorg-024	<1					104	

Client Reference: N3465

QUALITY CONTROL: Misc Inorg - Soil				Duplicate			Spike Recovery %			
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	[NT]
Date prepared	-			16/05/2018					16/05/2018	
Date analysed	-			16/05/2018					16/05/2018	
pH 1:5 soil:water	pH Units		Inorg-001						103	
Total Fluoride	mg/kg	50	Inorg-026/53	<50					83	

Client Reference: N3465

QUALITY CONTROL: Misc Soil - Inorg					Duplicate			Spike Recovery %		
Test Description	Units	PQL	Method	Blank	#	Base	Dup.	RPD	LCS-11	[NT]
Date prepared	-			15/05/2018					15/05/2018	
Date analysed	-			15/05/2018					15/05/2018	
Total Cyanide	mg/kg	0.5	Inorg-014	<0.5					118	

**Result Definitions**

<b>NT</b>	Not tested
<b>NA</b>	Test not required
<b>INS</b>	Insufficient sample for this test
<b>PQL</b>	Practical Quantitation Limit
<b>&lt;</b>	Less than
<b>&gt;</b>	Greater than
<b>RPD</b>	Relative Percent Difference
<b>LCS</b>	Laboratory Control Sample
<b>NS</b>	Not specified
<b>NEPM</b>	National Environmental Protection Measure
<b>NR</b>	Not Reported

**Quality Control Definitions**

<b>Blank</b>	This is the component of the analytical signal which is not derived from the sample but from reagents, glassware etc, can be determined by processing solvents and reagents in exactly the same manner as for samples.
<b>Duplicate</b>	This is the complete duplicate analysis of a sample from the process batch. If possible, the sample selected should be one where the analyte concentration is easily measurable.
<b>Matrix Spike</b>	A portion of the sample is spiked with a known concentration of target analyte. The purpose of the matrix spike is to monitor the performance of the analytical method used and to determine whether matrix interferences exist.
<b>LCS (Laboratory Control Sample)</b>	This comprises either a standard reference material or a control matrix (such as a blank sand or water) fortified with analytes representative of the analyte class. It is simply a check sample.
<b>Surrogate Spike</b>	Surrogates are known additions to each sample, blank, matrix spike and LCS in a batch, of compounds which are similar to the analyte of interest, however are not expected to be found in real samples.

Australian Drinking Water Guidelines recommend that Thermotolerant Coliform, Faecal Enterococci, & E.Coli levels are less than 1cfu/100mL. The recommended maximums are taken from "Australian Drinking Water Guidelines", published by NHMRC & ARMC 2011.

## Laboratory Acceptance Criteria

Duplicate sample and matrix spike recoveries may not be reported on smaller jobs, however, were analysed at a frequency to meet or exceed NEPM requirements. All samples are tested in batches of 20. The duplicate sample RPD and matrix spike recoveries for the batch were within the laboratory acceptance criteria.

Filters, swabs, wipes, tubes and badges will not have duplicate data as the whole sample is generally extracted during sample extraction.

Spikes for Physical and Aggregate Tests are not applicable.

For VOCs in water samples, three vials are required for duplicate or spike analysis.

Duplicates: <5xPQL - any RPD is acceptable; >5xPQL - 0-50% RPD is acceptable.

Matrix Spikes, LCS and Surrogate recoveries: Generally 70-130% for inorganics/metals; 60-140% for organics (+/-50% surrogates) and 10-140% for labile SVOCs (including labile surrogates), ultra trace organics and speciated phenols is acceptable.

In circumstances where no duplicate and/or sample spike has been reported at 1 in 10 and/or 1 in 20 samples respectively, the sample volume submitted was insufficient in order to satisfy laboratory QA/QC protocols.

When samples are received where certain analytes are outside of recommended technical holding times (THTs), the analysis has proceeded. Where analytes are on the verge of breaching THTs, every effort will be made to analyse within the THT or as soon as practicable.

Where sampling dates are not provided, Envirolab are not in a position to comment on the validity of the analysis where recommended technical holding times may have been breached.

Measurement Uncertainty estimates are available for most tests upon request.

Client Reference: N3465

**Report Comments**

MISC\_INORG\_CRVI: Hexavalent Chromium PQL has been raised due to matrix interference.

*Attachment D:  
Bore logs*




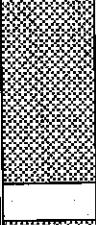
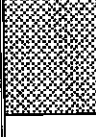
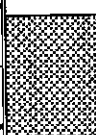



## Division of Environmental Health & Safety

Client	Aksara Pty Ltd	Job Number	N3465	BORE Number	BH1
Project	Environmental Site Assessment	Commenced		Date	11.05.18
Location	22 High Street, Rushworth VIC 3612	Completed		Date	11.05.18
Driller	NEO Consulting Pty Ltd	Logged By			CC

Borehole Angle: 90° Borehole Size: 100mm

Borehole Location Description: Close to the northern boundary over asphalt.

Depth (m)	Graphic log	Material Description	Field Records / Comments
		Asphalt 25mm	
1		Yellow/orange sandy clay till 4.5m with white rock channels at 1.9m and 3.0m	BH1 1.5
2			
3			BH1 3
4			BH1 4.5
5		END OF LOG	



## Division of Environmental Health & Safety

Client	Aksara Pty Ltd At - J & P Auto Repairs	Job Number	N3465	BORE Number	BH2
Project	Environmental Site Assessment	Commenced		Date	11.05.18
Location	22 High Street, Rushworth VIC 3612	Completed		Date	11.05.18
Driller	NEO Consulting Pty Ltd	Logged By			CC

Borehole Angle: 90° Borehole Size: 100mm

Borehole Location Description: South west of the building front near the driveway.

Depth (m)	Graphic log	Material Description	Field Records / Comments
		Asphalt 25mm	
1		Brown clay turning red/brown towards last 1m; dry powdery clay around 1m.	BH2 1.5
2			
3			BH2 3
4			BH2 4.5
5		END OF LOG	

*Attachment E:  
Potential Offsite receptors*

**TABLE: POTENTIAL RECEPTORS AND CONTAMINATION ROUTES**

LOCATION	RECEPTOR	ROUTE
On-site	Human receptors include: <ul style="list-style-type: none"> <li>• Site occupants</li> <li>• Site visitors</li> <li>• Contractors and workers</li> <li>• Future site occupants</li> </ul>	Exposure by direct contact via skin, ingesting and inhaling. Migration and consumption of contaminated groundwater. Migration of soluble contaminants with surface water run-off.
Off-site	Human receptors include: <ul style="list-style-type: none"> <li>• Off-site occupants/residents of their own property</li> <li>• Off-site visitors/customers</li> <li>• Contractors and workers dealing with projects on adjoining land</li> </ul>	Migration of contaminated underground water. Migration of contaminated surface water or similar. Extraction and use of groundwater down-gradient from the site.

## NOTICE OF RESCISSION

**TO:**

**Vince Tesoriero and 22 High Street Rushworth Pty Ltd (ACN 641 392 903) ATF 22 High Street Rushworth Unit Trust (ABN 96 570 791 251)**

SCHEDULE	
1. Vendor:	Inglwd Pty Ltd (ACN 622 141 931)
2. Purchaser:	Vince Tesoriero and/or Nominees
3. Nominee:	22 High Street Rushworth Pty Ltd (ACN 641 392 903) ATF 22 High Street Rushworth Unit Trust (ABN 96 570 791 251)
4. Guarantor:	Vince Tesoriero
5. Date of Contract:	20 September 2019
6. Land Description:	Lot 1 on Title Plan 431133N, in particular land contained in Certificate of Title Volume 8524 Folio 773
7. Property Address:	22 High Street, Rushworth VIC 3612
8. Due Date:	30 June 2021
9. Particulars of Default:	The Nominee has failed to pay the sum of \$1,340,909.09 being the balance due under the Contract on the Due Date.
10. Interest Rate:	2% higher than the rate for the time being fixed under Section 2 of the <i>Penalty Interest Rate Act 1983</i>
11. Legal Costs:	\$880.00 inclusive of GST

**TAKE NOTICE** that you are in default under the Contract referred to in the Schedule and that the particulars of default are specified in Item 9 of the Schedule.

**TAKE FURTHER NOTICE** that the Vendor intends to exercise its rights unless the default is remedied, and proper legal costs specified in Item 11 and interest on the amount due under the Contract at the rate specified in Item 10 are all paid within fourteen days of the service of this notice upon you.

**AND TAKE FURTHER NOTICE** that unless the default is remedied the Contract will be rescinded under General Condition 28 of the Contract.

DATED: 14 October 2021



-----  
**INGLWD PTY LTD (ACN 622 141 931)**

Konfir Kabo, Sole Director/ Secretary

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 08524 FOLIO 773

Security no : 124098896668A  
Produced 11/07/2022 02:44 PM

LAND DESCRIPTION

Lot 1 on Title Plan 431133N.  
PARENT TITLE Volume 02992 Folio 228  
Created by instrument C089298 23/11/1964

REGISTERED PROPRIETOR

Estate Fee Simple  
Sole Proprietor  
RUSHWORTH PROPERTY HOLDINGS PTY LTD of 22 HIGH STREET RUSHWORTH VIC 3612  
AV267421E 25/01/2022

ENCUMBRANCES, CAVEATS AND NOTICES

CAVEAT AV503441L 06/04/2022

Caveator  
LEO LEWIN  
Grounds of Claim  
MORTGAGE WITH THE FOLLOWING PARTIES AND DATE.  
Parties  
THE REGISTERED PROPRIETOR(S)  
Date  
25/01/2022  
Estate or Interest  
INTEREST AS MORTGAGEE  
Prohibition  
ABSOLUTELY  
Lodged by  
ABBAS JACOBS LAWYERS  
Notices to  
LEO LEWIN of SUITE 25 LEVEL 2 20 MACQUARIE STREET PARRAMATTA NSW 2150

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE TP431133N FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

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Additional information: (not part of the Register Search Statement)

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NIL

eCT Control 22162W ABBAS JACOBS LAWYERS  
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## Candy Nelson

---

**From:** Christopher Nehme <cnehme@fortislaw.com.au>  
**Sent:** Tuesday, 17 August 2021 9:26 PM  
**To:** 'Anthony Sommer'; Roy Hanna; Caitlin Murray  
**Cc:** Pierre Safi; Joshua Frangi; Ramsha Sulaman; Michael Hughes; Andrew Clarke; Simon Brandis  
**Subject:** RE: Tesoriero, Papadimitriou and Forum Finance Pty Ltd ats Westpac Banking Corporation Pty Ltd Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]  
**Attachments:** COS Oakleigh South.pdf

Dear Anthony,

See attached. Apologies.

**Christopher Nehme**  
Partner

**FORTIS | LAW**

Level 11, 75 Elizabeth Street Sydney NSW 2000  
PO Box 2541 Sydney NSW 2001 | DX 313 Sydney  
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**From:** Anthony Sommer <Anthony.Sommer@minterellison.com>  
**Sent:** Tuesday, 17 August 2021 21:03  
**To:** Roy Hanna <rhanna@fortislaw.com.au>; Caitlin Murray <Caitlin.Murray@minterellison.com>  
**Cc:** Christopher Nehme <cnehme@fortislaw.com.au>; Pierre Safi <pjsafi@fortislaw.com.au>; Joshua Frangi <jfrangi@fortislaw.com.au>; Ramsha Sulaman <ramsha@fortislaw.com.au>; Michael Hughes <Michael.Hughes@minterellison.com>; Andrew Clarke <Andrew.Clarke@minterellison.com>; Simon Brandis <Simon.Brandis@minterellison.com>  
**Subject:** RE: Tesoriero, Papadimitriou and Forum Finance Pty Ltd ats Westpac Banking Corporation Pty Ltd Federal Court of Australia Proceeding NSD616/2021 [ME-ME.FID6264995]

Dear Roy

Please can you provide a copy of the Purchase Contract referred to in the letter. It was not attached to your email below.

Regards

---

**Anthony Sommer**  
Senior Associate  
T +61 2 9921 4182 M +61 431 058 780  
[anthony.sommer@minterellison.com](mailto:anthony.sommer@minterellison.com)





---

**From:** Roy Hanna <[rhanna@fortislaw.com.au](mailto:rhanna@fortislaw.com.au)>  
**Sent:** Tuesday 17 August 2021 08:10 PM  
**To:** Anthony Sommer <[Anthony.Sommer@minterellison.com](mailto:Anthony.Sommer@minterellison.com)>; Caitlin Murray <[Caitlin.Murray@minterellison.com](mailto:Caitlin.Murray@minterellison.com)>  
**Cc:** Christopher Nehme <[cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)>; Pierre Safi <[pjsafi@fortislaw.com.au](mailto:pjsafi@fortislaw.com.au)>; Joshua Frangi <[jfrangi@fortislaw.com.au](mailto:jfrangi@fortislaw.com.au)>; Ramsha Sulaman <[ramsha@fortislaw.com.au](mailto:ramsha@fortislaw.com.au)>; Michael Hughes <[Michael.Hughes@minterellison.com](mailto:Michael.Hughes@minterellison.com)>; Andrew Clarke <[Andrew.Clarke@minterellison.com](mailto:Andrew.Clarke@minterellison.com)>; Simon Brandis <[Simon.Brandis@minterellison.com](mailto:Simon.Brandis@minterellison.com)>  
**Subject:** Tesoriero, Papadimitriou and Forum Finance Pty Ltd ats Westpac Banking Corporation Pty Ltd Federal Court of Australia Proceeding NSD616/2021

Dear Anthony and Caitlin

Please see **attached**.

Kind Regards

Roy Hanna | **Solicitor**

**FORTIS | LAW**

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Sensitive: Legal

Our Ref: CN:RH:26171  
Your Ref:

17 August 2021

Ms Caitlin Murray  
Minter Ellison  
Level 40, Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

**By email only:**     [Caitlin.Murray@minterellison.com](mailto:Caitlin.Murray@minterellison.com)  
                          [Anthony.Sommer@minterellison.com](mailto:Anthony.Sommer@minterellison.com)

Dear Sir/Madam,

**Tesoriero, Papadimitriou and Forum Finance Pty Ltd -v- Westpac Banking Corporation Pty Ltd**  
**Federal Court of Australia Proceedings No. NSD616/2021**

We refer to the original freezing orders made by Lee J on 2 July 2021 as amended (**Freezing Orders**).

Mr Tesoriero (**Vince**) entered into a purchase contract with a third party vendor (and not a related entity of Mr Tesoriero) on 16 December 2019 (**Purchase Contract**).

Under the Purchase Contract, Vince is required to complete the Purchase Contract by 20 August 2021 (as extended) (**Completion Obligation**). A copy of the Purchase Contract is **attached**.

The Completion Obligation is a bona fide obligation properly incurred under a contract entered into before the Freezing Orders were made.

However, in the current circumstances Vince is not in a position to fulfil his Completion Obligation under the Purchase Contract and in order to mitigate any loss or damage including forfeiture of the deposit paid, Vince proposes to exercise his nomination rights under the Purchase Contract.

Accordingly, this letter serves as notice that Vince intends to nominate a new purchaser who will pay a \$1,200,000 (exc. GST) nomination fee (**Nomination Fee**) and assume the Purchase Contract obligations (**Nomination**).

Vince will consent to the Nomination Fee being paid into Court or to a joint account held in the name of Fortis Law and Minter Ellison.

We understand that the Nominee has engaged solicitors Arnold Bloch Leibler to act on its behalf in the transaction.

Yours faithfully,  
**FORTIS LAW**



**Christopher Nehme**  
Partner

Email: [cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)

## Candy Nelson

---

**Subject:** FW: outstanding interest payments

**From:** Vince Tesoriero <[vinkath2000@yahoo.com.au](mailto:vinkath2000@yahoo.com.au)>  
**Subject:** outstanding interest payments  
**Date:** 16 July 2021 at 12:13:15 pm AEST  
**To:** [doug.moore@nab.com.au](mailto:doug.moore@nab.com.au)  
**Cc:** Christopher Nehme <[cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)>

Hi Doug,

Thank you for your time on the phone earlier.

As discussed, I've cc'd Christopher Nehme who is representing me in the current proceedings.

Chris, Doug asked if we can please link you with NABs solicitors in an effort to get accounts relaxed and interest paid to various banks as owed.

Doug there is a few more accounts and banks which unfortunately I am not across at present but am working towards and will share in the coming days. Below is a table which is normally set up on direct debit from you guys to Judo.

I am slowly working to clear my name and remove myself in these proceedings and endeavour to make good any interest owed to NAB and others moving forward.

Thank you  
Vince Tesoriero  
0411 137 849

Loan Facility	Customer Name	Account details		
		Account Name	BSB	Account
V300002021	9 Main Street Derrinallum PL ATF Derrinallum Petrol UT	9 MAIN STREET DERRINALLUM	082080	926496249
J300002019	9 Main Street Derrinallum PL ATF Derrinallum Petrol UT	9 MAIN STREET DERRINALLUM	082080	926496249
V300002017	275 High Street Golden Square PL ATF Golden Square Petrol UT	275 HIGH STREET GOLDEN SQUARE	082080	448010047
J300002018	275 High Street Golden Square PL ATF Golden Square Petrol UT	275 HIGH STREET GOLDEN SQUARE	082080	448010047
J300002022	123 High Street Taradale PL ATF Taradale Petrol UT	123 HIGH STREET TARADA	082080	975544112
V300002023	123 High Street Taradale PL ATF Taradale Petrol UT	123 HIGH STREET TARADA	082080	975544112
V300002024	4 Cowslip Street Violet Town PL ATF Violet Town Petrol Unit Trust	4 COWSLIP STREET VIOLET TOWN	082080	421958540
J300002020	4 Cowslip Street Violet Town PL ATF Violet Town Petrol Unit Trust	4 COWSLIP STREET VIOLET TOWN	082080	421958540
V300002468	89 Betka Road Mallacoota PL ATF 89 Betka Road Mallacoota UT	MALLACOOTA PETROL UNIT TRUST	082080	777179310

J300002467	89 Betka Road Mallacoota PL ATF 89 Betka Road Mallacoota UT	MALLACOOTA PETROL UNIT TRUST	082080	777179310
J300003572	64-66 Berkeley St Hawthorn Unit Trust	Forum Group Financial Services	082080	328159963
V300003571	64-66 Berkeley St Hawthorn Unit Trust	Forum Group Financial Services	082080	328159963

**From:** Alexandra Lawrence  
**Sent:** Wednesday, 6 July 2022 3:14:43 PM  
**To:** Kang, Justin  
**Cc:** Sazz Nasimi;Melissa Passarelli;Strack, Tamara;Canny, Elizabeth  
**Subject:** RE: RTGS Request Forms: Vincenzo Tesoriero [DENTONS-  
Documents.FID10220696] [MADG-CURRENT\_MATTERS.18091.047678]

Dear Mr Kang,

We refer to the below correspondence concerning the Nab accounts in the name of Mr Tesoriero and his associated entities.

Our client is required to provide further disclosure of all existing accounts in his name and the name of his associated entities by 11 July 2022 for the purpose of Court Proceedings and their present balance.

Our client is intending to disclose that he has the following accounts with NAB:

<b>Account name</b>	<b>Account Number</b>	<b>BSB</b>	<b>Account balance (\$)</b>
Business Account #0047	448010047	082-080	0
Business Account #1512	317881512	082-080	\$2,040.06
Business Account #1984	777331984	082-080	0
Business Account #2511	916282511	082-080	0
Business Account #4060	913604060	082-080	0
Business Account #4112	975544112	082-080	0
Business Account	178684593	082-080	0

#4593				
Business Account	205665778	082-080	0	
#5778				
Business Account	926496249	082-080	0	
#6249				
Business Account	777426975	082-080	0	
#6975				
Business Account	777487866	082-080	0	
#7866				
Business Account	421958540	082-080	0	
#8540				
Business Account	777549078	082-080	0	
#9078				
Business Account	205819116	082-080	0	
#9116				
Business Account	204569119	082-080	0	
#9119				
Business Account	777179310	082-080	0	
#9310				
Business Account	328159963	082-080	0	
#9963				
Business Account	708900012	082-080	0	
#0012				

As our client does not currently have access to his accounts, we request that NAB confirm the following:

1. That the above table is correct; and
2. Whether there are any other accounts with NAB in the name of Mr Tesoriero or any of his associated entities.

We require that this be confirmed by no later than COB 9 July 2021.

Kind regards,

**Alexandra Lawrence**

Associate

**MADGWICKS**  
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T: +61 3 9242 4720 E: [Alexandra.Lawrence@madgwicks.com.au](mailto:Alexandra.Lawrence@madgwicks.com.au)

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Sydney NSW 2001 Australia

ABN 47 702 595 758

**Allens > < Linklaters**

27 June 2022

Madgwicks Lawyers  
Level 6, 140 William Street  
Melbourne VIC 3000  
Attention: Sazz Nasimi/Melissa Passarelli

**By email**

Dear Colleagues

**5 Bulkara Street, Wagstaffe NSW (Property)**

We refer to our letter dated 10 June 2022 (**Letter**) and to the email from Dentons on 20 June 2022.

As you are aware, the agents for NAB in its capacity as mortgagee-in-possession have exchanged contracts for the sale of the Property. As foreshadowed in our Letter, the liquidators of FGFS have now entered into a contract for the sale for the items contained in the lists enclosed with our Letter.

In preparation for settlement, the remaining personal items must be removed from the Property. To that end, our clients will arrange for delivery of the personal items to Mr Tesoriero at 64-66 Berkeley Street, Hawthorne and will confirm the date and time of delivery in due course. In the event that Mr Tesoriero wishes the items to be delivered to a different address, please let us know by close of business on 28 June 2022.

Yours faithfully



**Chris Prestwich**  
Partner  
Allens  
Chris.Prestwich@allens.com.au  
T +61 2 9230 4496

**Kirsty Prinsloo**  
Managing Associate  
Allens  
Kirsty.Prinsloo@allens.com.au  
T +61 2 9230 4735

**Our Ref** 121031672-007:121031672

KBPS 520632659v3 121031672 27.6.2022

Allens is an independent partnership operating in alliance with Linklaters LLP.

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)

List of contents

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)   List of contents			
No.	Category	Description	Category
<b>Boat House Bathroom</b>			
1.001	Contingency	Assortment of boat house bathroom contents, includes: various toiletries items, 5 x life jackets in various sizes (LOT) (SAY)	Personal
<b>Boat House Enclosed Patio</b>			
1.002	Spit Rotisserie	Flaming Coals Spartan spit roaster, 1500mm (untested), stainless steel, hooded on castors, some surface rust	Rental
1.003	Leaf Blower	2017 Ryobi RBV254ON, serial number 1711001208, cordless	Rental
1.004	Walk Behind Mower	2015 Masport President 550 series 16.5, serial number 7958849, 4 stroke petrol	Rental
1.005	Whipper Snipper	Stihl Z Brushcutte FS 38, 2 stroke petrol, serial number 813146265, petrol powered	Rental
1.006	Spit Rotisserie	Flaming Coals Spartan spit roaster, 1500mm (untested), stainless steel, hooded on castors, surface rust	Rental
1.007	Contingency	Assortment of various contents in patio, includes ice box cooler, various fishing tackle, small 9kg gas bottle, heavily damaged steel spit on wheels, jerry can (LOT) (SAY)	Personal
<b>Boat House Kitchen</b>			
1.008	Microwave	Sharp, Carousel type	Rental
1.01	Dishwasher	Omega, stainless steel, 45cm, serial number DX300XA	Rental
1.011	Contingency	Assortment of various kitchen items, includes kettle, toaster, various plates, cutleries, Nespresso machine, wall clock and cleaning products (LOT) (SAY)	Rental
1.012	Contingency	Assortment of furnitures and contents of cabinet external to the kitchen, includes cabinet, various plates, bowls, books and ornaments (LOT) (SAY)	Rental
1.013	Television	Sony KDL-42W800A, full HD LED LCD flat screen smart television, serial number 130029-12, LCD , 42" with remote	Rental
1.014	Surround Sound System	Sonos Playbar, serial number A1011907CP34785C7A4C54Q	Rental
1.015	Fishing Rods	Shimano, Blackwater and Samaki Zing, Length Fishing Rods with overhead spinning reels, qty x 9	Personal
1.016	Lounge	White fabric, 3 seater lounge, together with a pair of fabric single lounge chairs plus assortment of approximately 14 x pillows	Rental
1.017	Cabinet	3 Door, solid timber, stand/sideboard, approx. 1,500mm in length	Rental
1.018	Side Tables	2 x 2 Sets of side tables, one with white timber legs and the other set with parquetry top and plain timber legs, also comes with a pair of matching lamps	Rental
1.019	Artwork	Pair of decorative acrylic paintings on canvas, each approx. 900 x 700mm	Rental
1.02	Artwork	Mixed media, original artwork, in metal frame	Rental
1.021	Dining table	White, melamine, circular dining table, with four matching chairs	Rental
1.022	Contingency	Assortment of various items in dining room area, includes 2 x carpets (largest approx. 1,800 x 150mm), various vases, 3 x Jet pilot lifejackets, umbrella stand and mixed media artwork housed in a perspex case (LOT) (SAY)	Rental
<b>Boat House Deck</b>			
1.023	Hanging Chairs	Pair of hanging chairs with cushions	Rental
1.024	Lounge	Cane lounge chair, 3 seater, grey	Rental
1.025	Pots and Plants	Various white pots, with included plants, qty x 9	Rental
1.026	Tables	A non-matching pair of circular coffee tables, each approx. 900mm round	Rental
1.027	Fenders	Pair of air blown black fenders	Rental
1.028	Decorations	Collection of various white wall hangings, 6 x in total	Rental
1.029	Pontoon	Floating modular twin Jet-ski Pontoon, approx. 2,000 x 2,500mm	Rental
1.03	Bed	Queen size bed, grey fabric, with linen and pillows	Rental
1.031	Contingency	Assortment of various bedroom items, includes white display trunk, bedside table and lamps (LOT) (SAY)	Rental
<b>Granny Flat (St Front of Property)</b>			
1.032	Bed	Queen size bed, with linen and pillows	Rental

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)

List of contents

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)   List of contents			
No.	Category	Description	Category
1.033	Lounge	White linen, 3 seater lounge with various pillows	Rental
1.034	Cabinets	A pair of matching mirrored bedside tables with a matching side board, includes a pair of bedside lamps	Rental
1.035	Television	Wintel, approx. 30", comes with a remote control, wall mounted, with surround sound speakers	Rental
1.036	Contingency	Assortment of various items in flat, includes Delonghi EN500 Nespresso coffee machine, glasswares, kettle and decorative, wall mounted artwork (LOT) (SAY)	Rental
<b>Alfresco Lounge</b>			
1.037	Cane Lounge	A pair of matching cane Chase lounges with cream cushions, includes 4 x pillows	Rental
1.038	Coffee Table	2 Designer coffee tables in the form of a cut tree trunk	Rental
1.039	Drinks Trolley	A drinks trolley, together with assorted alcohol, both opened and unopened, excludes the Johnny Walker King George V Whisky	Rental
1.040	Whisky	Johnny Walker King George V Whisky	Personal
1.041	Book	Annie Leibovitz, SUMO, a limited edition of 10,000 signed and numbered copies, this being number 3376	Rental
1.042	Contingency	Assortment of various items in alfresco lounge, includes various decorative items with ornaments, rugs, vases, plants, sheep skulls and books (excluding 1.53) (LOT) (SAY)	Rental
1.043	Stools	Cane bar stools, qty 3	Rental
1.044	Contingency	Assortment of various bathroom items, includes decorations, towels and mirror (LOT) (SAY)	Personal
<b>Bathroom 3</b>			
1.045	Contingency	Assortment of various bathroom items, includes decorations, towels and mirror (LOT) (SAY)	Personal
<b>Bathroom 4</b>			
1.046	Contingency	Assortment of various bathroom items, includes decorations, towels and mirror (LOT) (SAY)	Personal
<b>Bedroom 2</b>			
1.047	Bed	Queen size, four poster bed, with linen and pillows	Rental
1.048	Bedside Tables	Matching pair of bedside tables, together with contents and items in the tables	Rental
1.049	Lamps	Pair of designer floor lamps	Rental
1.050	Surfboard	VS Eco Bean11 surf board, thruster/twin	Personal
1.051	Contingency	Assortment of various items, includes decorative artwork, cane chair, coffee table (LOT) (SAY)	Rental
<b>Bedroom 3</b>			
1.052	Single Beds	Matching pair of single beds with linen and pillows	Rental
1.053	Cabinets	Bedside, 2 drawer, timber table, with marble top, together with a matching chest of 5 drawers	Rental
1.054	Contingency	Assortment of various items, includes decorative artwork, lamp and ornaments (LOT) (SAY)	Rental
<b>Butlers Pantry</b>			
1.055	Contingency	Assortment of various items, includes cutlery, plates, cups, dry food goods, ornaments, kettle, toaster, knife set (LOT) (SAY)	Rental
1.056	Refrigerator	Samsung SRS676GDHLS, two-door fridge, ice maker, serial number W85443ADC00167M	Rental
<b>Dining Room</b>			
1.057	Dining Table	10 Seater, solid timber, dining table with 12 matching timber and leather chairs	Rental
1.058	Contingency	Assortment of various items, includes floor lamp, table decorations and lamp shade (LOT) (SAY)	Rental
<b>Entry</b>			
1.059	Foyer Table	Floating foyer table, with various decorative vases, lamps and artwork	Rental
1.060	Lounge	Timber, with white linen cushion, comes with 6 x small pillows	Rental
1.061	Artwork	Pair of decorative artworks in Perspex frames	Rental
1.062	Contingency	Assortment of various vases, rug and lamp (LOT) (SAY)	Rental

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)

List of contents

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)   List of contents			
No.	Category	Description	Category
<b>Front Entry</b>			
1.063	Contingency	Assortment of various vases and decorative pieces (LOT) (SAY)	Rental
1.064	Koi	A School of Koi fish, includes 2 x large Koi of collectable nature	Rental
<b>Garage</b>			
1.065	Contingency	Assortment of various tools, includes water pressure cleaner, Makita drill and an empty toolbox (LOT) (SAY)	Rental
1.066	Refrigerator	Mitsubishi MR-L710EN-GBK-A2, double-door, serial number 001207	Rental
1.067	Water Ski Tube	Towable loose unit, water ski tube	Rental
1.068	Contingency	Assortment of various contents, includes hand tools, Christmas tree, motoring fluids and more various items (LOT) (SAY)	Personal
1.069	Water Ski	2 Pairs of water skis, one adult Blast 67 and one child's essential, also includes a 4 Life Jacket	Personal
<b>Indoor Pool Area</b>			
1.07	Boxing Gear	A selection of various boxing training items plus a weighted medicine ball	Personal
1.071	Exercise Bike	Tomahawk THK Series, recumbent exercise bike	Personal
1.072	Timber Furniture	A selection of various timber-based hand made furniture, with cream cushions	Rental
1.073	Chairs	6 x Plastic stackable chairs	Rental
1.074	Contingency	Assortment of various items, includes vases, Hooka pipe, linen and wall clock (LOT) (SAY)	Rental
<b>Kitchen</b>			
1.075	Stools	3 x Cane bar stools	Rental
1.076	Microwave	Samsung, stainless steel	Rental
1.077	Refrigerator	General electric company, PSA29VGXACSS, double-door, stainless steel, serial number LT409601	Rental
1.078	Television	Samsung UA55JS8000WXXY, 55", wall- mounted, serial number ONEPT3TGG900486L	Rental
1.079	Alcohol	Various unopened alcohol	Personal
1.08	Whisky	Johnny Walker, blue label whisky	Personal
1.081	Contingency	Assortment of various items, includes cutlery, dinnerware, wall clock, coffee machine and sandwich maker (LOT) (SAY)	Rental
<b>Laundry</b>			
1.082	Front Load Washing Machine	Miele W2104, HoneyComb Care	Rental
1.083	Front Load Dryer	Miele T4453C, HoneyComb Care	Rental
1.084	Vacuum	Dyson Big Ball	Rental
1.085	Contingency	Assortment of various items, includes cleaning goods, containers, iron and ironing board (LOT) (SAY)	Rental
<b>Laundry Hallway</b>			
1.086	Contingency	Assortment of various items, includes mat, decorative artwork and clothing air dryer rack (LOT) (SAY)	Rental
<b>Living Room</b>			
1.087	Sideboard	Glass, topped with natural timber base, approx. 2,500mm in length	Rental
1.088	Lounge Seats	A pair of velvet retro style seats	Rental
1.089	Mirror	Large wall mirror, cube style	Rental
1.09	Vacuum	Dyson Blade, handheld vacuum	Rental
1.091	Coffee Table	Glass, topped with table top contents	Rental
1.092	Tribal Wear	A feather and shell Sepik tribal decoration	Rental
1.093	Artwork	Decorative wall-mounted artwork	Rental
1.094	Lounge Seats	L-shaped, Fabric, approx. 10 x seater, includes pillows and throws	Rental
1.095	Artwork	A set of three reprint photographic artworks	Rental
1.096	Plant	Large potted palm tree	Rental

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)

List of contents

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)   List of contents			
No.	Category	Description	Category
1.097	Contingency	Assortment of various vases, includes light shades, decorations, books and small coffee tables (LOT) (SAY)	Rental
<b>Lounge Room</b>			
1.098	Timber Decoration	Floor-mounted timber decoration artwork	Rental
1.099	Lounge	White fabric	Rental
1.1	Television	LG 65SM8100PTA, 65" flat screen, serial number 904INZY85421	Rental
1.101	Furniture	Pair of cane chairs, together with a set of three coffee tables	Rental
1.102	Game Station Console	Xbox One, with hand controller, serial number 010619181417	Rental
1.103	Electronic Equipment	Surround-sound unit, together with an Apple connection	Rental
1.104	Contingency	Assortment of various contents, includes board games, floor lamp, decorative artwork and decorations (LOT) (SAY)	Rental
<b>Main Hallway</b>			
1.105	Natural Artwork	Timber slab, wall-mounted artworks, qty 5	Rental
1.106	Entry SideBoard	Large white entry foyer table	Rental
1.107	Decorations	Various decorative display pieces, located on entry foyer table	Rental
1.108	Mirrors	Pair of matching circular wall mirrors	Rental
1.109	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed	Rental
1.11	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed	Rental
1.111	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed	Rental
1.112	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed	Rental
1.113	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed	Rental
1.114	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed	Rental
1.115	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed	Rental
1.116	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed	Rental
1.117	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed	Rental
1.118	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed	Rental
1.119	Chair	Louis XVI style chair	Rental
1.12	Tribal Wear	Shell Sepik tribal style decoration	Rental
1.121	Tribal Wear	Sepik tribal style decoration	Rental
1.122	Artwork	Free-standing timber artwork decorations	Rental
1.123	Foyer table	Floating foyer table with various decorative vases, lamps and artwork	Rental
1.124	Contingency	Assortment of various decorative display pieces, includes vases, books (LOT) (SAY)	Rental
<b>Master Bedroom</b>			
1.125	Artwork	Decorative mixed media artwork	Rental
1.126	Mirror	Collection of four mirrors	Rental
1.127	Chairs	Matching pair of fabric lounges, with pillows and throw, includes a small coffee table	Rental
1.128	Safe	Small CMI safe, approx. 300 x 200mm	Personal
1.129	Mirror	Large wall-mounted gilt-edged mirror	Rental
1.13	Artworks	Pair of perspex cased artworks	Rental
1.131	Table and Baskets	Marble top hall table, together with 2 woven baskets	Rental
1.132	Wall Unit	2 Door, woven front, timber, wall-unit	Rental
1.133	Artwork	Pair of timber artworks, housed in perspex, framed	Personal
1.134	Hall Table	Marble top hall table, together with two woven stools	Rental
1.135	Side Tables	Pair of timber side tables with contents	Rental

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)

List of contents

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)   List of contents			
No.	Category	Description	Category
1.136	Mirror	Large, wall-mounted, gilt-edged mirror	Rental
1.137	Chairs	Pair of cane recliner chairs, with cream pillows	Rental
1.138	Bed	Four poster, timber, bed with all linen and pillows	Rental
1.139	Mirror	Large, wall-mounted, gilt-edged mirror	Rental
1.14	Lounges	Matching pair of woven lounges, with pillows	Rental
1.141	Tribal Wear	Sepik tribal style decoration	Rental
1.142	Plant	Large pot, with large internal tree, plus additional smaller pot	Rental
1.143	Contingency	Assortment of various decorations, includes pots, vases, rugs and more (LOT) (SAY)	Rental
1.144	Bedside Tables	Pair of matching multi-piece bedside tables	Rental
1.145	Unit	Woven, front timber unit	Rental
1.146	Surround Sound System	Sonos Playbar	Rental
1.147	Television	LG 65SM8100PTA, 65", serial number 904INLV85232	Rental
1.148	Table	Small, circular, white	Rental
<b>Media Room</b>			
1.149	Lounge	Corner L-shaped, fabric lounge	Rental
1.15	Chairs	Matching pair of beige, leather, armchairs	Rental
1.151	Stand	Timber stand, with two vases and a sculpture	Rental
1.152	Surround Sound System	Sonos Playbar	Rental
1.153	Stand	Samsung UA60F6400AMXXY, 60" Flatscreen, serial number 07U13MMD801292E	Rental
1.154	Electronic Devices	Selection of various electronic devices, includes DVD player	Rental
1.155	Lamp	Top floor lamp, brass	Rental
1.156	Artwork	Pair of decorative framed artworks	Rental
1.157	Coffee Tables	3x marble top coffee tables, with contents on top	Rental
1.158	Contingency	Assortment of various decorations, includes pots, vases, rugs and more (LOT) (SAY)	Rental
<b>Office</b>			
1.159	Chair	Eames-style office chair	Rental
1.16	Work Station	HP MFPM479fdw, comes with additional inks	Rental
1.161	Contingency	Assortment of various decorations, includes decorative items (LOT) (SAY)	Rental
<b>Store Room 1</b>			
1.162	Contingency	Assortment of various decorations, includes decorative items (LOT) (SAY)	Rental
<b>Store Room 2</b>			
1.163	Contingency	Assortment of various decorations, includes linen and unused soaps and washes (LOT) (SAY)	Rental
<b>Study</b>			
1.164	Security Camera System	Comprising 4 x cameras (3 x cameras on the main house plus 1 x camera on the boat house), Dalhua digital recorder, monitor	Rental
1.165	Chairs	Pair of fabric covered arm chairs, with pillows	Rental
1.166	Assorted Furniture	Pair of foot rests, pair of matching small side tables	Rental
1.167	Floor Covering	Rattan-style, large floor rug	Rental
1.168	Artwork	Various decorative wall-hanging artworks, qty 2	Rental
1.169	Furniture	Black side table, together with a pair of small white stools	Rental
1.17	Contingency	Assortment of various reproduction antique style ornaments and decorations (LOT) (SAY)	Rental
<b>Front Garden</b>			
1.171	Furniture	Outdoor garden furniture	Rental

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)

List of contents

5 Bulkara Street Pty Ltd (Receivers and Managers Appointed)   List of contents			
No.	Category	Description	Category
1.172	Contingency	Assortment of various outdoor plants and pots (LOT) (SAY)	Rental
1.173	Water Sport	Pair of sea kayaks in poor condition (filled with mud and water and unmovable upon inspection)	Rental
1.174	Contingency	Assortment of various outdoor furniture, includes round table with 4 cane seats (LOT) (SAY)	Rental
1.175	Contingency	Assortment of various outdoor plants, pots and a pair of seats (LOT) (SAY)	Rental
<b>Side of House</b>			
1.176	Sea Kayak	P300, boreal design, sea kayak, yellow	Personal
1.177	Sea Kayak	Ultralight, boreal design, sea kayak, yellow/red	Personal
1.178	Water Sport	4 x Sea kayak paddles	Personal
1.179	Plant	Wall-mounted stag horn fern	Rental
1.18	Paddle Board	Smik-design, stand up paddle board, 10.4 feet in length, with cover and paddle	Personal
1.181	Surfboard	Softtech design trainer surfboard, approx. 5 feet in length	Personal
1.182	Heater	Flametta, pair of external gas powered heaters, stainless steel	Rental
1.183	Furniture	Outdoor dining suite, with matching coffee table, pillows and decorations	Rental

**Allens**

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26 October 2021

Sazz Nasimi  
Partner  
Madgwicks lawyers  
Level 6, 140 William Street  
Melbourne VIC 3000

**By Email & Post**

Dear Mr Nasimi

**5 and 6 Bulkara Street, Wagstaffe NSW 2257**

We act for Jason Preston and Jason Ireland in their capacity as receivers of the property at 5 and 6 Bulkara Street, Wagstaffe NSW 2257 (the **Properties**) (the **Receivers**).

A list of the items located at the Properties is at Schedule 1 and 2 to this letter (**Goods**). None of those items appear to be of a personal nature and it appears that Goods belong to Forum Group Financial Services Pty Limited (In Liquidation) or, in the alternative, each of 5 Bulkara Street Pty Ltd (In Liquidation) as the lessor of the Property and 6 Bulkara Street Pty Ltd (In Liquidation) as the owner of that Property.

Nonetheless, to the extent that your client, Mr Tesoriero, contends that any of the items are his personal possessions, please confirm within 7 days of the date of this letter:

- Whether your client contends that any of the items listed at Schedule 1 belong to him; and
- If so, provide evidence of ownership of the Goods (for example, receipts and tax invoices).

Please contact us should you have any questions.

Yours sincerely



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**Our Ref** CVPS:121031672  
CRTS 517011672v1 121031672 26.10.2021



**Schedule 1: Asset listing of 5 Bulkara Street, Wagstaffe NSW**

ASSET NO.	ASSET	DESCRIPTION
	<b>Boat House Bathroom</b>	
1.001	Contingency	Assortment of boat house bathroom contents, includes: various toiletries items, 5 x life jackets in various sizes (LOT) (SAY)
	<b>Boat House Enclosed Patio</b>	
1.002	Spit Rotisserie	Flaming Coals Spartan spit roaster, 1500mm (untested), stainless steel, hooded on castors, some surface rust
1.003	Leaf Blower	2017 Ryobi RBV254ON, serial number 1711001208, cordless
1.004	Walk Behind Mower	2015 Masport President 550 series 16.5, serial number 7958849, 4 stroke petrol
1.005	Whipper Snipper	Stihl Z Brushcutte FS 38, 2 stroke petrol, serial number 813146265, petrol powered
1.006	Spit Rotisserie	Flaming Coals Spartan spit roaster, 1500mm (untested), stainless steel, hooded on castors, surface rust
1.007	Contingency	Assortment of various contents in patio, includes ice box cooler, various fishing tackle, small 9kg gas bottle, heavily damaged steel spit on wheels, jerry can (LOT) (SAY)
	<b>Boat House Kitchen</b>	
1.008	Microwave	Sharp, Carousel type
1.009	Bar Fridge	Hisense HR6BF157B, approx. 157 litres
1.010	Dishwasher	Omega, stainless steel, 45cm, serial number DX300XA
1.011	Contingency	Assortment of various kitchen items, includes kettle, toaster, various plates, cutleries, Nespresso machine, wall clock and cleaning products (LOT) (SAY)
1.012	Contingency	Assortment of furnitures and contents of cabinet external to the kitchen, includes cabinet, various plates, bowls, books and ornaments (LOT) (SAY)
	<b>Boat House Living Room</b>	
1.013	Television	Sony KDL-42W800A, full HD LED LCD flat screen smart television, serial number 130029-12, LCD , 42" with remote
1.014	Surround Sound System	Sonos Playbar, serial number A1011907CP34785C7A4C54Q
1.015	Fishing Rods	Shimano, Blackwater and Samaki Zing, Length Fishing Rods with overhead spinning reels, qty x 9
1.016	Lounge	White fabric, 3 seater lounge, together with a pair of fabric single lounge chairs plus assortment of approximately 14 x pillows

ASSET NO.	ASSET	DESCRIPTION
1.017	Cabinet	3 Door, solid timber, stand/sideboard, approx. 1,500mm in length
1.018	Side Tables	2 x 2 Sets of side tables, one with white timber legs and the other set with parquetry top and plain timber legs, also comes with a pair of matching lamps
1.019	Artwork	Pair of decorative acrylic paintings on canvas, each approx. 900 x 700mm
1.020	Artwork	Mixed media, original artwork, in metal frame
1.021	Dining Table	White, melamine, circular dining table, with four matching chairs
1.022	Contingency	Assortment of various items in dining room area, includes 2 x carpets (largest approx. 1,800 x 150mm), various vases, 3 x Jet pilot lifejackets, umbrella stand and mixed media artwork housed in a perspex case (LOT) (SAY)
	<b>Boat House Deck</b>	
1.023	Hanging Chairs	Pair of hanging chairs with cushions
1.024	Lounge	Cane lounge chair, 3 seater, grey
1.025	Pots and Pans	Various white pots, with included plants, qty x 9
1.026	Tables	A non-matching pair of circular coffee tables, each approx. 900mm round
1.027	Fenders	Pair of air blown black fenders
1.028	Decorations	Collection of various white wall hangings, 6 x in total
1.029	Pontoon	Floating modular twin Jet-ski Pontoon, approx. 2,000 x 2,500mm
	<b>Boat House Upstairs Bedroom</b>	
1.030	Bed	Queen size bed, grey fabric, with linen and pillows
1.031	Contingency	Assortment of various bedroom items, includes white display trunk, bedside table and lamps (LOT) (SAY)
	<b>Granny Flat (St Front of Property)</b>	
1.032	Bed	Queen size bed, with linen and pillows
1.033	Lounge	White linen, 3 seater lounge with various pillows
1.034	Cabinets	A pair of matching mirrored bedside tables with a matching side board, includes a pair of bedside lamps
1.035	Television	Wintel, approx. 30", comes with a remote control, wall mounted, with surround sound speakers

ASSET NO.	ASSET	DESCRIPTION
1.036	Contingency	Assortment of various items in flat, includes Delonghi EN500 Nespresso coffee machine, glasswares, kettle and decorative, wall mounted artwork (LOT) (SAY)
	<b>Alfresco Lounge</b>	
1.037	Cane Lounge	A pair of matching cane Chase lounges with cream cushions, includes 4 x pillows
1.038	Coffee Table	2 Designer coffee tables in the form of a cut tree trunk
1.039	Drinks Trolley	A drinks trolley, together with assorted alcohol, both opened and unopened, excludes the Johnny Walker King George V Whisky
1.040	Whisky	Johnny Walker King George V Whisky
1.041	Book	Annie Leibovitz, SUMO, a limited edition of 10,000 signed and numbered copies, this being number 3376
1.042	Contingency	Assortment of various items in alfresco lounge, includes various decorative items with ornaments, rugs, vases, plants, sheep skulls and books (excluding 1.53) (LOT) (SAY)
1.043	Stools	Cane bar stools, qty 3
	<b>Bathroom 2</b>	
1.044	Contingency	Assortment of various bathroom items, includes decorations, towels and mirror (LOT) (SAY)
	<b>Bathroom 3</b>	
1.045	Contingency	Assortment of various bathroom items, includes decorations, towels and mirror (LOT) (SAY)
	<b>Bathroom 4</b>	
1.046	Contingency	Assortment of various bathroom items, includes decorations, towels and mirror (LOT) (SAY)
	<b>Bedroom 2</b>	
1.047	Bed	Queen size, four poster bed, with linen and pillows
1.048	Bedside Tables	Matching pair of bedside tables, together with contents and items in the tables
1.049	Lamps	Pair of designer floor lamps
1.050	Surfboard	VS Eco Bean11 surf board, thruster/twin
1.051	Contingency	Assortment of various items, includes decorative artwork, cane chair, coffee table (LOT) (SAY)
	<b>Bedroom 3</b>	
1.052	Single Beds	Matching pair of single beds with linen and pillows
1.053	Cabinets	Bedside, 2 drawer, timber table, with marble top, together with a matching chest of 5 drawers

ASSET NO.	ASSET	DESCRIPTION
1.054	Contingency	Assortment of various items, includes decorative artwork, lamp and ornaments (LOT) (SAY)
	<b>Butlers Pantry</b>	
1.055	Contingency	Assortment of various items, includes cutlery, plates, cups, dry food goods, ornaments, kettle, toaster, knife set (LOT) (SAY)
1.056	Refrigerator	Samsung SRS676GDHLS, two-door fridge, ice maker, serial number W85443ADC00167M
	<b>Dining Room</b>	
1.057	Dining Table	10 Seater, solid timber, dining table with 12 matching timber and leather chairs
1.058	Contingency	Assortment of various items, includes floor lamp, table decorations and lamp shade (LOT) (SAY)
	<b>Entry</b>	
1.059	Foyer Table	Floating foyer table, with various decorative vases, lamps and artwork
1.060	Lounge	Timber, with white linen cushion, comes with 6 x small pillows
1.061	Artwork	Pair of decorative artworks in Perspex frames
1.062	Contingency	Assortment of various vases, rug and lamp (LOT) (SAY)
	<b>Front Entry</b>	
1.063	Contingency	Assortment of various vases and decorative pieces (LOT) (SAY)
1.064	Koi	A School of Koi fish, includes 2 x large Koi of collectable nature
	<b>Garage</b>	
1.065	Contingency	Assortment of various tools, includes water pressure cleaner, Makita drill and an empty toolbox (LOT) (SAY)
1.066	Refrigerator	Mitsubishi MR-L710EN-GBK-A2, double-door, serial number 001207
1.067	Water Ski Tube	Towable loose unit, water ski tube
1.068	Contingency	Assortment of various contents, includes hand tools, Christmas tree, motoring fluids and more various items (LOT) (SAY)
1.069	Water Ski	2 Pairs of water skis, one adult Blast 67 and one child's essential, also includes a 4 Life Jacket
	<b>Indoor Pool Area</b>	
1.070	Boxing Gear	A selection of various boxing training items plus a weighted medicine ball
1.071	Exercise Bike	Tomahawk THK Series, recumbent exercise bike

ASSET NO.	ASSET	DESCRIPTION
1.072	Timber Furniture	A selection of various timber-based hand made furniture, with cream cushions
1.073	Chairs	6 x Plastic stackable chairs
1.074	Contingency	Assortment of various items, includes vases, Hooka pipe, linen and wall clock (LOT) (SAY)
	<b>Kitchen</b>	
1.075	Stools	3 x Cane bar stools
1.076	Microwave	Samsung, stainless steel
1.077	Refrigerator	General electric company, PSA29VGXACSS, double-door, stainless steel, serial number LT409601
1.078	Television	Samsung UA55JS8000WXXY, 55", wall-mounted, serial number ONEPT3TGG900486L
1.079	Alcohol	Various unopened alcohol
1.080	Whisky	Johnny Walker, blue label whisky
1.081	Contingency	Assortment of various items, includes cutlery, dinnerware, wall clock, coffee machine and sandwich maker (LOT) (SAY)
	<b>Laundry</b>	
1.082	Front Load Washing Machine	Miele W2104, HoneyComb Care
1.083	Front Load Dryer	Miele T4453C, HoneyComb Care
1.084	Vacuum	Dyson Big Ball
1.085	Contingency	Assortment of various items, includes cleaning goods, containers, iron and ironing board (LOT) (SAY)
	<b>Laundry Hallway</b>	
1.086	Contingency	Assortment of various items, includes mat, decorative artwork and clothing air dryer rack (LOT) (SAY)
	<b>Living Room</b>	
1.087	Sideboard	Glass, topped with natural timber base, approx. 2,500mm in length
1.088	Lounge Seats	A pair of velvet retro style seats
1.089	Mirror	Large wall mirror, cube style
1.090	Vacuum	Dyson Blade, handheld vacuum
1.091	Coffee Table	Glass, topped with table top contents
1.092	Tribal Wear	A feather and shell Sepik tribal decoration
1.093	Artwork	Decorative wall-mounted artwork
1.094	Lounge Seats	L-shaped, Fabric, approx. 10 x seater, includes pillows and throws as seen in the images

ASSET NO.	ASSET	DESCRIPTION
1.095	Artwork	A set of three reprint photographic artworks
1.096	Plant	Large potted palm tree
1.097	Contingency	Assortment of various vases, includes light shades, decorations, books and small coffee tables (LOT) (SAY)
	<b>Lounge Room</b>	
1.098	Timber Decoration	Floor-mounted timber decoration artwork
1.099	Lounge	White fabric
1.100	Television	LG 65SM8100PTA, 65" flat screen, serial number 904INZY85421
1.101	Furniture	Pair of cane chairs, together with a set of three coffee tables
1.102	Game Station Console	Xbox One, with hand controller, serial number 010619181417
1.103	Electronic Equipment	Surround-sound unit, together with an Apple connection
1.104	Contingency	Assortment of various contents, includes board games, floor lamp, decorative artwork and decorations (LOT) (SAY)
	<b>Main Hallway</b>	
1.105	Natural Artwork	Timber slab, wall-mounted artworks, qty 5
1.106	Entry SideBoard	Large white entry foyer table
1.107	Decorations	Various decorative display pieces, located on entry foyer table
1.108	Mirrors	Pair of matching circular wall mirrors
1.109	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed
1.110	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed
1.111	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed
1.112	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed
1.113	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed
1.114	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed
1.115	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed
1.116	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed
1.117	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed
1.118	Artwork	Artist: Slim Aarons, digital print on Fine Arts paper, framed
1.119	Chair	Louis XVI style chair
1.120	Tribal Wear	Shell Sepik tribal style decoration
1.121	Tribal Wear	Sepik tribal style decoration
1.122	Artwork	Free-standing timber artwork decorations
1.123	Foyer Table	Floating foyer table with various decorative vases, lamps and artwork

ASSET NO.	ASSET	DESCRIPTION
1.124	Contingency	Assortment of various decorative display pieces, includes vases, books (LOT) (SAY)
	<b>Master Bedroom</b>	
1.125	Artwork	Decorative mixed media artwork
1.126	Mirror	Collection of four mirrors
1.127	Chairs	Matching pair of fabric lounges, with pillows and throw, includes a small coffee table
1.128	Safe	Small CMI safe, approx. 300 x 200mm
1.129	Mirror	Large wall-mounted gilt-edged mirror
1.130	Artworks	Pair of perspex cased artworks
1.131	Table and Baskets	Marble top hall table, together with 2 woven baskets
1.132	Wall Unit	2 Door, woven front, timber, wall-unit
1.133	Artwork	Pair of timber artworks, housed in perspex, framed
1.134	Hall Table	Marble top hall table, together with two woven stools
1.135	Side Tables	Pair of timber side tables with contents
1.136	Mirror	Large, wall-mounted, gilt-edged mirror
1.137	Chairs	Pair of cane recliner chairs, with cream pillows
1.138	Bed	Four poster, timber, bed with all linen and pillows
1.139	Mirror	Large, wall-mounted, gilt-edged mirror
1.140	Lounges	Matching pair of woven lounges, with pillows
1.141	Tribal Wear	Sepik tribal style decoration
1.142	Plant	Large pot, with large internal tree, plus additional smaller pot
1.143	Contingency	Assortment of various decorations, includes pots, vases, rugs and more (LOT) (SAY)
1.144	Bedside Tables	Pair of matching multi-piece bedside tables
1.145	Unit	Woven, front timber unit
1.146	Surround Sound System	Sonos Playbar
1.147	Television	LG 65SM8100PTA, 65", serial number 904INLV85232
1.148	Table	Small, circular, white
	<b>Media Room</b>	
1.149	Lounge	Corner L-shaped, fabric lounge
1.150	Chairs	Matching pair of beige, leather, armchairs
1.151	Stand	Timber stand, with two vases and a sculpture
1.152	Surround Sound System	Sonos Playbar

ASSET NO.	ASSET	DESCRIPTION
1.153	Stand	Samsung UA60F6400AMXXY, 60 " Flatscreen, serial number 07U13MMD801292E
1.154	Electronic Devices	Selection of various electronic devices, includes DVD player
1.155	Lamp	Top floor lamp, brass
1.156	Artwork	Pair of decorative framed artworks
1.157	Coffee Tables	3x marble top coffee tables, with contents on top
1.158	Contingency	Assortment of various decorations, includes pots, vases, rugs and more (LOT) (SAY)
	<b>Office</b>	
1.159	Chair	Eames-style office chair
1.160	Work Station	HP MFPM479fdw, comes with additional inks
1.161	Contingency	Assortment of various decorations, includes decorative items (LOT) (SAY)
	<b>Store Room 1</b>	
1.162	Contingency	Assortment of various decorations, includes decorative items (LOT) (SAY)
	<b>Store Room 2</b>	
1.163	Contingency	Assortment of various decorations, includes linen and unused soaps and washes (LOT) (SAY)
	<b>Study</b>	
1.164	Security Camera System	Comprising 4 x cameras (3 x cameras on the main house plus 1 x camera on the boat house), Dalhua digital recorder, monitor
1.165	Chairs	Pair of fabric covered arm chairs, with pillows
1.166	Assorted Furniture	Pair of foot rests, pair of matching small side tables
1.167	Floor Covering	Rattan-style, large floor rug
1.168	Artwork	Various decorative wall-hanging artworks, qty 2
1.169	Furniture	Black side table, together with a pair of small white stools
1.170	Contingency	Assortment of various reproduction antique style ornaments and decorations (LOT) (SAY)
	<b>Front Garden</b>	
1.171	Furniture	Outdoor garden furniture
1.172	Contingency	Assortment of various outdoor plants and pots (LOT) (SAY)
	<b>Rear Deck Area</b>	
1.173	Water Sport	Pair of sea kayaks in poor condition (filled with mud and water and unmovable upon inspection)



ASSET NO.	ASSET	DESCRIPTION
1.174	Contingency	Assortment of various outdoor furniture, includes round table with 4 cane seats (LOT) (SAY)
1.175	Contingency	Assortment of various outdoor plants, pots and a pair of seats (LOT) (SAY)
	<b>Side of House</b>	
1.176	Sea Kayak	P300, boreal design, sea kayak, yellow
1.177	Sea Kayak	Ultralight, boreal design, sea kayak, yellow/red
1.178	Water Sport	4 x Sea kayak paddles
1.179	Plant	Wall-mounted stag horn fern
1.180	Paddle Board	Smik-design, stand up paddle board, 10.4 feet in length, with cover and paddle
1.181	Surfboard	Softech design trainer surfboard, approx. 5 feet in length
1.182	Heater	Flametta, pair of external gas powered heaters, stainless steel
1.183	Furniture	Outdoor dining suite, with matching coffee table, pillows and decorations

**Schedule 2: Asset listing of 6 Bulkara Street, Wagstaffe NSW**

ASSET NO.	ASSET	DESCRIPTION
	<b>Boat House</b>	
1.001	Contingency	Various children's blowup water sport toys, lifejackets and beach baskets (LOT) (SAY)
1.002	Sun Beds	Timber, with cream cushions, qty 2 (NIL access available)
1.003	Pool Cleaner	Maytronics Dolphin X30
	<b>Main House Bathroom 2</b>	
1.004	Contingency	For various smalls, including: wall hangings, baskets and jars to walls and vanity (LOT) (SAY)
	<b>Main House Dining Area</b>	
1.005	Dining Setting	Timber, 8 seater table, approx. 2,000mm x 900mm, with 8 matching cane chairs (LOT)
1.006	Masks	Pair of antique African (likely West African) masks on custom metal stands, circa 1900
1.007	Vases	Set of three artificially aged clay African jugs
1.008	Contingency	For various decorative smalls, includes vases, plates, rug, pillows, baskets, cake stands etc (LOT) (SAY)
	<b>Main House Garage Area</b>	
1.009	Walk Behind Mower	2015 Masport President 550 series 16.5, 4 stroke petrol, serial number 7958849
1.010	Gold Club Sets	Golf clubs in bags, 1x Taylor-made burner, qty 2
1.011	Contingency	For assortment of various items, includes step ladders, various cleaning equipment, open cartons of alcohol, Ryobi air blower, children's play equipment and a vacuum (LOT) (SAY)
	<b>Main House Kitchen Area</b>	
1.012	Bar Stools	High back, timber with cream covers, qty 3
1.013	Microwave	Panasonic NN-ST780S, stainless steel
1.014	Coffee Grinder	Mazzer Mini, stainless steel, electronic with hopper
1.015	Coffee Machine	Rocket Giotto, with associated attachments and jugs
1.016	Contingency	For assortment of kitchen smalls, includes vases, soda stream, jute mat, cups, saucers, cutlery, saucepans, etc (LOT) (SAY)
	<b>Main House Laundry Area</b>	
1.017	Dryer	Electrolux EDV6051
1.018	Washing Machine	Fisher and Paykel, smart top loader
1.019	Contingency	Assortment of various decorative pieces plus an iron, ironing board and various other cleaning products (LOT) (SAY)

ASSET NO.	ASSET	DESCRIPTION
	<b>Main House Living Room 1</b>	
1.020	Floor Decoration	Antique, timber septic dug out timber bowl, together with 5 x timber handmade brushes
1.021	Artwork	Matching pair of original artworks, white, framed
1.022	Office Equipment	Pair of home office multi stations, both are HP Laser Jet models, comes with a scanner
1.023	Furniture	Cane chair, together with a cane pot plant holder with contents and a rattan floor rug
1.024	All-in-One Computer	Apple iMac A1419 with keyboard and mouse, serial number CO2QL0NDGQ18
1.025	Artwork	Series of 6 Adrian Lockhart (1947 - ), limited edition, hand signed, Etching and Aquatine, all housed in white timber frames
1.026	Arm Chairs	Matching pair of leather arm chairs with marble look, side table and various pillows, together with a lamp
1.027	Coffee Table	Timber, with assorted contents, together with rattan rug and tribal rug
1.028	Speaker	SONO surround sound speaker system, serial number 15105CAAFDB1525CC
1.029	Pots	Set of matching rattan timber pots
	<b>Main House Living Room 2</b>	
1.030	Artwork	Adrian Lockhart (1947 - ), original mixed media painting on paper, approx. 1,200 x 900mm, signed lower left, housed in a timber frame
1.031	Coffee Table	Timber, with contents
1.032	Chairs	Matching pair of cane arm chairs, together with a small timber coffee table and cream pillows
1.033	Coffee Table	Timber coffee table with contents
1.034	Table	Large central low height table with contents
1.035	Lounge	Cane lounge suite with cream cushions and covers, single seater and a 3 seater, qty 4
1.036	Rug	Large rattan floor rug
1.037	Artwork	Series of 12 Adrian Lockhart (1947 - ), limited edition, hand signed, Etching and Aquatine, all housed in white timber frames
1.038	Speaker	SONO surround sound speaker system, serial number 15105CAAFD8152786
1.039	Bar Fridge	Westinghouse WRM1300WC, single door

ASSET NO.	ASSET	DESCRIPTION
1.040	Contingency	Assortment of various items, includes decorations, rugs, decorative wall pieces and table decorations (LOT) (SAY)
	<b>Main House Master Bedroom</b>	
1.041	iPad Tablet	Apple iPad, excludes cords and cables
1.042	Bedroom Suite	Complete bedroom suite, includes double bed, matching pair of bedside tables, lamps, stool, rug and decorative side table items (LOT) (SAY)
1.043	Television	Samsung UA55JU6400WXYZ, 55", flat screen, serial number 0BNY3MJG400309F
1.044	Artwork	Well framed original artwork
1.045	Contingency	Assortment of various decorative wall features, table pieces, towels and alarm clock (LOT) (SAY)
1.046	Chairs	Matching pair of cane chairs with cream pillows, together with a small side table in the shape of a log
	<b>Main House Pantry</b>	
1.047	Refrigerator	Fisher and Paykel RF522ADUSX5, double door, stainless steel, serial number EKG844735
1.048	Contingency	Assortment of various decorative pieces, includes vases, tubs and plates (LOT) (SAY)
	<b>Main House Playroom</b>	
1.049	Television	Samsung UA60J6200AWXXY, 60", flat screen, serial number 0BTQ3MJG800258M
1.050	Table	Childs play table with 4 x stools, includes circular rattan rug
1.051	Play Equipment	Various children's play equipment, includes blackboard, dolls, bead and kitchen
1.052	Lounge	Cream lounge, with various pillows and cushions
1.053	Contingency	Assortment of various children's play equipment, includes board games and toys (LOT) (SAY)
	<b>Main House Upstairs Bathroom 3</b>	
1.054	Contingency	Assortment of various decorative vases and display pieces, together with cleaning products (LOT) (SAY)
	<b>Main House Upstairs Bathroom 4</b>	
1.055	Contingency	Assortment of various decorative vases and display pieces, together with cleaning products (LOT) (SAY)
	<b>Main House Upstairs Bathroom 5</b>	

ASSET NO.	ASSET	DESCRIPTION
1.056	Contingency	Assortment of various decorative vases and display pieces, together with cleaning products (LOT) (SAY)
	<b>Main House Upstairs Bedroom 2</b>	
1.057	Bedroom Suite	Double bed with linen and pillows, together with matching side tables and hanging lamp shades, includes a non-matching pair of stools (LOT) (SAY)
1.058	Contingency	Assortment of various decorative vases and display pieces, together with cleaning products (LOT) (SAY)
	<b>Main House Upstairs Bedroom 3</b>	
1.059	Bedroom Suite	Double bed with linen and pillows, together with matching side tables and hanging lamp shades, includes a stool (LOT) (SAY)
1.060	Contingency	Assortment of various decorative vases and display pieces, together with cream pillows and lounge base (LOT) (SAY)
	<b>Main House Upstairs Bedroom 4</b>	
1.061	Bedroom Suite	Double bed with linen and pillows, together with matching side tables and hanging lamp shades (LOT) (SAY)
1.062	Television	Samsung UA50MU6100W, 50", flat screen, serial number 03A93NGJ400455A
1.063	Contingency	Assortment of various decorative wall display pieces, together with cream pillows and lounge base (LOT) (SAY)
	<b>Main House Upstairs Bunk Room</b>	
1.064	Cot	Childs cream colored timber cot, with linen
1.065	Mattresses	Single bed, comes with linen and pillows, qty 4
1.066	Contingency	Assortment of various pieces, includes decorative artwork, single armchair and various cream pillows, together with a large cream lounge cushion base (LOT) (SAY)
	<b>Main House Upstairs Comms Room</b>	
1.067	Server Rack	Steel, IT rack, excludes contents
1.068	Switch	Luxul XGS-10245, ethernet switch
1.069	Television	Samsung S22E310, 21.5", flat screen
1.070	Signal Interface	Livezi Chatterbox, signal interface connectors, qty 8
1.071	Wireless Controller	XWC-1000 wireless controller
1.072	Managed Switch	Luxul AMS2616P

ASSET NO.	ASSET	DESCRIPTION
1.073	Sound System	Sonos Multi-Room ZonePlayer music system, qty 7
1.074	HDMI Matrix	Matrix Bluestream HDCP2.2, with audio breakout
1.075	Contingency	Assortment of various electrical surge protectors and power cords (LOT) (SAY)
	<b>Main House Staircase</b>	
1.076	Contingency	Assortment of various decorative wall pieces (LOT) (SAY)
	<b>Front Yard</b>	
1.077	Contingency	Assortment of various potted plants (LOT) (SAY)
	<b>Back Yard</b>	
1.078	Trampoline	Circular trampoline with safety net
1.079	Table Suite	Outdoor dining suite, includes 2 x 2 seater, timber lounges, with cream pillows, 2 x basic design armchairs and a cane side table
1.080	Coffee Table	Timber, with decorative contents, comes with a set of decorative timber garden Tools
1.081	Rug	Rattan floor rug
1.082	Table Suite	6 Seater, outdoor dining table
1.083	Contingency	Assortment of various garden ornaments, potted plants (LOT) (SAY)
1.084	Contingency	Assortment of BBQ, various utensils and cooking items (LOT) (SAY)
1.085	Umbrella	Outdoor type umbrella
1.086	Recliner Chairs	Pair of outdoor recliner chairs with small side tables

5 Bulkara Street Pty Ltd & 6 Bulkara Street Pty Ltd  
(Both Receivers and Managers Appointed)  
List of potential personal effects

List of potential personal effects

Items

Photo

Two sets of golf clubs



Kids scooter



Toys



List of potential personal effects

Items

Photo

Kids dual sided easel



photocopier



Printer



Apple iMac all-in-one computer





List of potential personal effects

Items

Photo

Skateboarding



iPad



Jet-skis & trailers



Miscellaneous items



List of potential personal effects

Items

Photo

BBQ



Miscellaneous items



Shoes



Shoes  
Safe



Clothing



List of potential personal effects

Items

Photo

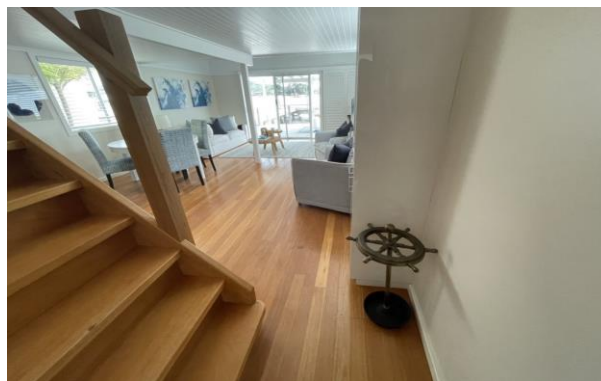
Perfume  
Clothing



Hair dryer



Exercise bike



List of potential personal effects

Items

Photo

Kitchen appliances



Cushions



Photocopier



Towels





List of potential personal effects

Items

Photo

Cushions



TV



Cushions



Shoes



List of potential personal effects

Items

Photo

fishing rods



Cushions



Kettle  
Coffee machine





# BUSINESS EXTRA STATEMENT

STATEMENT NUMBER 69

28 FEBRUARY 2022 TO 30 MARCH 2022

THE MANAGER  
65 NELSON STREET ENTERPRISES P/L  
44 HOWITT RD  
CAULFIELD NORTH VIC 3161

## WELCOME TO YOUR ANZ ACCOUNT AT A GLANCE

### Account Details

65 NELSON STREET ENTERPRISES PTY LTD  
ATF 65 NELSON STREET ENTERPRISES TRUST

### Branch Number (BSB)

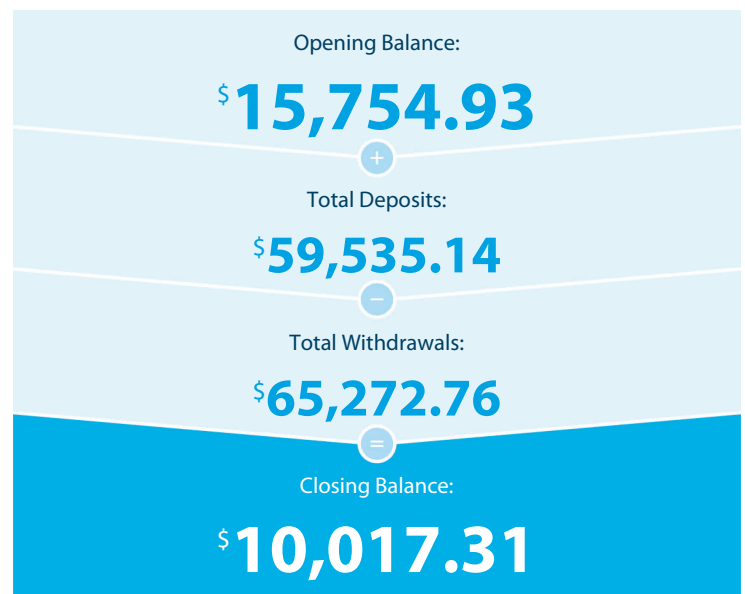
013-214

### Account Number

4609-98561

### Account Descriptor

BUSINESS EXTRA



## NEED TO GET IN TOUCH?



**ANZ Internet Banking**  
anz.com

OR



**Enquiries:** 13 13 14  
**Lost/Stolen Cards:** 1800 033 844

# BUSINESS EXTRA STATEMENT

Account Number 4609-98561

## Transaction Details

Please retain this statement for taxation purposes

Date	Transaction Details	Withdrawals (\$)	Deposits (\$)	Balance (\$)
<b>2022</b>				
<b>28 FEB</b>	<b>OPENING BALANCE</b>			<b>15,754.93</b>
01 MAR	<b>POS3221001 ANZ EFTPOS</b>		714.80	16,469.73
01 MAR	<b>TRANSFER</b> FROM AMEX GR 29.80 8030689681		29.80	16,499.53
01 MAR	<b>TRANSFER</b> FROM UBER BV PARTNERPMT, 21 1289		3,080.14	19,579.67
01 MAR	<b>PAYMENT</b> TO ANZ BANK MERCHANT FEE	342.43		19,237.24
02 MAR	<b>POS3221001 ANZ EFTPOS</b>		931.20	20,168.44
02 MAR	<b>TRANSFER</b> FROM AMEX GR 8.00 8030689681		8.00	20,176.44
02 MAR	<b>TRANSFER</b> FROM DELIVEROO AUSTRALIA 1050AU1CSDE		438.34	20,614.78
03 MAR	<b>POS3221001 ANZ EFTPOS</b>		1,236.40	21,851.18
03 MAR	<b>TRANSFER</b> FROM AMEX GR 23.80 8030689681		23.80	21,874.98
04 MAR	<b>POS3221001 ANZ EFTPOS</b>		712.10	22,587.08
04 MAR	<b>TRANSFER</b> FROM AMEX GR 64.50 8030689681		64.50	22,651.58
07 MAR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 05 MAR 2022		1,271.90	23,923.48
07 MAR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 06 MAR 2022		2,789.20	26,712.68
07 MAR	<b>POS3221001 ANZ EFTPOS</b>		3,168.00	29,880.68
07 MAR	<b>TRANSFER</b> FROM AMEX GR 4.00 8030689681		4.00	29,884.68
07 MAR	<b>TRANSFER</b> FROM AMEX GR 44.20 8030689681		44.20	29,928.88
07 MAR	<b>TRANSFER</b> FROM AMEX GR 82.40 8030689681		82.40	30,011.28
08 MAR	<b>WAIVE: OUTWARD DISHONOUR FEE</b>		37.70	30,048.98
08 MAR	<b>POS3221001 ANZ EFTPOS</b>		747.50	30,796.48
08 MAR	<b>TRANSFER</b> FROM AMEX GR 70.60 8030689681		70.60	30,867.08
08 MAR	<b>TRANSFER</b> FROM UBER BV PARTNERPMT, 21 1289		3,043.56	33,910.64
08 MAR	<b>DISHONOUR FEE</b>	37.70		33,872.94
09 MAR	<b>POS3221001 ANZ EFTPOS</b>		601.20	34,474.14
09 MAR	<b>TRANSFER</b> FROM MENULOG PTY LTD MENULOG:11046214		43.57	34,517.71
09 MAR	<b>TRANSFER</b> FROM AMEX GR 115.10 8030689681		115.10	34,632.81
09 MAR	<b>TRANSFER</b> FROM DELIVEROO AUSTRALIA 1050AU1D8R3		282.47	34,915.28
09 MAR	<b>ANZ MOBILE BANKING PAYMENT 021969</b> TO [REDACTED]	25.30		34,889.98
	<b>TOTALS AT END OF PAGE</b>	<b>\$405.43</b>	<b>\$19,540.48</b>	



# BUSINESS EXTRA STATEMENT

Account Number 4609-98561

Date	Transaction Details	Withdrawals (\$)	Deposits (\$)	Balance (\$)
09 MAR	ANZ MOBILE BANKING PAYMENT 022997 TO ██████████	175.00		34,714.98
09 MAR	ANZ MOBILE BANKING PAYMENT 019473 TO ██████████	220.00		34,494.98
09 MAR	ANZ MOBILE BANKING PAYMENT 021201 TO ██████████	341.00		34,153.98
09 MAR	ANZ MOBILE BANKING PAYMENT 022527 TO ██████████	500.00		33,653.98
09 MAR	ANZ MOBILE BANKING PAYMENT 024151 TO ██████████	557.30		33,096.68
09 MAR	ANZ MOBILE BANKING PAYMENT 023570 TO ██████████	712.50		32,384.18
09 MAR	ANZ MOBILE BANKING PAYMENT 019016 TO ██████████	728.00		31,656.18
09 MAR	ANZ MOBILE BANKING PAYMENT 018587 TO ██████████	871.70		30,784.48
09 MAR	ANZ MOBILE BANKING PAYMENT 024718 TO ██████████	899.75		29,884.73
10 MAR	POS3221001 ANZ EFTPOS		905.50	30,790.23
11 MAR	POS3221001 ANZ EFTPOS		1,108.30	31,898.53
11 MAR	TRANSFER FROM AMEX GR 25.60 8030689681		8.63	31,907.16
11 MAR	REVERSAL OF CREDIT ENTRY	6,561.45		25,345.71
11 MAR	PAYMENT TO ANZ BUSINESS CARD	19,084.27		6,261.44
14 MAR	POS3221001 ANZ EFTPOS		1,363.40	7,624.84
14 MAR	POS3221001 ANZ EFTPOS EFFECTIVE DATE 12 MAR 2022		1,573.40	9,198.24
14 MAR	POS3221001 ANZ EFTPOS EFFECTIVE DATE 13 MAR 2022		2,753.80	11,952.04
14 MAR	TRANSFER FROM AMEX GR 30.00 8030689681		30.00	11,982.04
14 MAR	TRANSFER FROM AMEX GR 35.30 8030689681		35.30	12,017.34
14 MAR	TRANSFER FROM AMEX GR 114.50 8030689681		114.50	12,131.84
15 MAR	POS3221001 ANZ EFTPOS		1,631.40	13,763.24
15 MAR	TRANSFER FROM AMEX GR 34.70 8030689681		34.70	13,797.94
15 MAR	TRANSFER FROM UBER BV PARTNERPMT, 211289		2,752.85	16,550.79
16 MAR	POS3221001 ANZ EFTPOS		784.70	17,335.49
16 MAR	TRANSFER FROM AMEX GR 16.00 8030689681		16.00	17,351.49
16 MAR	TRANSFER FROM DELIVEROO AUSTRALIA 1050AU1DNCL		198.74	17,550.23
17 MAR	POS3221001 ANZ EFTPOS		783.90	18,334.13
17 MAR	TRANSFER FROM AMEX GR 8.60 8030689681		8.60	18,342.73
18 MAR	POS3221001 ANZ EFTPOS		1,188.00	19,530.73
<b>TOTALS AT END OF PAGE</b>		<b>\$30,650.97</b>	<b>\$15,291.72</b>	

# BUSINESS EXTRA STATEMENT

Account Number 4609-98561

Date	Transaction Details	Withdrawals (\$)	Deposits (\$)	Balance (\$)
18 MAR	<b>TRANSFER</b> FROM AMEX GR 73.70 8030689681		73.70	19,604.43
21 MAR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 19 MAR 2022		976.60	20,581.03
21 MAR	<b>POS3221001 ANZ EFTPOS</b>		1,799.80	22,380.83
21 MAR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 20 MAR 2022		2,746.60	25,127.43
21 MAR	<b>TRANSFER</b> FROM AMEX GR 4.00 8030689681		4.00	25,131.43
21 MAR	<b>TRANSFER</b> FROM AMEX GR 20.00 8030689681		20.00	25,151.43
21 MAR	<b>TRANSFER</b> FROM AMEX GR 80.70 8030689681		80.70	25,232.13
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 379321</b> TO [REDACTED]	172.50		25,059.63
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 373684</b> TO [REDACTED]	172.50		24,887.13
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 372009</b> TO [REDACTED]	311.30		24,575.83
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 376772</b> TO [REDACTED]	334.40		24,241.43
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 372561</b> TO [REDACTED]	343.20		23,898.23
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 378364</b> TO [REDACTED]	373.20		23,525.03
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 381116</b> TO [REDACTED]	471.00		23,054.03
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 374401</b> TO [REDACTED]	473.30		22,580.73
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 371567</b> TO [REDACTED]	635.20		21,945.53
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 376208</b> TO [REDACTED]	702.00		21,243.53
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 380212</b> TO [REDACTED]	705.30		20,538.23
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 374881</b> TO [REDACTED]	763.50		19,774.73
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 377432</b> TO [REDACTED]	871.70		18,903.03
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 373195</b> TO [REDACTED]	871.70		18,031.33
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 382683</b> TO [REDACTED]	899.75		17,131.58
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 375564</b> TO [REDACTED]	899.75		16,231.83
21 MAR	<b>ANZ MOBILE BANKING PAYMENT 384541</b> TO COTTAGE CHEESE FARM	1,019.61		15,212.22
22 MAR	<b>POS3221001 ANZ EFTPOS</b>		1,012.50	16,224.72
22 MAR	<b>TRANSFER</b> FROM AMEX GR 12.60 8030689681		12.60	16,237.32
<b>TOTALS AT END OF PAGE</b>		<b>\$10,019.91</b>	<b>\$6,726.50</b>	

# BUSINESS EXTRA STATEMENT

Account Number 4609-98561

Date	Transaction Details	Withdrawals (\$)	Deposits (\$)	Balance (\$)
22 MAR	<b>TRANSFER</b> FROM UBER BV PARTNERPMT, 211289		3,499.57	19,736.89
23 MAR	<b>POS3221001 ANZ EFTPOS</b>		933.70	20,670.59
23 MAR	<b>TRANSFER</b> FROM MENULOG PTY LTD MENULOG:11046214		40.23	20,710.82
23 MAR	<b>TRANSFER</b> FROM AMEX GR 29.00 8030689681		29.00	20,739.82
23 MAR	<b>TRANSFER</b> FROM DELIVEROO AUSTRALIA 1050AU1E5L9		362.58	21,102.40
24 MAR	<b>POS3221001 ANZ EFTPOS</b>		868.45	21,970.85
24 MAR	<b>TRANSFER</b> FROM AMEX GR 4.00 8030689681		4.00	21,974.85
25 MAR	<b>POS3221001 ANZ EFTPOS</b>		995.20	22,970.05
25 MAR	<b>TRANSFER</b> FROM AMEX GR 40.00 8030689681		40.00	23,010.05
28 MAR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 26 MAR 2022		968.20	23,978.25
28 MAR	<b>POS3221001 ANZ EFTPOS</b>		2,565.40	26,543.65
28 MAR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 27 MAR 2022		2,715.70	29,259.35
28 MAR	<b>TRANSFER</b> FROM AMEX GR 4.00 8030689681		4.00	29,263.35
28 MAR	<b>TRANSFER</b> FROM AMEX GR 8.60 8030689681		8.60	29,271.95
28 MAR	<b>TRANSFER</b> FROM AMEX GR 45.60 8030689681		45.60	29,317.55
28 MAR	<b>ANZ MOBILE BANKING PAYMENT 541123</b> TO [REDACTED]	231.00		29,086.55
28 MAR	<b>ANZ MOBILE BANKING PAYMENT 542174</b> TO MELBOURNE FRESH CENTRE	259.57		28,826.98
28 MAR	<b>ANZ MOBILE BANKING PAYMENT 540646</b> TO [REDACTED]	268.75		28,558.23
28 MAR	<b>ANZ MOBILE BANKING PAYMENT 543803</b> TO [REDACTED]	432.00		28,126.23
28 MAR	<b>ANZ MOBILE BANKING PAYMENT 540167</b> TO [REDACTED]	480.10		27,646.13
28 MAR	<b>ANZ MOBILE BANKING PAYMENT 539182</b> TO [REDACTED]	637.50		27,008.63
28 MAR	<b>ANZ MOBILE BANKING PAYMENT 539700</b> TO [REDACTED]	763.50		26,245.13
28 MAR	<b>ANZ MOBILE BANKING PAYMENT 543367</b> TO [REDACTED]	871.70		25,373.43
28 MAR	<b>ANZ MOBILE BANKING PAYMENT 542658</b> TO [REDACTED]	899.75		24,473.68
29 MAR	<b>POS3221001 ANZ EFTPOS</b>		943.50	25,417.18
29 MAR	<b>TRANSFER</b> FROM AMEX GR 9.00 8030689681		9.00	25,426.18
29 MAR	<b>TRANSFER</b> FROM UBER BV PARTNERPMT, 211289		2,460.30	27,886.48
<b>TOTALS AT END OF PAGE</b>		<b>\$4,843.87</b>	<b>\$16,493.03</b>	

# BUSINESS EXTRA STATEMENT

Account Number 4609-98561

Date	Transaction Details	Withdrawals (\$)	Deposits (\$)	Balance (\$)
29 MAR	<b>ANZ INTERNET BANKING BPAY</b> DEFT PAYMENTS {548352} EFFECTIVE DATE 28 MAR 2022	19,314.88		8,571.60
30 MAR	<b>WAIVE: OUTWARD DISHONOUR FEE</b>		37.70	8,609.30
30 MAR	<b>POS3221001 ANZ EFTPOS</b>		1,154.60	9,763.90
30 MAR	<b>TRANSFER</b> FROM AMEX GR 69.60 8030689681		69.60	9,833.50
30 MAR	<b>TRANSFER</b> FROM DELIVEROO AUSTRA 1050AU1EKOW		221.51	10,055.01
30 MAR	<b>DISHONOUR FEE</b>	37.70		10,017.31
	<b>TOTALS AT END OF PAGE</b>	<b>\$19,352.58</b>	<b>\$1,483.41</b>	
	<b>TOTALS AT END OF PERIOD</b>	<b>\$65,272.76</b>	<b>\$59,535.14</b>	<b>\$10,017.31</b>

## IMPORTANT INFORMATION

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- Call us:**
- General enquiries **13 13 14**
  - If you're overseas **+61 3 9683 9999**
  - ANZ Complaint Resolution Team on **1800 805 154**
  - If you're deaf, hard of hearing and/or have a speech impairment, call **133 677** or visit the **National Relay Service** at:  
<https://nrschat.nrscall.gov.au/nrs/internetrelay>

- Write to us:** ANZ Complaint Resolution Team  
Locked Bag 4050,  
South Melbourne VIC 3205  
or **ANZ online complaints form:**  
<https://www.anz.com.au/support/contact-us/compliments-suggestions-complaints/feedback/>

- Visit us:** At your nearest ANZ branch.  
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- Call:** **1800 931 678** (free call within Australia),  
or **+61 1800 931 678** (International)
- Write to:** **Australian Financial Complaints Authority Limited**  
GPO Box 3,  
Melbourne VIC 3001
- Online:** Email: [info@afca.org.au](mailto:info@afca.org.au)  
Web: [www.afca.org.au](http://www.afca.org.au)



# BUSINESS EXTRA STATEMENT

STATEMENT NUMBER 70  
30 MARCH 2022 TO 29 APRIL 2022

THE MANAGER  
65 NELSON STREET ENTERPRISES P/L  
44 HOWITT RD  
CAULFIELD NORTH VIC 3161

## WELCOME TO YOUR ANZ ACCOUNT AT A GLANCE

### Account Details

65 NELSON STREET ENTERPRISES PTY LTD  
ATF 65 NELSON STREET ENTERPRISES TRUST

### Branch Number (BSB)

013-214

### Account Number

4609-98561

### Account Descriptor

BUSINESS EXTRA



## NEED TO GET IN TOUCH?



**ANZ Internet Banking**  
anz.com

OR



**Enquiries:** 13 13 14  
**Lost/Stolen Cards:** 1800 033 844

# BUSINESS EXTRA STATEMENT

Account Number 4609-98561

## Transaction Details

Please retain this statement for taxation purposes

Date	Transaction Details	Withdrawals (\$)	Deposits (\$)	Balance (\$)
<b>2022</b>				
<b>30 MAR</b>	<b>OPENING BALANCE</b>			<b>10,017.31</b>
31 MAR	<b>POS3221001 ANZ EFTPOS</b>		912.40	10,929.71
01 APR	<b>POS3221001 ANZ EFTPOS</b>		1,220.00	12,149.71
04 APR	<b>WAIVE: OUTWARD DISHONOUR FEE</b>		37.70	12,187.41
04 APR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 02 APR 2022		925.15	13,112.56
04 APR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 03 APR 2022		2,782.50	15,895.06
04 APR	<b>POS3221001 ANZ EFTPOS</b>		2,961.00	18,856.06
04 APR	<b>TRANSFER</b> FROM AMEX GR 22.00 8030689681		22.00	18,878.06
04 APR	<b>TRANSFER</b> FROM AMEX GR 24.00 8030689681		24.00	18,902.06
04 APR	<b>TRANSFER</b> FROM AMEX GR 55.65 8030689681		55.65	18,957.71
04 APR	<b>DISHONOUR FEE</b>	37.70		18,920.01
05 APR	<b>POS3221001 ANZ EFTPOS</b>		679.20	19,599.21
05 APR	<b>TRANSFER</b> FROM AMEX GR 4.00 8030689681		4.00	19,603.21
05 APR	<b>TRANSFER</b> FROM UBER BV PARTNERPMT, 211289		2,944.26	22,547.47
05 APR	<b>ANZ M-BANKING FUNDS TFER</b> TRANSFER 101995 TO 4564807013323835 EFFECTIVE DATE 04 APR 2022	500.00		22,047.47
06 APR	<b>POS3221001 ANZ EFTPOS</b>		922.10	22,969.57
06 APR	<b>TRANSFER</b> FROM MENULOG PTY LTD MENULOG:11046214		39.36	23,008.93
06 APR	<b>TRANSFER</b> FROM AMEX GR 63.00 8030689681		63.00	23,071.93
06 APR	<b>TRANSFER</b> FROM DELIVEROO AUSTRALIA 1050AU1F1JK		429.28	23,501.21
07 APR	<b>POS3221001 ANZ EFTPOS</b>		917.60	24,418.81
07 APR	<b>TRANSFER</b> FROM AMEX GR 22.00 8030689681		22.00	24,440.81
08 APR	<b>WAIVE: OUTWARD DISHONOUR FEE</b>		37.70	24,478.51
08 APR	<b>POS3221001 ANZ EFTPOS</b>		1,116.50	25,595.01
08 APR	<b>TRANSFER</b> FROM AMEX GR 20.00 8030689681		20.00	25,615.01
08 APR	<b>DISHONOUR FEE</b>	37.70		25,577.31
11 APR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 09 APR 2022		1,274.50	26,851.81
11 APR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 10 APR 2022		2,576.70	29,428.51
11 APR	<b>POS3221001 ANZ EFTPOS</b>		2,633.35	32,061.86
11 APR	<b>TRANSFER</b> FROM AMEX GR 34.00 8030689681		34.00	32,095.86
	<b>TOTALS AT END OF PAGE</b>	<b>\$575.40</b>	<b>\$22,653.95</b>	

# BUSINESS EXTRA STATEMENT

Account Number 4609-98561

Date	Transaction Details	Withdrawals (\$)	Deposits (\$)	Balance (\$)
11 APR	<b>TRANSFER</b> FROM AMEX GR 47.60 8030689681		47.60	32,143.46
12 APR	<b>POS3221001 ANZ EFTPOS</b>		992.20	33,135.66
12 APR	<b>TRANSFER</b> FROM AMEX GR 220.50 8030689681		220.50	33,356.16
12 APR	<b>TRANSFER</b> FROM UBER BV PARTNERPMT, 211289		2,708.75	36,064.91
12 APR	<b>ANZ MOBILE BANKING PAYMENT 332286</b> TO [REDACTED]	165.00		35,899.91
12 APR	<b>ANZ MOBILE BANKING PAYMENT 336114</b> TO [REDACTED]	275.00		35,624.91
12 APR	<b>ANZ MOBILE BANKING PAYMENT 327824</b> TO [REDACTED]	297.00		35,327.91
12 APR	<b>ANZ MOBILE BANKING PAYMENT 329428</b> TO [REDACTED]	302.50		35,025.41
12 APR	<b>ANZ MOBILE BANKING PAYMENT 336558</b> TO [REDACTED]	343.75		34,681.66
12 APR	<b>ANZ MOBILE BANKING PAYMENT 335247</b> TO [REDACTED]	346.50		34,335.16
12 APR	<b>ANZ MOBILE BANKING PAYMENT 331155</b> TO [REDACTED]	467.00		33,868.16
12 APR	<b>ANZ MOBILE BANKING PAYMENT 330721</b> TO [REDACTED]	467.00		33,401.16
12 APR	<b>ANZ MOBILE BANKING PAYMENT 335662</b> TO [REDACTED]	487.00		32,914.16
12 APR	<b>ANZ MOBILE BANKING PAYMENT 333670</b> TO [REDACTED]	661.30		32,252.86
12 APR	<b>ANZ MOBILE BANKING PAYMENT 334053</b> TO [REDACTED]	728.00		31,524.86
12 APR	<b>ANZ MOBILE BANKING PAYMENT 334822</b> TO [REDACTED]	756.00		30,768.86
12 APR	<b>ANZ MOBILE BANKING PAYMENT 334495</b> TO [REDACTED]	756.00		30,012.86
12 APR	<b>ANZ MOBILE BANKING PAYMENT 331922</b> TO [REDACTED]	871.70		29,141.16
12 APR	<b>ANZ MOBILE BANKING PAYMENT 331557</b> TO [REDACTED]	871.70		28,269.46
12 APR	<b>ANZ MOBILE BANKING PAYMENT 330336</b> TO [REDACTED]	899.75		27,369.71
12 APR	<b>ANZ MOBILE BANKING PAYMENT 329888</b> TO [REDACTED]	899.75		26,469.96
12 APR	<b>ANZ MOBILE BANKING PAYMENT 339292</b> TO COTTAGE CHEESE FARM	1,144.35		25,325.61
13 APR	<b>POS3221001 ANZ EFTPOS</b>		1,450.50	26,776.11
13 APR	<b>TRANSFER</b> FROM MENULOG PTY LTD MENULOG:11046214		61.33	26,837.44
13 APR	<b>TRANSFER</b> FROM DELIVEROO AUSTRALIA 1050AU1FFRO		407.37	27,244.81
14 APR	<b>POS3221001 ANZ EFTPOS</b>		1,045.70	28,290.51
	<b>TOTALS AT END OF PAGE</b>	<b>\$10,739.30</b>	<b>\$6,933.95</b>	

# BUSINESS EXTRA STATEMENT

Account Number 4609-98561

Date	Transaction Details	Withdrawals (\$)	Deposits (\$)	Balance (\$)
14 APR	<b>TRANSFER</b> FROM AMEX GR 25.20 8030689681		6.90	28,297.41
19 APR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 15 APR 2022		1,363.40	29,660.81
19 APR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 18 APR 2022		2,042.70	31,703.51
19 APR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 17 APR 2022		2,474.90	34,178.41
19 APR	<b>POS3221001 ANZ EFTPOS</b>		2,481.20	36,659.61
19 APR	<b>TRANSFER</b> FROM AMEX GR 4.00 8030689681		4.00	36,663.61
19 APR	<b>TRANSFER</b> FROM AMEX GR 26.00 8030689681		26.00	36,689.61
19 APR	<b>TRANSFER</b> FROM AMEX GR 103.80 8030689681		103.80	36,793.41
19 APR	<b>TRANSFER</b> FROM AMEX GR 130.70 8030689681		130.70	36,924.11
19 APR	<b>TRANSFER</b> FROM UBER BV PARTNERPMT, 211289		1,915.47	38,839.58
19 APR	<b>ANZ MOBILE BANKING PAYMENT 212000</b> TO [REDACTED]	66.00		38,773.58
19 APR	<b>ANZ MOBILE BANKING PAYMENT 213877</b> TO [REDACTED]	409.30		38,364.28
19 APR	<b>ANZ MOBILE BANKING PAYMENT 210878</b> TO [REDACTED]	728.00		37,636.28
19 APR	<b>ANZ MOBILE BANKING PAYMENT 213136</b> TO [REDACTED]	756.00		36,880.28
19 APR	<b>ANZ MOBILE BANKING PAYMENT 212507</b> TO [REDACTED]	806.00		36,074.28
19 APR	<b>ANZ MOBILE BANKING PAYMENT 211537</b> TO [REDACTED]	871.70		35,202.58
19 APR	<b>ANZ MOBILE BANKING PAYMENT 214563</b> TO [REDACTED]	899.75		34,302.83
20 APR	<b>POS3221001 ANZ EFTPOS</b>		965.30	35,268.13
20 APR	<b>TRANSFER</b> FROM MENULOG PTY LTD MENULOG:11046214		68.15	35,336.28
20 APR	<b>TRANSFER</b> FROM AMEX GR 4.00 8030689681		4.00	35,340.28
20 APR	<b>TRANSFER</b> FROM DELIVEROO AUSTRALIA 1050AU1FYRX		177.20	35,517.48
21 APR	<b>POS3221001 ANZ EFTPOS</b>		850.50	36,367.98
21 APR	<b>ANZ MOBILE BANKING PAYMENT 648906</b> TO [REDACTED]	533.00		35,834.98
21 APR	<b>ANZ MOBILE BANKING PAYMENT 649920</b> TO [REDACTED]	676.00		35,158.98
21 APR	<b>ANZ MOBILE BANKING PAYMENT 652202</b> TO [REDACTED]	756.00		34,402.98
21 APR	<b>ANZ MOBILE BANKING PAYMENT 650977</b> TO [REDACTED]	806.00		33,596.98
<b>TOTALS AT END OF PAGE</b>		<b>\$7,307.75</b>	<b>\$12,614.22</b>	



# BUSINESS EXTRA STATEMENT

Account Number 4609-98561

Date	Transaction Details	Withdrawals (\$)	Deposits (\$)	Balance (\$)
21 APR	<b>ANZ MOBILE BANKING PAYMENT 651489</b> TO [REDACTED]	871.70		32,725.28
21 APR	<b>ANZ MOBILE BANKING PAYMENT 652916</b> TO [REDACTED]	899.75		31,825.53
22 APR	<b>POS3221001 ANZ EFTPOS</b>		1,033.40	32,858.93
26 APR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 23 APR 2022		1,316.80	34,175.73
26 APR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 24 APR 2022		2,015.60	36,191.33
26 APR	<b>POS3221001 ANZ EFTPOS</b> EFFECTIVE DATE 25 APR 2022		2,146.90	38,338.23
26 APR	<b>POS3221001 ANZ EFTPOS</b>		2,988.90	41,327.13
26 APR	<b>TRANSFER</b> FROM AMEX GR 4.00 8030689681		4.00	41,331.13
26 APR	<b>TRANSFER</b> FROM AMEX GR 12.80 8030689681		12.80	41,343.93
26 APR	<b>TRANSFER</b> FROM AMEX GR 98.60 8030689681		98.60	41,442.53
26 APR	<b>TRANSFER</b> FROM UBER BV PARTNERPMT, 211289		2,936.23	44,378.76
27 APR	<b>TRANSFER</b> FROM AMEX GR 53.50 8030689681		53.50	44,432.26
27 APR	<b>TRANSFER</b> FROM DELIVEROO AUSTRALIA 1050AU1GDHV		175.33	44,607.59
27 APR	<b>ANZ M-BANKING FUNDS TFER</b> TRANSFER 159511 TO 4564807013296270	34,830.32		9,777.27
28 APR	<b>POS3221001 ANZ EFTPOS</b>		816.20	10,593.47
29 APR	<b>POS3221001 ANZ EFTPOS</b>		723.50	11,316.97
29 APR	<b>TRANSFER</b> FROM AMEX GR 14.00 8030689681		14.00	11,330.97
	<b>TOTALS AT END OF PAGE</b>	<b>\$36,601.77</b>	<b>\$14,335.76</b>	
	<b>TOTALS AT END OF PERIOD</b>	<b>\$55,224.22</b>	<b>\$56,537.88</b>	<b>\$11,330.97</b>

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- us:**
- If you're overseas **+61 3 9683 9999**
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  - If you're deaf, hard of hearing and/or have a speech impairment, call **133 677** or visit the **National Relay Service** at:  
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**Write** ANZ Complaint Resolution Team  
**to us:** Locked Bag 4050,  
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**Online:** Email: [info@afca.org.au](mailto:info@afca.org.au)  
Web: [www.afca.org.au](http://www.afca.org.au)

**Write Australian Financial Complaints Authority Limited**  
**to:** GPO Box 3,  
Melbourne VIC 3001

8 July 2022

4 Cowslip Street Violet  
Town Pty Ltd  
ACN. 639 872 352  
9 Main Street Derrinallum  
Pty Ltd  
ACN. 639 872 736  
275 High Street Golden  
Square Pty Ltd  
ACN. 639 870 545  
123 High Street Taradale  
Pty Ltd  
ACN. 639 872 512  
Level 5, 141 Walker Street,  
North Sydney  
NSW 2060

5 Bulkara Pty Ltd  
(in Liquidation)  
(Receivers and Managers  
Appointed)  
ACN 630 982 160  
c/- McGrathNicol  
Level 12, 20 Martin Place  
Sydney NSW 2000  
  
Chris Prestwich  
Allens  
Deutsche Bank Place  
Corner of Hunter and Philip  
Street  
Sydney NSW 2000

Vincenzo Frank Tesoriero  
44 Howitt Road  
Caulfield North VIC 3186  
c/ Madgwicks  
Level 6, 140 William Street  
Melbourne VIC 3000

**and by email:**  
[vinkath2000@yahoo.com.au](mailto:vinkath2000@yahoo.com.au)

Dear Sir/Madam

**Deed of Loan 1, Corporate Guarantee 1 and Personal Guarantee 1  
Letter of Demand**

We refer to our letter dated 30 November 2021 (attached) and:

- (a) the Deed of Loan between Aksara Holdings Pty Ltd (**Lender**), 4 Cowslip Street Violet Town Pty Ltd, 9 Main Street Derrinallum Pty Ltd, 275 High Street Golden Square Pty Ltd and 123 High Street Taradale Pty Ltd (**Borrowers**) and Vincenzo Frank Tesoriero (**Tesoriero**) and 5 Bulkara Street Pty Ltd (**Bulkara**) (collectively **Guarantors**) dated 30 April 2020 (**Deed of Loan 1**);
- (b) the Deed of Corporate Guarantee and Indemnity between the Lender and Bulkara dated 30 April 2020 (**Corporate Guarantee 1**); and
- (c) the Deed of Personal Guarantee and Indemnity between the Lender and Tesoriero dated 30 April 2020 (**Personal Guarantee 1**).

Unless otherwise defined, capitalised terms used in this letter have the same meaning as in the Deed of Loan 1.

We note that the Lender has not received the Amount Outstanding of \$80,126.32 demanded in our 30 November 2021 letter. An Event of Default has therefore occurred that was not remedied within 15 Business Days.

.../2

Pursuant to clause 10(a) of the Deed of Loan 1, the Lender now demands that the Borrowers immediately pay the entire Debt.

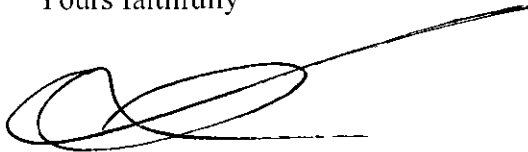
As at the date of this letter, the entire Debt is the total sum of **\$3,417,387.57**, comprising \$3,205,052.83 in principal and \$212,334.74 in interest calculated as set out below. The entire Debt continues to accrue.

Advanced Amount	Interest					Total
	4%	6%				
	1/08/2021	1/11/2021	1/02/2022	1/05/2022	8/07/2022	
\$3,205,052.83	\$32,050.52	\$48,075.79	\$48,075.79	\$48,075.79	\$36,056.84	\$3,417,387.57

Pursuant to the guarantee at clause 8 of the Deed of Loan 1, the Corporate Guarantee 1 and the Personal Guarantee 1, the Lender also hereby demands that the Guarantors pay the entire Debt.

The Lender reserves its right to take possession of, and sell, any or all of the Secured Properties.

Yours faithfully



Konfir Kabo  
Director  
Aksara Holdings Pty Ltd

30 November 2021

Latep Legal  
Suite 3, Level 11  
343 Little Collins Street  
Melbourne Vic 3000

5 Bulkara Street Pty Ltd  
Level 1  
385 Tooronga Road  
Hawthorn East Vic 3123

Vincenzo Frank Tesoriero  
55 Howitt Road  
Caulfield North Vic 3186

and by email:  
[prakash.patel@latep.com.au](mailto:prakash.patel@latep.com.au)

and by email:  
[yinkath2000@yahoo.com.au](mailto:yinkath2000@yahoo.com.au)

Dear Sir/Madam

**Deed of Loan 1, Corporate Guarantee 1 and Personal Guarantee 1  
Letter of Demand**

We refer to:

- (a) the Deed of Loan between Aksara Holdings Pty Ltd (**Lender**), 4 Cowslip Street Violet Town Pty Ltd, 9 Main Street Derrinallum Pty Ltd, 275 High Street Golden Square Pty Ltd and 123 High Street Taradale Pty Ltd (**Borrowers**) and Vincenzo Frank Tesoriero (**Tesoriero**) and 5 Bulkara Street Pty Ltd (**Bulkara**) (collectively **Guarantors**) dated 30 April 2020 (**Deed of Loan 1**);
- (b) the Deed of Corporate Guarantee and Indemnity between the Lender and Bulkara dated 30 April 2020 (**Corporate Guarantee 1**); and
- (c) the Deed of Personal Guarantee and Indemnity between the Lender and Tesoriero dated 30 April 2020 (**Personal Guarantee 1**).

Unless otherwise defined, capitalised terms used in this letter have the same meaning as in the Deed of Loan 1.

Pursuant to the Deed of Loan 1, the following interest amounts were payable to the Lender:

- (a) 1 August 2021           \$32,050.53
- (b) 1 November 2021       \$32,050.53

Those amounts have not been paid, constituting an Event of Default under the Deed of Loan 1.

Pursuant to clause 6(c), the Lender hereby increases the Interest Rate to the Default Interest Rate as set out in Schedule 1 for the period from the due date for payment of the outstanding amount until the date the outstanding amount is paid in full.

By reason of the above, the total amount now payable is \$80,126.32 (**Amount Outstanding**) comprising the following:

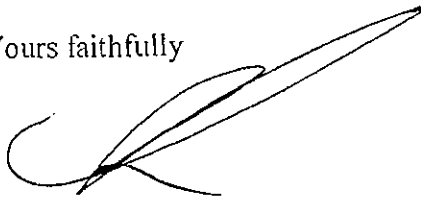
- (a) 1 August 2021 \$32,050.53
- (b) 1 November 2021 \$48,075.79 \*being interest at the Default Interest Rate from 1 August 2021

The Lender hereby demands that the Borrowers pay the Amount Outstanding.

Pursuant to the guarantee at clause 8 of the Deed of Loan 1, the Corporate Guarantee 1 and the Personal Guarantee 1, the Lender also hereby demands that the Guarantors pay the Amount Outstanding.

The Lender reserves its rights including to demand that the entire Debt be immediately payable if the Amount Outstanding is not paid within 15 Business Days and to take possession of, and sell, any or all of the Secured Properties.

Yours faithfully



Konfir Kabo  
Director  
Aksara Holdings Pty Ltd

8 July 2022

31 Ellerman Street  
Dimboola Pty Ltd  
ACN 641 392 887  
14 Kirwin Road Morwell  
Pty Ltd  
ACN 641 402 093  
160 Murray Valley Hwy  
Lake Boga Pty Ltd  
ACN 641 392 921  
55 Nolan Street  
Maryborough Pty Ltd  
ACN 641 392 912  
89 Betka Road Mallacoota  
Pty Ltd  
ACN 641 393 179  
Level 5, 141 Walker Street,  
North Sydney NSW 2060

5 Bulkara Pty Ltd (in  
Liquidation)  
(Receivers and Managers  
Appointed)  
ACN 630 982 160  
c/- McGrathNicol  
Level 12, 20 Martin Place  
Sydney NSW 2000

Chris Prestwich  
Allens  
Deutsche Bank Place  
Corner of Hunter and Philip  
Street  
Sydney NSW 2000

Vincenzo Frank Tesoriero  
44 Howitt Road  
Caulfield North Vic 3186  
c/ Madgwicks  
Level 6, 140 William Street  
Melbourne VIC 3000

**and by email:**  
[vinkath2000@yahoo.com.au](mailto:vinkath2000@yahoo.com.au)

Dear Sir/Madam

**Deed of Loan 2, Corporate Guarantee 2 and Personal Guarantee 2  
Letter of Demand**

We refer to our letter dated 30 November 2021 (attached) and:

- (a) the Deed of Loan between Aksara Holdings Pty Ltd (**Lender**), 31 Ellerman Street Dimboola Pty Ltd, 14 Kirwin Road Morwell Pty Ltd, 160 Murray Valley Hwy Pty Ltd, 55 Nolan Street Maryborough Pty Ltd, 89 Betka Road Mallacoota Pty Ltd (**Borrowers**) and Vincenzo Frank Tesoriero (**Tesoriero**) and 5 Bulkara Street Pty Ltd (**Bulkara**) (collectively **Guarantors**) dated 7 July 2020 (**Deed of Loan 2**);
- (b) the Deed of Corporate Guarantee and Indemnity between the Lender and Bulkara (**Corporate Guarantee 2**); and
- (c) the Deed of Personal Guarantee and Indemnity between the Lender and Tesoriero dated 7 July 2020 (**Personal Guarantee 2**).

Unless otherwise defined, capitalised terms used in this letter have the same meaning as in the Deed of Loan 2.

.../2

We note that the Lender has not received the Amount Outstanding of \$56,806.93 demanded in our 30 November 2021 letter. An Event of Default has therefore occurred that was not remedied within 15 Business Days.

Pursuant to clause 10(a) of the Deed of Loan 2, the Lender now demands that the Borrowers immediately pay the entire Debt.

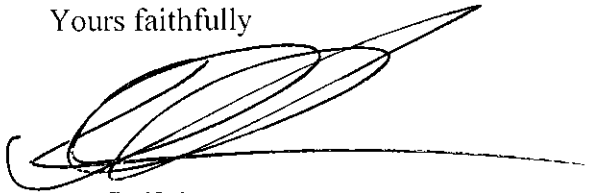
As at the date of this letter, the entire Debt is the total sum of **\$2,433,930.27**, comprising \$2,272,277.50 in principal and \$161,652.77 in interest calculated as set out below. The entire Debt continues to accrue.

Advanced Amount	Interest					Total
	4%	6%				
	1/07/2021	1/10/2021	1/01/2022	1/04/2022	8/07/2022	
\$2,272,277.50	\$22,722.77	\$34,084.16	\$34,084.16	\$34,084.16	\$36,677.52	\$2,433,930.27

Pursuant to the guarantee at clause 8 of the Deed of Loan 2, the Corporate Guarantee 2 and the Personal Guarantee 2, the Lender also hereby demands that the Guarantors pay the entire Debt.

The Lender reserves its right to take possession of, and sell, any or all of the Secured Properties.

Yours faithfully



Konfir Kabo  
Director  
Aksara Holdings Pty Ltd



30 November 2021

Latep Legal  
Suite 3, Level 11  
343 Little Collins Street  
Melbourne Vic 3000

5 Bulkara Street Pty Ltd  
Level 1  
385 Tooronga Road  
Hawthorn East Vic 3123

Vincenzo Frank Tesoriero  
55 Howitt Road  
Caulfield North Vic 3186

and by email:  
[prakash.patel@latep.com.au](mailto:prakash.patel@latep.com.au)

and by email:  
[vinkath2000@yahoo.com.au](mailto:vinkath2000@yahoo.com.au)

Dear Sir/Madam

**Deed of Loan 2, Corporate Guarantee 2 and Personal Guarantee 2  
Letter of Demand**

We refer to:

- (a) the Deed of Loan between Aksara Holdings Pty Ltd (**Lender**), 31 Ellerman Street Dimboola Pty Ltd, 55 Nolan Street Maryborough Pty Ltd, 160 Murray Valley Hwy Lake Boga Pty Ltd, 89 Betka Road Mallacoota Pty Ltd and 14 Kirwin Road Morwell Pty Ltd (**Borrowers**) and Vincenzo Frank Tesoriero (**Tesoriero**) and 5 Bulkara Street Pty Ltd (**Bulkara**) (collectively **Guarantors**) dated 7 July 2020 (**Deed of Loan 2**);
- (b) the Deed of Corporate Guarantee and Indemnity between the Lender and Bulkara dated 7 July 2020 (**Corporate Guarantee 2**); and
- (c) the Deed of Personal Guarantee and Indemnity between the Lender and Tesoriero dated 7 July 2020 (**Personal Guarantee 2**).

Unless otherwise defined, capitalised terms used in this letter have the same meaning as in the Deed of Loan 2.

Pursuant to the Deed of Loan 2, the following interest amounts were payable to the Lender:

- (a) 1 July 2021                      \$22,722.77
- (b) 1 October 2021                \$22,722.77

Those amounts have not been paid, constituting an Event of Default under the Deed of Loan 2.

Pursuant to clause 6(c), the Lender hereby increases the Interest Rate to the Default Interest Rate as set out in Schedule 1 for the period from the due date for payment of the outstanding amount until the date the outstanding amount is paid in full.

By reason of the above, the total amount now payable is \$56,806.93 (**Amount Outstanding**) comprising the following:

- (a) 1 July 2021 \$22,722.77
- (b) 1 October 2021 \$34,084.16 \*being interest at the Default Interest Rate from 1 July 2021

The Lender hereby demands that the Borrowers pay the Amount Outstanding.

Pursuant to the guarantee at clause 8 of the Deed of Loan 2, the Corporate Guarantee 2 and the Personal Guarantee 2, the Lender also hereby demands that the Guarantors pay the Amount Outstanding.

The Lender reserves its rights including to demand that the entire Debt be immediately payable if the Amount Outstanding is not paid within 15 Business Days and to take possession of, and sell, any or all of the Secured Properties.

Yours faithfully



Konfir Kabo  
Director  
Aksara Holdings Pty Ltd

8 July 2022

9 Gregory Street Ouyen Pty  
Ltd  
ACN. 641 392 707  
Level 5, 141 Walker Street,  
North Sydney  
NSW 2060

14 James Street Pty Ltd  
(in Liquidation) (Receivers  
and Managers Appointed)  
ACN 638 449 206  
c/- McGrathNicol  
Level 12, 20 Martin Place  
Sydney NSW 2000

Vincenzo Frank Tesoriero  
44 Howitt Road  
Caulfield North Vic 3186  
c/ Madgwicks  
Level 6, 140 William Street  
Melbourne VIC 3000

Chris Prestwich  
Allens  
Deutsche Bank Place  
Corner of Hunter and Philip  
Street  
Sydney NSW 2000

**and by email:**  
[vinkath2000@yahoo.com.au](mailto:vinkath2000@yahoo.com.au)

Dear Sir/Madam

**Deed of Loan 3, Corporate Guarantee 3 and Personal Guarantee 3  
Letter of Demand**

We refer to our letter dated 30 November 2021 (attached) and:

- (a) the Deed of Loan between Aksara Holdings Pty Ltd (**Lender**), 9 Gregory Street Ouyen Pty Ltd and 22 High Street Rushworth Pty Ltd (**Borrowers**) and Vincenzo Frank Tesoriero (**Tesoriero**) and 14 James Street Pty Ltd (**James Street**) (collectively **Guarantors**) dated December 2020 (**Deed of Loan 3**);
- (b) the Deed of Corporate Guarantee and Indemnity between the Lender and James Street dated December 2020 (**Corporate Guarantee 3**); and
- (c) the Deed of Personal Guarantee and Indemnity between the Lender and Tesoriero dated December 2020 (**Personal Guarantee 3**).

Unless otherwise defined, capitalised terms used in this letter have the same meaning as in the Deed of Loan 3.

.../2

We note that the Lender has not received the Amount Outstanding of \$7,875.00 demanded in our 30 November 2021 letter. An Event of Default has therefore occurred that was not remedied within 15 Business Days.

Pursuant to clause 10(a) of the Deed of Loan 3, the Lender now demands that the Borrowers immediately pay the entire Debt.

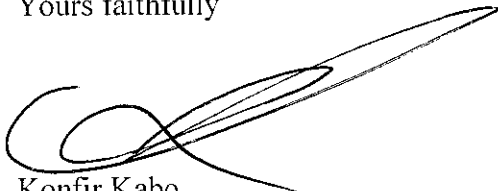
As at the date of this letter, the entire Debt is the total sum of **\$450,211.40**, comprising \$315,000.00 in principal, shortage of funds at settlement of \$89,972.98 and \$45,238.42 in interest calculated as set out below. The entire Debt continues to accrue.

Advanced Amount	Interest					Shortage at settlement	Total
	4%		6%				
	23/09/21	23/12/21	23/03/22	23/6/22	8/07/2022		
\$315,000.00	7,875.00	11,812.50	11,812.50	11,812.50	\$1,925.92	\$89,972.98	\$450,211.40

Pursuant to the guarantee at clause 8 of the Deed of Loan 3, the Corporate Guarantee 3 and the Personal Guarantee 3, the Lender also hereby demands that the Guarantors pay the entire Debt.

The Lender reserves its right to take possession of, and sell, any or all of the Secured Properties.

Yours faithfully



Konfir Kabo  
Director  
Aksara Holdings Pty Ltd

30 November 2021

Latep Legal  
Suite 3, Level 11  
343 Little Collins Street  
Melbourne Vic 3000

14 James Street Pty Ltd  
Level 5  
141 Walker Street  
North Sydney NSW 2060

Vincenzo Frank Tesoriero  
55 Howitt Road  
Caulfield North Vic 3186

**and by email:**  
[prakash.patel@latep.com.au](mailto:prakash.patel@latep.com.au)

**and by email:**  
[vinkath2000@yahoo.com.au](mailto:vinkath2000@yahoo.com.au)

Dear Sir/Madam

**Deed of Loan 3, Corporate Guarantee 3 and Personal Guarantee 3  
Letter of Demand**

We refer to:

- (a) the Deed of Loan between Aksara Holdings Pty Ltd (**Lender**), 9 Gregory Street Ouyen Pty Ltd and 22 High Street Rushworth Pty Ltd (**Borrowers**) and Vincenzo Frank Tesoriero (**Tesoriero**) and 14 James Street Pty Ltd (**James Street**) (collectively **Guarantors**) dated December 2020 (**Deed of Loan 3**);
- (b) the Deed of Corporate Guarantee and Indemnity between the Lender and James Street dated December 2020 (**Corporate Guarantee 3**); and
- (c) the Deed of Personal Guarantee and Indemnity between the Lender and Tesoriero dated December 2020 (**Personal Guarantee 3**).

Unless otherwise defined, capitalised terms used in this letter have the same meaning as in the Deed of Loan 3.

Pursuant to the Deed of Loan 3, interest in the amount of \$7,875 (**Amount Outstanding**) was payable to the Lender on 23 September 2021. This amount has not been paid, constituting an Event of Default under the Deed of Loan 3.

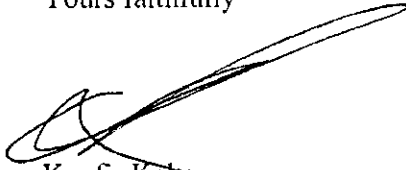
Pursuant to clause 6(c), the Lender hereby increases the Interest Rate to the Default Interest Rate as set out in Schedule 1 for the period from the due date for payment of the outstanding amount until the date the outstanding amount is paid in full. By reason of the above, interest at the Default Interest Rate will accrue from 23 September 2021.

The Lender hereby demands that the Borrowers pay the Amount Outstanding.

Pursuant to the guarantee at clause 8 of the Deed of Loan 3, the Corporate Guarantee 3 and the Personal Guarantee 3, the Lender also hereby demands that the Guarantors pay the Amount Outstanding.

The Lender reserves its rights including to demand that the entire Debt be immediately payable if the Amount Outstanding is not paid within 15 Business Days and to take possession of, and sell, any or all of the Secured Properties.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Konfir Kabo', written in a cursive style with a long horizontal stroke extending to the right.

Konfir Kabo  
Director  
Aksara Holdings Pty Ltd

**Candy Nelson**

---

**Subject:** FW: Tesoriero Group

**From:** Darren Mitchell <[Darren.Mitchell2@cba.com.au](mailto:Darren.Mitchell2@cba.com.au)>  
**Date:** 7 July 2022 at 12:57:52 pm AEST  
**To:** Michael Pratt <[michael\\_pratt@smefg.com.au](mailto:michael_pratt@smefg.com.au)>  
**Cc:** Vince Tesoriero <[vinkath2000@yahoo.com.au](mailto:vinkath2000@yahoo.com.au)>, Michael Johns <[mjohns@smefg.com.au](mailto:mjohns@smefg.com.au)>  
**Subject:** RE: Tesoriero Group

**[ CBA Information Classification: Customer and Personal ]**

In addition there are also the following home loan exposures for John and Teresa:

- \$2,518,662.44 (arrear \$140,959)
- \$640,758.78 (arrear \$35,876)

[ CBA information handling guidelines can be found on our web site: [commbank.com.au/DataClass](http://commbank.com.au/DataClass) ]



**Darren Mitchell**  
Senior Manager Corporate  
Group Credit Structuring  
Level 18  
Tower 1, 727 Collins Street  
Melbourne Vic 3008

**Phone** (03) 8620 1420  
**Email** [darren.mitchell2@cba.com.au](mailto:darren.mitchell2@cba.com.au)

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[ CBA information handling guidelines can be found on our web site: [commbank.com.au/DataClass](http://commbank.com.au/DataClass) ]

\*\*\*\*\* IMPORTANT MESSAGE \*\*\*\*\*

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\*\*\*\*\*

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/07/2022 6:34:40 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172  
& ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 18/07/2022 6:44:46 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.





Form 59

Rule 29.02(1)

## Affidavit

No. 616 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another named in the Schedule

Applicants

**Forum Finance Pty Ltd ACN 153 301 172 (In Liquidation)** and others named in the Schedule

Respondents

Fifth Affidavit of: **Vincenzo Frank Tesoriero**  
 Address: 64-66 Berkley St, Hawthorn VIC 3122  
 Occupation: Director  
 Date: 18 July 2022

### Contents

Document number	Details	Paragraph	Page
1	Seventh Affidavit of Vincenzo Frank Tesoriero sworn on July 2022	1	2

Filed on behalf of (name & role of party) Vincenzo Frank Tesoriero, Third Respondent  
 Prepared by (name of person/lawyer) Sazz Nasimi  
 Law firm (if applicable) Madgwicks Lawyers  
 Tel 03 9242 4720 Tel 03 9242 4720  
 Email sazz.nasimi@madgwicks.com.au  
**Address for service** Level 6, 140 William Street, Melbourne VIC 3000  
 (include state and postcode)

[Version 3 form approved 02/05/2019]

047678:4885511\_1

I, Vincenzo Frank Tesoriero, director, of 64-66 Berkeley St, Hawthorn VIC 3122 hereby make oath and say:

1. I am the Third Respondent in the proceedings.
2. I make this affidavit from my own knowledge save where otherwise indicated. Where I depose to matters that I have been informed of by others, I believe those matters to be true and correct.

**Assets and income**

3. I refer to my affidavit of 12 July 2022 (**12 July 2022 affidavit**) and confirm that, to the best of my knowledge, all of my assets and income was disclosed in the 12 July 2022 affidavit.
4. For further clarity I say that:
  - (a) all "income" derived by me is received by those corporate entities which received income to which I have already referred in previous affidavits. I have not directly received any income in my personal capacity whatsoever;
  - (b) The only income received by corporate entities associated with me is:
    - i. the rental income outlined in Annexure B of my July 2022 affidavit; and
    - ii. the income earned by the café operated by 65 Nelson Street Enterprises Trust outlined at paragraphs 62-65 of my July 2022 affidavit. The café business is not presently generating enough income to pay me a salary for running this business.
5. In my affidavit sworn 17 June 2022 I deposed that the rental earned by my associated entities was insufficient to cover the mortgage obligations of my associated entities. Following the rental increases as outlined at paragraph 23 Table 3 of my 12 July 2022 affidavit, and the fact there were no significant property expenses due in June 2022 as outlined at paragraph 14 Table 1 of my June 2022 affidavit, there was \$1,190.50 left over from the June 2022 rental income received by entities associated with me after payment of property expenses and mortgage expenses. I cannot draw on this amount as it will be required to cover property expenses in months where the expenses are greater (eg water rates, insurance is due). A high level summary of the rental income/ mortgage payments is below. The full breakdown was already provided in my 12 July 2022 affidavit.

*Alaurence*

*91.*

<b>Income and Mortgage Payments</b>				
Month	Rental income (full breakdown of income at Annexure B of July 2022 affidavit)	Rental income after property expenses (full details of expenses at para 14 of July 2022 affidavit)	Mortgage payments (full breakdown of mortgage payments at Annexure B of July 2022 affidavit)	Net position
April	\$187,980.001	\$110,476.70	\$117,947.07	-\$7,470.37
May	\$49,599.122	\$104,193.30	\$115,227.79	-\$11,034.49
June	\$125,560.00	\$118,729.30	\$117,538.80	\$1,190.50

### **Liabilities and expenses**

6. My associated entities have a number of expenses, the main ones being the property and mortgage expenses outlined at Annexure B of my 12 July 2022 affidavit.
7. Regarding me personally, my main liabilities are my legal expenses (both already incurred and future) as outlined at paragraphs 34-36 of my affidavit sworn 17 June 2022 and my personal liabilities and expenses, referred to below.
8. Apart from my legal expenses, since July 2021 my personal liabilities and expenses have been funded by my family as I am unable to access any funds to cover these myself despite the freezing orders permitting me to spend \$5,000 per week on living expenses.
9. A high level summary of the expenses my family has been covering for me is outlined below. I note these amounts are approximate only and may vary on a month to month basis.

<b>Table 5: High Level Summary of Personal Expenses Covered by my Family</b>	
<b>Item</b>	<b>Expenses (monthly)</b>
Groceries	\$3,500
Restaurants/ entertainment	\$2,500

<sup>1</sup> Rental paid at the same time for April and May 2022 for a number of properties as detailed at Annexure B of my July 2022 affidavit.

<sup>2</sup> Rental paid at the same time for April and May 2022 for a number of properties as detailed at Annexure B of my July 2022 affidavit.

*A Lawrence*

Transport	\$1,500
Phone bill	\$200
Clothing/ personal belongings	Nil- I do not expect my family to cover these expenses so have not purchased many new clothes/ items since July 2021.
House upkeep	\$1,000
Electricity, gas, water etc	\$1,000
TV, Netflix, Stan, News Corp subscriptions	\$200
Property insurance	\$600 for 64-66 Berkely Street Hawthorn
Vehicle insurance and registration (for vehicles outlined in annexure A of the July 2022 affidavit)	\$6,000
Health insurance	\$300
Repayments on Mini 2020 Cooper S	\$1,300
Personal expenses (eg gym membership, doctors's appointments)	\$1,500
<b>Total</b>	<b>\$19,750</b>

10. As deposed in my 12 July 2022 affidavit, the interest and principal payments for my personal residence, 64-66 Berkeley Street Hawthorn, which is owed by 64 Berkeley Street Hawthorn Pty Ltd, are \$58,600 per month. This is included in the mortgage payments outlined at Anenxure B of my 12 July 2022 affidavit.

*A Lawrence*

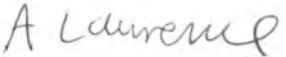
*J.D.*

11. For the avoidance of doubt, I do not have access to \$40,000 surplus per month as suggested by counsel for the applicants in the hearing of 1 July 2022.

**The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.**

Sworn / Affirmed by the deponent  
at Melbourne  
in the state of Victoria  
on 18 July 2022  
Before me:

)  
)  
)   
)  
)  
) Signature of deponent

  
\_\_\_\_\_

**Alexander Lawrence**  
6th Floor, 140 William St, Melbourne, Vic, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria).

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW).
2. I saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I has confirmed the person's identity based on the following identification document presented to me: Drivers Licence

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 9/11/2021 6:12:03 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 9/11/2021 6:12:07 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59

Rule 29.02(1)

## Affidavit

No. NSD of 616/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

**Westpac Banking Corporations ABN 33 007 457 141** and another named in the Schedule  
Applicants

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others named in the  
Schedule  
Respondents

Affidavit of: **Sarwar (Sazz) Nasimi**

Address: Level 6, 140 William Street, Melbourne 3000

Occupation: Legal practitioner

Date: 9 November 2021

### Contents

Document number	Details	Paragraph	Page
1.	Affidavit of Sarwar (Sazz) Nasimi sworn 9 November 2021	1	2
2	Exhibit SN-1 being a paginated bundle of documents	4	1-245

Filed on behalf of (name & role of party) Vincenzo Frank Tesoriero, Third Respondent

Prepared by (name of person/lawyer) Sazz Nasimi

Law firm (if applicable) Madgwicks Lawyers

Tel 03 9242 4720

Fax 03 9242 4777

Email Alexandra.lawrence@madgwicks.com.au

Address for service Level 6, 140 Williams Street, Melbourne 3000 VIC

(include state and postcode)

[Version 3 form approved 02/05/2019]

720

CM:047678:4602593\_1

I, Sarwar (Sazz) Nasimi, of Level 6,140 William Street Melbourne in the State of Victoria hereby make Oath and Say:

**Preliminary**

1. I am a legal practitioner and a partner within the law firm Madgwicks.
2. I make this affidavit from my own knowledge save where otherwise indicated. Where I depose to matters that I have been informed of by others, I believe those matters to be true and correct.
3. Madgwicks represents the Third Respondent and his associated entities in the present proceeding, and I am the responsible partner within the firm with the ultimate care and conduct of the matter on their behalf.
4. Annexed to this affidavit and shown to me at the time of swearing this affidavit is a paginated bundle of documents marked "SN-1". This exhibit contains all the documents referred to in my affidavit. Where reference is made to specific document or part of a document, contained within "SN-1", it will be referred to by my initials followed by the page number on which that document or reference appears, i.e **SN-#**.
5. For convenience I have sought to, where possible, adopt terminology within this my affidavit, which have previously been used by the parties and accepted by the Court when describing various topics or issues.
6. On 27 October 2021, Madgwicks wrote to Allens Lawyers (**Allens**), being the solicitors representing the liquidators (including provisional liquidators), and informed them that our client intended to oppose the application for the winding up of the provisional liquidation entities ("**PL Entities**"). In that same letter a request was made for various categories of documents, concerning the PL Entities, which included the following:
  - (a) Managements accounts from 1 July 2020 to 30 June 2021;
  - (b) Bank statements for June 2021;
  - (c) Provisional balance sheet for the years 2020 and 2021;
  - (d) Details of debtors as at 30 June 2021;
  - (e) Details of creditors as at 30 June 2021;





- (f) All provisional liquidator reports to creditors;
- (g) Any equipment leases in existence for which any of the PL Entities are receiving monthly payments; and
- (h) Asset registers.

A copy of the letter sent by Madgwicks to Allens is annexed at **SN-3**.

7. Responses to Madgwicks' 27 October 2021 letter were received as follows:

- (a) on 29 October 2021, we received an email response attaching a number of zip files containing some, but not all, of the requested documents (**29 October Response**). A copy of the 29 October 2021 response can be seen at **SN-5**; and
- (b) on 2 November 2021 we received a further email response attaching a zip file title "1. Management Accounts- 1 July 2020- 30 June 2021" which we were informed was for FGFS (**2 November Response**). A true copy of the 2 November 2021 response is exhibited at **SN-7**.

(collectively, **Allens Responses**).

8. The 29 October Response contained 3 zip folders by the name of each PL Entity. Within each of the three folders were 8 subfolders which had been given titles matching the categories of documents that we had requested. As set out in the following paragraph, several of the subfolders were empty. A true copy of some screenshots of the various folders and sub-folders can be seen at **SN 9-13**.

9. A reconciliation of the folders and sub-folders contained in the Allens Responses is as follows:

(a)

FORUM ENVIRO		
	Sub Folder	Contents
1.	Management Accounts	Empty
2.	Bank Statements	Bank Statement for June 2021
3.	Balance Sheets	Excel Spreadsheet of unknown origin.
4.	Debtors	Empty
5.	Creditors	Empty

6.	Provisional Liquidator Reports	Empty
7.	Equipment Leases	Empty
8.	Asset Register	Empty

Copies of these documents can be found at **SN 14-17**.

(b)

<b>FORUM ENVIRO AUST</b>		
	<b>Sub Folder</b>	<b>Contents</b>
1.	Management Accounts	Empty
2.	Bank Statements	Bank Statement for June 2021
3.	Balance Sheets	Excel Spreadsheet
4.	Debtors	Empty
5.	Creditors	Empty
6.	Provisional Liquidator Reports	Empty
7.	Equipment Leases	Empty
8.	Asset Register	Empty

Copies of these documents can be found at **SN 18-19**.

(c)

<b>FGFS</b>		
	<b>Sub Folder</b>	<b>Contents</b>
1.	Management Accounts	Empty in the 29 October Response but supplemented with 6 Excel Spreadsheets in the 2 November Response.
2.	Bank Statements	Bank Statement for June 2021
3.	Balance Sheets	Balance Sheet and Comparative balance Sheet
4.	Debtors	Aged Receivables as at 30 June 2021
5.	Creditors	Aged Payables as at 30 June 2021
6.	Provisional Liquidator Reports	Liquidator's report of 8 October 2021
7.	Equipment Leases	Empty
8.	Asset Register	Empty




Copies of these documents can be seen at commencing at **SN-20**.

10. In addition to the above documents, the solicitors for the Applicant had previously provided to us various other documents pertaining to the PL Entities. These documents included various bank statements for accounts that the PL Entities held with the NAB. Copies of these bank statements are located at **SN 118-147**.
11. In the bundle of documents provided by the liquidators and relating to the PL Entities, no asset register or any like document which listed the individual assets owned by any of the PL Entities were provided. This appears to conflict with the following comments made by the liquidators in their report of 8 October 2021:
  - (a) *To date we have undertaken the following*
    - (i) *...sought and secured FGFS's assets and sought indicative valuations (where applicable) to determine their realisation value.*
    - (ii) *Located, secured and sought to realise vehicles registered to FGFS.*
  - (b) *FGFS maintained a single bank account with NAB, which held a balance \$572k on appointment of the Provisional Liquidators.*

A true copy of the liquidator's report dated 8 October 2021 is exhibited at **SN 46-117**.

12. The liquidators have claimed that the PL Entities are hopelessly insolvent with each entity owing significant sums to various creditors. However, very limited documents have been provided by the liquidator which support this contention. For example, the liquidators have not provided any management accounts for Forum Enviro, nor have they provided any balance sheets. Thus, it is unclear as to how the liquidators have reached the conclusion that this entity is insolvent.

### **Legal Funding**

13. The present case is a substantially large and, in some respects, a factually complex matter. This is illustrated by the size of the Second Further Amended Statement of Claim which consists of 2711 paragraphs spanning 621 pages.
14. The Applicant in the present case is represented by MinterEllison. The Liquidators are represented by Allens. Both of these firms have retained the assistance of senior and junior counsel.




15. In addition to the above, I am aware of at least 6 practitioners working on this matter on behalf of the Applicant. A dedicated email address, [\[ProjectOlympus@minterellison.com\]](mailto:ProjectOlympus@minterellison.com) has been set up by the Applicant's solicitors, presumably for the Applicant's solicitors to keep track of the email traffic which flows between the parties.
16. Furthermore, since the filing of Madgwicks' notice of appearance on 22 September 2021, we have received, mainly from the Applicant's solicitors, in excess of 128 separate items of correspondence and 2384 pages of affidavits, which all directly relate to the proceeding.
17. On 29 October 2021, I caused a letter to be sent to MinterEllison which stated that due to funding restraints the Third Respondent was not yet in a position to respond to some of the correspondence. A copy of the 29 October 2021 letter can be seen at **SN 149-150**.
18. On 2 November 2021 MinterEllison responded to that letter, *inter alia*, as follows:

*"If your client will not or cannot secure funding for your services, then you can cease to act."*

A copy of the 2 November 2021 letter can be seen at **SN 153-154**.

19. Prior to our engagement, the Third Respondent had already incurred in excess of \$200,000 in legal fees, which remain unpaid to date. I note that the liquidators have secured \$4.5M (excluding GST) in funding from the Applicant and have already sought approval of:
  - (a) their fees in the sum of \$511,930.00 (excluding GST) for Forum Finance Pty Ltd for the period 9 July 2021 to 19 September 2021. The specific page outlining the remuneration is at **SN-73**;
  - (b) their fees in the sum of \$2,848,126.00 (excluding GST) for Forum Group Financial Services Pty Ltd (in provisional liquidation) for the period 15 July 2021 to 19 September 2021. The specific page outlining the remuneration is at **SN-73**; and
  - (c) their fees in the sum of \$309,229.25 for Forum Group Pty Ltd for the period 8 July 2021 to 22 July 2021. A true copy of the report to creditors dated 28 October 2021 outlining the remuneration sought is exhibited at **SN-155-237**. The specific page outlining the remuneration is at **SN-208**.

The above summary highlights the size and scale of the current proceeding.



20. Moving forward it is somewhat difficult to estimate how much funding the Third Respondent (and his related entities) will require to defend the Applicant's claims. The uncertainty is by and large created by the Applicant and the liquidators who seem to be presently working in tandem and is dependent on the number of interlocutory applications that they make.
21. The table below sets out the legal fees which the Third Respondent has incurred to date, together with my best estimate of the legal fees which he will incur between now and the end of 2021:

	Senior Counsel		Junior Counsel		Fortis Law	Madgwicks
	Days	\$	Days	\$		\$
Work conducted by previous solicitors					\$233,660.52	
Works to 12 November	-	\$110,550.00	-	\$17,500.00		\$100,000
Attendance to drafting of defence	3	\$ 29,700.00	4	\$10,000.00		\$8,785.00
Interlocutory applications	8	\$ 79,200.00	10	\$25,000.00		\$39,445.00
Expert Reports	2	\$ 19,800.00	3	\$ 7,500.00		\$15,995.00
Discovery/Subpoenas	1	\$ 9,900.00	2	\$ 5,000.00		\$47,285.00
Miscellaneous Interlocutory/client updates	1	\$ 9,900.00	2	\$ 5,000.00		\$36,715.00
<b>Sub-Total</b>		<b>\$148,500.00</b>		<b>\$52,500.00</b>	<b>\$233,660.52</b>	<b>\$248,225.00</b>
	<b>Total</b>	<b>\$682,885.52</b>				

### Media Coverage


22. From about late September 2021, it was reported in numerous media sources, including the Australian, that the Applicant and King & Wood Mallesons had commissioned an investigative report into whether any employees of the Forum Group were involved in the alleged scam subject to this proceeding. The articles discuss the investigation in detail.
23. On 5 November 2021, I caused a letter to be sent to MinterEllison requesting a copy of the report. A true copy of the letter dated 5 November 2021 is exhibited at **SN 238-240**. A true copy of the articles is at **SN 241-245**.



The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

Sworn by Sarwar (Sazz) Nasimi )

at Melbourne on 9 November 2021 )



---

Before me:



**Melissa Passarelli**  
6th Floor, 140 William St, Melbourne, Vic, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria).

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW).
2. I observed the deponent signing a copy of this affidavit in real time.
3. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
4. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
5. I has confirmed the person's identity based on the following identification document presented to me: Drivers Licence

## Schedule of Parties

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141

Second Applicant Westpac New Zealand Limited (company registration number company number 1763882)

### Respondents

First Respondent Forum Finance Pty Limited (in liquidation) ACN 153 301 172

Second Respondent: Basile Papadimitriou

Third Respondent Vincenzo Frank Tesoriero

Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705

Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997

Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840

Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364

Eighth Respondent 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662

Ninth Respondent 14 James Street Pty Ltd (in liquidation) ACN 638 449 206

Tenth Respondent 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129

Eleventh Respondent 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160

Twelfth Respondent 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473

Thirteenth Respondent 23 Margaret Street Pty Ltd ACN 623 715 373



Fourteenth Respondent 1160 Glen Huntly Road Pty Ltd ACN 639 447 984

Fifteenth Respondent 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093

Sixteenth Respondent Canner Investments Pty Ltd ACN 624 176 049

Seventeenth Respondent 123 High Street Taradale Pty Ltd ACN 639 872 512

Eighteenth Respondent 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921

Nineteenth Respondent 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887

Twentieth Respondent 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352

Twenty-First Respondent 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912

Twenty-Second Respondent 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179

Twenty-Third Respondent 9 Gregory Street Ouyen Pty Ltd ACN 641 392 707

Twenty-Fourth Respondent 9 Main Street Derrinallum Pty Ltd ACN 639 872 736

Twenty-Fifth Respondent 286 Carlisle Street Pty Limited ACN 610 042 343

Twenty-Sixth Respondent 275 High Street Golden Square Pty Ltd ACN 639 870 545

Twenty-Seventh Respondent Mazcon Investments Hellas IKE

Twenty-Eighth Respondent Palante Pty Ltd ACN 135 344 151

Twenty-Ninth Respondent Anastasios Giamouridis

Thirtieth Respondent The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964  
626

Thirty-First Respondent Iugis Pty Ltd (in liquidation) ACN 632 882 243

Thirty-Second Respondent Iugis (UK) Limited

Thirty-Third Respondent Iugis Holdings Limited

Thirty-Fourth Respondent Iugis Global Financial Services Limited

Thirty-Fifth Respondent Iugis Finance Limited

Thirty-Sixth Respondent Spartan Consulting Group Pty Ltd (in liquidation) ACN 168  
989 544 ACN

Thirty-Seventh Respondent Intrashield Pty Ltd (in liquidation) ACN 133 426 534

Thirty-Eighth Respondent Tesoriero Investment Group Pty Ltd ACN 161 088 115



Thirty-Ninth Respondent Mangusta (Vic) Pty Ltd ACN 631 520 682

Fortieth Respondent 193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237

Forty-First Respondent 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626

Forty-Second Respondent Iugis Hellas IKE

Forty-Third Respondent Iugis Energy SA

  
730



## Exhibit certificate

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 616 of 2021

**Westpac Banking Corporations ABN 33 007 457 141**

Applicant

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others according to the Schedule  
Respondents

This is the exhibit marked "**SN-1**" now produced and shown to Sarwar (Sazz) Nasimi at the time of swearing his affidavit on 9 November 2021 before me:



**Melissa Passarelli**  
6th Floor, 140 William St, Melbourne, Vic, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria).

Solicitor

## Mackenzie Preston

---

**From:** Candy Nelson  
**Sent:** Wednesday, 27 October 2021 3:24 PM  
**To:** Chris.Prestwich@allens.com.au; Kirsty.Prinsloo@allens.com.au  
**Cc:** Sazz Nasimi; Melissa Passarelli; Alexandra Lawrence; anthony.sommer@minterellison.com; caitlin.murray@minterellison.com  
**Subject:** Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705 | Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840 | Forum Enviro (Aust) Pty Ltd (provisional liquid... [MADG-CURRENT\_MATTERS.18091.047678]  
**Attachments:** 211027 Letter from Madgwicks to Allens(4587824.1).pdf

Dear Mr Prestwich and Ms Prinsloo,

Please refer to the **attached** correspondence.

Kind regards,

**Candy Nelson**  
Personal Assistant

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LAWYERS

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T: +61 3 9242 4748 E: [Candy.Nelson@madgwicks.com.au](mailto:Candy.Nelson@madgwicks.com.au)

Level 6, 140 William Street, Melbourne VIC 3000  
[www.madgwicks.com.au](http://www.madgwicks.com.au)



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Chris Prestwich & Kristy Prinsloo  
Partner & Managing Associate  
Allens  
Deutsche Bank Place  
Corner Hunter & Phillip Streets  
Sydney NSW 2000

Date: 27 October 2021  
File No: 047678  
Author: Alexandra Lawrence  
Partner: Sazz Nasimi

By email: [Chris.Prestwich@allens.com.au](mailto:Chris.Prestwich@allens.com.au)  
[Kirsty.Prinsloo@allens.com.au](mailto:Kirsty.Prinsloo@allens.com.au)

Dear Mr Prestwich and Ms Prinsloo

**Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705**  
**Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840**  
**Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364**  
**("PL Entities")**

We refer to the orders of Justice Lee dated 20 October 2021 (**Orders**).

Pursuant to paragraph 9 of the Orders, we confirm that our client contests the application for the wind up in respect to the PL Entities.

We are instructed that the PL Entities are likely to be solvent. Our client instructs us that as at the time of the appointment of the provisional liquidators, the PL Entities had significant assets which included cash at bank and property. Further, we are instructed that the PL Entities may have held ongoing lease contracts which generated approximately \$3 million to \$5 million in revenue per month.

Excluding the contingent liability of Westpac's claim against the PL Entities in Federal Court Proceedings No NSD616/2021, the matters referred to in the preceding paragraph suggest that it is highly likely that the PL Entities are solvent and ought not be wound up.

With respect to each company comprising the PL Entities, we are informed that their asset positions as at the time when they were placed in provision liquidation is as follows:

**Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705**

1. Approximately \$800,000 in cash assets;
2. An unencumbered boat worth approximately \$700,000;
3. The property known as 2-4 Atherton Road, Oakleigh 3166 which has approximately \$1.5million of equity; and



**MADGWICKS**  
ABN 82 199 611 971

Level 6  
140 William Street  
Melbourne VIC 3000  
Australia  
DX 485

T: +61 3 9242 4744  
F: +61 3 9242 4777  
E: [madgwicks@madgwicks.com.au](mailto:madgwicks@madgwicks.com.au)  
W: [madgwicks.com.au](http://madgwicks.com.au)



4. A number of motor vehicles.

**Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840 and  
Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364**

5. Our client does not have visibility on the assets of these companies but understands there are substantial cash assets available to them.

### **Request for documents**

Further, you may recall His Honour's comments at the last return concerning the timely provision of documents that may be requested by our client. We note that your clients were appointed as provisional liquidators to the PL entities on 15 July 2021 and have now had some time to marshal the relevant financial information necessary to consider the financial position of each of the PL entities. Some of this information is referred to in the list of documentation referred to below. Accordingly, in order for our office to assess the issue of solvency further, we request from your client the following documents for each of the PL Entities:

1. Managements accounts from 1 July 2020 to 30 June 2021;
2. Bank statements for June 2021;
3. Provisional balance sheet for the years 2020 and 2021;
4. Details of debtors as at 30 June 2021;
5. Details of creditors as at 30 June 2021;
6. All provisional liquidator reports to creditors;
7. Any equipment leases in existence for which any of the PL Entities are receiving monthly payments; and
8. Asset registers.

Needless to state we require your client's adherence to our request as soon as reasonably possible.

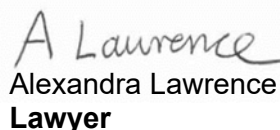
Should you have any queries in relation to this letter please contact our office.

Yours faithfully  
**MADGWICKS**



Sazz Nasimi  
**Partner**

**T:** 03 9242 4741  
**E:** Sazz.Nasimi@madgwicks.com.au



A Lawrence  
Alexandra Lawrence  
**Lawyer**

**T:** 03 9242 4720  
**E:** Alexandra.Lawrence@madgwicks.com.au

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**CC:** [anthony.sommer@minterellison.com](mailto:anthony.sommer@minterellison.com); [caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com)

## Mackenzie Preston

---

**From:** Prinsloo, Kirsty <Kirsty.Prinsloo@allens.com.au>  
**Sent:** Friday, 29 October 2021 5:41 PM  
**To:** Candy Nelson; Alexandra Lawrence; Melissa Passarelli; Sazz Nasimi  
**Cc:** anthony.sommer@minterellison.com; caitlin.murray@minterellison.com; Prestwich, Chris; Forum (Allens)  
**Subject:** RE: Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705 | Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840 | Forum Enviro (Aust) Pty Ltd (provisional liquid... [MADG-CURRENT\_MATTERS.18091.0476  
**Attachments:** Forum Enviro.zip; FGFS.zip; Forum Enviro (Aust).zip

Dear Colleagues

We refer to your letter dated 25 October 2021.

To the extent the documents you have requested have been located by the provisional liquidators in the records available to them, those documents are attached.

Kind regards

Kirsty

Kirsty Prinsloo  
Managing Associate, **Allens**  
**DL** [+61 2 9230 4735](tel:+61292304735) **M** [+61 420 347 183](tel:+61420347183) [www.allens.com.au](http://www.allens.com.au)

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**From:** Candy Nelson <Candy.Nelson@madgwicks.com.au>  
**Sent:** Wednesday, 27 October 2021 3:24 PM  
**To:** Prestwich, Chris <Chris.Prestwich@allens.com.au>; Prinsloo, Kirsty <Kirsty.Prinsloo@allens.com.au>  
**Cc:** Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>; Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>; Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>; anthony.sommer@minterellison.com; caitlin.murray@minterellison.com  
**Subject:** Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705 | Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840 | Forum Enviro (Aust) Pty Ltd (provisional liquid... [MADG-CURRENT\_MATTERS.18091.047678]

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Dear Mr Prestwich and Ms Prinsloo,

Please refer to the **attached** correspondence.

Kind regards,

**Candy Nelson**  
Personal Assistant

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T: +61 3 9242 4748 E: [Candy.Nelson@madgwicks.com.au](mailto:Candy.Nelson@madgwicks.com.au)

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[www.madgwicks.com.au](http://www.madgwicks.com.au)



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Website: <https://www.allens.com.au> | Office locations: <https://www.allens.com.au/offices> | Partner contacts: <https://www.allens.com.au/experts>

\*\*\*\*\*

## Mackenzie Preston

---

**From:** Prinsloo, Kirsty <Kirsty.Prinsloo@allens.com.au>  
**Sent:** Tuesday, 2 November 2021 2:29 PM  
**To:** Candy Nelson; Alexandra Lawrence; Melissa Passarelli; Sazz Nasimi  
**Cc:** anthony.sommer@minterellison.com; caitlin.murray@minterellison.com; Prestwich, Chris; Forum (Allens)  
**Subject:** RE: Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705 | Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840 | Forum Enviro (Aust) Pty Ltd (provisional liquid..... [Allens-File-DMS.FID2091065]  
**Attachments:** 1. Management Accounts - 1 July 2020 - 30 June 2021.zip

Dear Colleagues

We refer to your letter dated 25 October 2021 and to our email on 29 October 2021.

The provisional liquidators have additionally located the attached balance sheets, profit and loss and cash flows for FGFS.

Kind regards

Kirsty

Kirsty Prinsloo  
Managing Associate, **Allens**  
**DL** [+61 2 9230 4735](tel:+61292304735) **M** [+61 420 347 183](tel:+61420347183)

---

**From:** Prinsloo, Kirsty  
**Sent:** Friday, 29 October 2021 5:41 PM  
**To:** 'Candy Nelson' <Candy.Nelson@madgwicks.com.au>; Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>; Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>; Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>  
**Cc:** anthony.sommer@minterellison.com; caitlin.murray@minterellison.com; Prestwich, Chris <Chris.Prestwich@allens.com.au>; Forum (Allens) <ForumAllens@allens.com.au>  
**Subject:** RE: Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705 | Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840 | Forum Enviro (Aust) Pty Ltd (provisional liquid... [MADG-CURRENT\_MATTERS.18091.0476

Dear Colleagues

We refer to your letter dated 25 October 2021.

To the extent the documents you have requested have been located by the provisional liquidators in the records available to them, those documents are attached.

Kind regards

Kirsty

Kirsty Prinsloo  
Managing Associate, **Allens**  
**DL** [+61 2 9230 4735](tel:+61292304735) **M** [+61 420 347 183](tel:+61420347183) [www.allens.com.au](http://www.allens.com.au)

**Allens > < Linklaters**





**From:** Candy Nelson <[Candy.Nelson@madgwicks.com.au](mailto:Candy.Nelson@madgwicks.com.au)>  
**Sent:** Wednesday, 27 October 2021 3:24 PM  
**To:** Prestwich, Chris <[Chris.Prestwich@allens.com.au](mailto:Chris.Prestwich@allens.com.au)>; Prinsloo, Kirsty <[Kirsty.Prinsloo@allens.com.au](mailto:Kirsty.Prinsloo@allens.com.au)>  
**Cc:** Sazz Nasimi <[Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)>; Melissa Passarelli <[Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)>;  
 Alexandra Lawrence <[Alexandra.Lawrence@madgwicks.com.au](mailto:Alexandra.Lawrence@madgwicks.com.au)>; [anthony.sommer@minterellison.com](mailto:anthony.sommer@minterellison.com);  
[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com)  
**Subject:** Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705 | Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840 | Forum Enviro (Aust) Pty Ltd (provisional liquid... [MADG-CURRENT\_MATTERS.18091.047678]

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Dear Mr Prestwich and Ms Prinsloo,

Please refer to the **attached** correspondence.

Kind regards,

**Candy Nelson**  
Personal Assistant



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## PL Entities Main Folders









My files > Tes > Documents from liquidator <sup>Ⓜ</sup>

 Name ▾	Modified ▾	Modified By ▾	File size ▾	Sharing
 FGFS	6 days ago	Alexandra Lawrence	8 items	<sup>Ⓜ</sup> Shared
 Forum Enviro (Aust).zip	October 31	Alexandra Lawrence	19.9 KB	<sup>Ⓜ</sup> Shared
 Forum Enviro.zip	October 31	Alexandra Lawrence	271 KB	<sup>Ⓜ</sup> Shared

## Forum Enviro Sub Folders



Forum Enviro.zip > **Forum Enviro**

Name	Date Modified	File Size
 1. Management Accounts - 1 July 2...	2021-10-29	
 2. Bank Statements - June 2021	2021-10-28	
 3. Balance Sheets - 2020 and 2021	2021-10-29	
 4. Debtors - 30 June 2021	2021-10-28	
 5. Creditors - 30 June 2021	2021-10-29	
 6. Provisional liquidator reports	2021-10-29	
 7. Equipment leases	2021-10-29	
 8. Asset registers	2021-10-27	

## FGFS Sub Folders









My files > Ies > Documents from liquidator > FGFS 

 Name ▾	Modified ▾	Modified By ▾	File size ▾	Sharing
 1. Management Accounts - 1 July 2020 - 30...	6 days ago	Alexandra Lawrence	1 item	 Shared
 2. Bank Statements - June 2021	6 days ago	Alexandra Lawrence	1 item	 Shared
 3. Balance Sheets - 2020 and 2021	6 days ago	Alexandra Lawrence	2 items	 Shared
 4. Debtors - 30 June 2021	6 days ago	Alexandra Lawrence	1 item	 Shared
 5. Creditors - 30 June 2021	6 days ago	Alexandra Lawrence	1 item	 Shared
 6. Provisional liquidator reports	6 days ago	Alexandra Lawrence	1 item	 Shared
 7. Equipment leases	6 days ago	Alexandra Lawrence	0 items	 Shared
 8. Asset registers	6 days ago	Alexandra Lawrence	0 items	 Shared

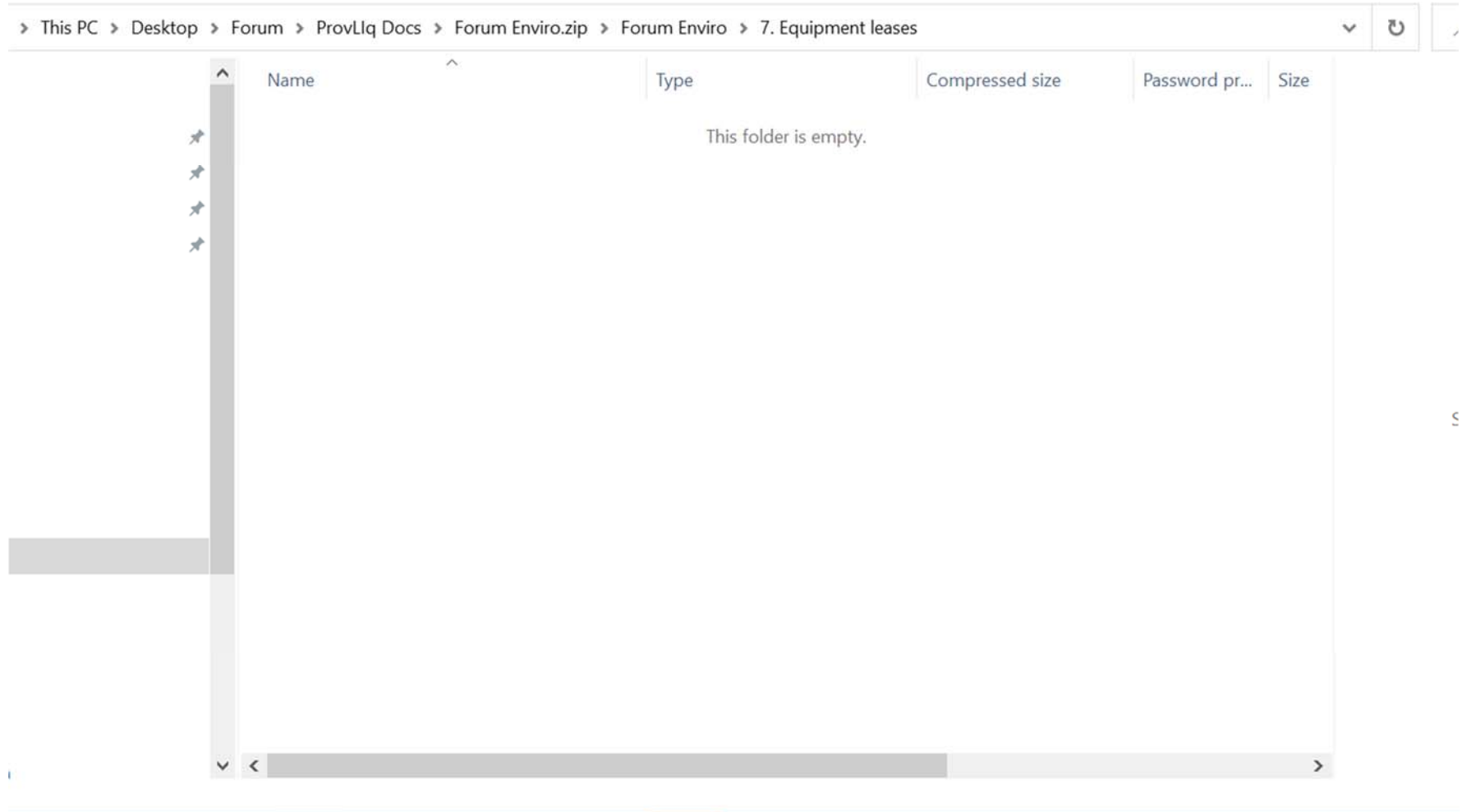
**Forum Enviro (Aust) Sub Folders**



Forum Enviro (Aust).zip > **Forum Enviro (Aust)**

Name	Date Modified	File Size
 1. Management Accounts	2021-10-29	
 2. Bank Statements - June 2021	2021-10-28	
 3. Balance Sheets - 2020 and 2021	2021-10-29	
 4. Debtors - 30 June 2021	2021-10-28	
 5. Creditors - 30 June 2021	2021-10-29	
 6. Provisional liquidator reports	2021-10-29	
 7. Equipment leases	2021-10-29	
 8. Asset registers	2021-10-28	

**Forum Enviro Item 7 Sub Folder "Equipment Lease" Empty**





Account details

**Account name**  
Forum Enviro Pty Ltd  
**Account number**  
082-080 84-548-0595  
**Currency**  
AUD

Account balance summary

**Opening balance:** 7,322.39 CR  
**Total credits:** 48,568.00 CR  
**Total debits:** 16,230.38 DR  
**Closing balance:** 39,660.01 CR  
  
Date from: 01 June 2021  
Date to: 30 June 2021

Transaction details

Date	Narrative	Reference number	Debit amount	Credit amount	EOD balance
08/06/2021	TRANSFER CREDITS Loan from FG FORUM NSW			30,000.00 CR	
08/06/2021	INTER-BANK CREDIT ALH GROUP ALH GP LTD FORUM ENVIRO PTY			3,025.00 CR	
08/06/2021	AUTOMATIC DRAWING 13152427 TOYOTA FINANCE FORUM FLEET PTY		1,013.08 DR		
08/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183722428 Westlawn May21 Ren		10,316.90 DR		29,017.41 CR
11/06/2021	AUTOMATIC DRAWING 4336879704378607 NAB CARD AUTOPAY FORUM ENVIRO PL		1,462.69 DR		27,554.72 CR
21/06/2021	AUTOMATIC DRAWING 13156353 TOYOTA FINANCE FORUM ENVIRO PTY		957.46 DR		26,597.26 CR
22/06/2021	INTER-BANK CREDIT ALH GROUP ALH GP LTD FORUM ENVIRO PTY			990.00 CR	27,587.26 CR
24/06/2021	TRANSFER DEBITS ONLINE D3341705543 Roger Bur CC topup FORUM ENVIRO		1,000.00 DR		
24/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184842001 CP1385		1,470.25 DR		25,117.01 CR
30/06/2021	INTER-BANK CREDIT REMSYD REMONDIS Austral FORUM ENVIRO PTY			14,553.00 CR	
30/06/2021	FEE ACCOUNT FEES A.K.F. FORUM ENVIRO		10.00 DR		39,660.01 CR

**End of report**



## FE FY21 balance sheet

Curr Move			Last Year	This Year		
<b>ASSETS</b>						
0.00	11100	Cash on Hand	10,000.00	10,000.00	10,000.00	
32,337.62	11105	Cash at bank - NAB	140,407.25	39,660.01	39,660.01	Gross assets 1,841,636.68
12,347.59-	11200	Trade Debtors	108,105.01	99,175.13	99,175.13	Gross liabilities - 20,387,936.44
0.00	11201	Sundry Debtor	889,309.26	0.00	0	Net assets - 18,546,299.76
2,778.60-	11205	Prov for Doubtful Debts	13,307.25-	0.00	0.00	
0.00	12030	Inter Company Loans - Forum Fleet	127,000.00-	0.00	0	
30,000.00-	12040	Inter Company Loans - Forum Group	14,963,466.49-	14,500,157.23-	-14500157.23	
0.00	12060	Inter Company Loans - Forum Finance	1,232,085.55	1,232,085.55	1,232,085.55	
0.00	12065	Inter company Loans - FORUM DIRECT	206,304.35-	0.00	0.00	
2,267.00-	12070	Inter Company Loan Acc - FGOC	5,427,260.51-	5,413,691.60-	-5,413,691.60	
0.00	12087	Intercompany Loan - Imagetec Solution	38,000.00-	38,000.00-	-38,000.00	
0.00	14610	Motor Vehicles - at Cost	256,172.06	256,172.06	256172.06	
30,694.00-	14620	Motor Vehicles - Accum Dep	133,394.81-	164,088.81-	-164,088.81	
45,749.57-		Total ASSETS	18,272,654.28-	18,478,844.89-	-18,478,844.89	
<b>LIABILITIES</b>						
1,000.00-	21100	Credit Cards	1,933.54-	1,000.00	1,000.00	
29,270.00	21156	Accrual - Expenses	337,944.83-	0.00	-	
64,394.00-	21200	Trade Creditors	12,817.77-	74,710.90-	- 74,710.90	
0.00	21201	Sundry Creditor	1,933.54	0.00	-	
57,821.62-	21210	Hire Purchase Liability - Current	60,122.16-	63,161.80-	- 63,161.80	
8,654.37	21211	Less:Unexpired Interest - Current	11,754.90	9,518.21	9,518.21	
2,632.36	21310	GST Collected	32,633.87-	317.72-	- 317.72	
6,396.33	21330	GST Paid	2,030.15	7,079.61	7,079.61	
0.09-	21500	Provision for Payroll Tax	70.35	0.00	-	
0.00	21505	Provision for FBT	33,346.62-	0.00	-	
4,300.00	21605	Northern Managed Finance Clearing	0.00	15,300.00	15,300.00	
30,659.00	21610	Forum Finance Rental Clearing	0.00	168,901.00	168,901.00	
590.00	21617	FGFS Rental Clearing Account	0.00	21,887.00-	- 21,887.00	
60,195.16	24500	Hire Purchase Liabilities - Non Current	172,116.54-	111,921.38-	- 111,921.38	

8,654.37-	24510	Less Unexpired Interest - Non Current	11,399.48	2,745.11	2,745.11
-----	-----	-----	-----	-----	
10,827.14		Total LIABILITIES	623,726.91-	67,454.87-	-67454.87
-----	-----	-----	-----	-----	
EQUITY					
0.00	31000	Owners/Shareholders Equity	10,000.00-	10,000.00-	
0.00	38000	Retained Earnings	14,052,997.99	18,906,381.19	
34,922.43	39000	Current Year Earnings	4,853,383.20	350,081.43-	
-----	-----	-----	-----	-----	
34,922.43		Total EQUITY	18,896,381.19	18,546,299.76	-18546299.76
-----	-----	-----	-----	-----	



Account details

Account balance summary

**Account name**  
Forum Enviro Aust PL  
**Account number**  
082-080 82-508-1722  
**Currency**  
AUD

**Opening balance:** 1,487,977.66 CR  
**Total credits:** 6,925,637.90 CR  
**Total debits:** 8,390,365.84 DR  
**Closing balance:** 23,249.72 CR  
  
Date from: 01 June 2021  
Date to: 30 June 2021

Transaction details

Date	Narrative	Reference number	Debit amount	Credit amount	EOD balance
01/06/2021	TRANSFER CREDITS Veolia May21 FORUM GRP FS			4,837,237.90 CR	
01/06/2021	TRANSFER CREDITS Westrac May21 FORUM GRP FS			180,400.00 CR	
01/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183247040 BHO RENT		3,729,044.00 DR		2,776,571.56 CR
02/06/2021	TRANSFER DEBITS TT3021806620 Payment-Id 183247228BHO NZ RENT		609,956.07 DR		2,166,615.49 CR
15/06/2021	TRANSFER CREDITS Loan from FGFS FORUM GRP FS			500,000.00 CR	
15/06/2021	TRANSFER DEBITS TT3021872623 Payment-Id 184116703BHO NZ RENT		472,975.77 DR		
15/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184116325 BHO RENT		2,028,390.00 DR		165,249.72 CR
16/06/2021	TRANSFER CREDITS Loan from FGFS FORUM GRP FS			1,330,000.00 CR	
16/06/2021	TRANSFER CREDITS Loan from FGFS FORUM GRP FS			78,000.00 CR	
16/06/2021	TRANSFER DEBITS Forum Group BHO Lock184269166 PAY WESTRAC		1,550,000.00 DR		23,249.72 CR

End of report

## FE Aust FYI21 balance sheet

Curr Move -----			Last Year -----	This Year -----	
<b>ASSETS</b>					
1,464,727.94-	11105	Cash at bank - NAB	5,091,238.90	23,249.72	23,249.72
4,141,934.50	11200	Trade Debtors	5,888,254.90	9,159,572.40	9,159,572.40
825,068.16-	11670	Loan to FGFS	0.00	4,779,151.69-	-4,779,151.69
-----	-----	-----	-----	-----	-----
1,852,138.40		Total ASSETS	10,979,493.80	4,403,670.43	
-----	-----	-----	-----	-----	-----
Gross assets 12,558,596.55					
Gross liabilities 13,576,183.82					
Net assets - 1,017,587.27					
<b>LIABILITIES</b>					
5,693.03-	21200	Trade Creditors	0.00	1,980,893.03-	-1,980,893.03
832,688.40-	21310	GST Collected	1,057,560.80-	2,203,456.10-	-2,203,456.10
517.55	21330	GST Paid	59,425.00	871,174.43	871,174.43
1,550,000.00	21451	Suspense - Pending	0.00	1,550,000.00	1,550,000.00
1,918,800.00-	21614	SMBC Clearing Account	564,000.00-	954,600.00	954,600.00
30,250.00-	21615	Flexi Rent Clearing Account	30,250.00-	60,500.00-	- 60,500.00
489,600.00-	21616	BHO Finance Clearing Account	9,387,108.00-	4,421,383.00-	-4,421,383.00
130,800.00-	21617	SocGen Finance Clearing Account	0.00	130,800.00-	- 130,800.00
-----	-----	-----	-----	-----	-----
1,857,313.88-		Total LIABILITIES	10,979,493.80-	5,421,257.70-	
-----	-----	-----	-----	-----	-----
<b>EQUITY</b>					
0.00	38000	Retained Earnings	9,655,712.60	9,655,712.60	
5,175.48	39000	Current Year Earnings	9,655,712.60-	8,638,125.33-	
-----	-----	-----	-----	-----	-----
5,175.48		Total EQUITY	0.00	1,017,587.27	
-----	-----	-----	-----	-----	-----

# Balance Sheet

Forum Group Financial Services Pty Ltd

As at 30 September 2020

Account	30 Sep 2020	30 Aug 2020	30 Jul 2020
<b>Assets</b>			
<b>Bank</b>			
Forum Group Financial Services	4,041,392.14	5,126,212.39	1,370,275.88
<b>Total Bank</b>	<b>4,041,392.14</b>	<b>5,126,212.39</b>	<b>1,370,275.88</b>
<b>Current Assets</b>			
Accounts Receivable	337,797.90	447,047.08	248,462.58
Loan - CTEX Global	200,000.00	200,000.00	200,000.00
Loan - Kew Avenue Pty Ltd	52,500.00	52,500.00	52,500.00
Loan - VT	0.00	166,341.24	166,341.24
Prepayments	38,596.96	8,844.11	8,368.50
<b>Total Current Assets</b>	<b>628,894.86</b>	<b>874,732.43</b>	<b>675,672.32</b>
<b>Fixed Assets</b>			
2-4 Atherton Road, Oakleigh	4,210,000.00	4,210,000.00	4,210,000.00
Vehicles	1,918,057.30	1,850,959.88	1,496,182.86
<b>Total Fixed Assets</b>	<b>6,128,057.30</b>	<b>6,060,959.88</b>	<b>5,706,182.86</b>
<b>Non-current Assets</b>			
Clearing Account - FG Future Fund NMF/HP/WL/BHO	2,712,215.06	2,712,215.06	0.00
Clearing Account - FG NMF Non-Future Funded Deals	2,589,501.16	2,752,330.86	2,915,160.56
Clearing Account - Forum Group	(48,114.81)	(48,114.81)	(48,114.81)
Clearing Account - Forum Group Tranche 1	343,459.07	345,027.07	347,875.52
Clearing Account - Forum Group Tranche 2	1,317,582.76	1,353,555.33	1,489,689.90
Clearing Account - Future Funded BHO	6,662,704.37	6,662,704.37	6,662,704.37
Clearing Account - Future Funded HP	2,767,096.12	2,767,096.12	2,767,096.12
Clearing Account - Future Funded NMF	55,081,409.40	55,081,409.40	55,081,409.40
Clearing Account - Future Funded WL	3,840,548.19	3,840,548.19	3,840,548.19
Clearing Account - Purchased NMF Future Funded Contracts	21,692,104.02	21,692,104.02	21,692,104.02
Erim Downs	200,000.00	200,000.00	200,000.00
Giamouridis	8,371,320.11	7,710,796.31	7,043,217.29
Loan - 10 James - Warehouse	0.00	59,677.87	59,677.87
Loan - 1160 Glen Huntly Road	910,558.76	900,948.76	891,998.76
Loan - 12 James - Warehouse	0.00	60,143.87	60,143.87
Loan - 123 High St, Taradale	68,177.49	68,177.49	63,856.41
Loan - 14 James Street Pty Ltd	2,301,148.59	2,049,819.63	2,049,441.23
Loan - 14 Kirwin Road, Morwell	262,026.87	256,872.41	248,872.41
Loan - 16 James - Warehouse	0.00	20,694.87	20,694.87
Loan - 160 Murray Valley Hwy, Lake Boga	216,893.64	210,363.89	200,661.39
Loan - 18 James - Warehouse	0.00	20,694.87	20,694.87
Loan - 19 Parsons - Warehouse	0.00	20,694.87	20,694.87
Loan - 193 Carlisle Street Enterprises Pty Ltd	30,304.64	30,304.64	30,304.64
Loan - 22 High Street, Rushworth	11,690.91	9,090.91	9,090.91
Loan - 275 High St, Golden Square	278,664.80	278,664.80	251,895.48
Loan - 29 Parsons - Warehouse	0.00	20,694.87	20,694.87
Loan - 31 Ellerman Street, Dimboola	129,824.17	121,663.49	116,619.44
Loan - 39 Parsons - Warehouse	0.00	20,694.87	20,694.87
Loan - 4 Cowslip St, Violet Town	285,364.57	285,364.57	258,168.03
Loan - 5 Bulkara	3,216,670.45	3,181,688.09	3,161,688.09
Loan - 55 Nolan Street, Maryborough	146,605.05	141,367.91	138,199.91
Loan - 6 Bulkara	475,000.00	475,000.00	475,000.00
Loan - 64-66 Berkeley St, Hawthorn	400,000.00	400,000.00	400,000.00
Loan - 65 Nelson Street Enterprises Pty Ltd	0.00	30,363.10	30,363.10
Loan - 8 Olive Street - Warehouse	0.00	28,032.87	28,032.87
Loan - 8-12 Natalia Ave Oakleigh Pty Ltd	1,533,426.25	1,504,276.25	1,236,703.75
Loan - 89 Betka Road, Mallacoota	96,589.11	90,447.60	70,447.60
Loan - 9 Gregory Street, Ouyen	11,690.91	9,090.91	9,090.91
Loan - 9 Main St, Derrinallum	125,391.49	125,391.49	115,775.85
Loan - Ellinikos Tourismos/Mazcon	7,387,138.48	7,206,983.76	3,106,983.76
Loan - FGOE	3,680,495.75	3,764,352.91	3,930,301.95
Loan - Forum Enviro	4,339,695.10	4,339,695.10	5,427,886.84
Loan - Forum Group/Enviro	0.00	(1,902,991.61)	747,008.39
Loan - Iugis	5,517,296.55	4,632,728.34	3,315,000.71
Loan - Iugis (EU) GmbH	1,140,074.82	1,112,268.12	1,112,268.12
Loan - Iugis Hellas IKE	124,583.75	121,545.12	121,545.12
Loan - Iugis Holdings Limited	12,306,613.12	11,276,148.22	10,937,135.45

Loan - Iugis UK Ltd	4,835,478.91	4,740,718.33	4,740,718.33
Loan - Mark Menzies	300,000.00	300,000.00	300,000.00
Loan - Orca Comercio De Sistemas Ambientais Ltd	66,989.48	66,989.48	66,989.48
Loan - Orca Enviro Systems Pty Ltd	0.00	0.00	80,736.42
Loan - Orca Environmental Solutions DMCC	911,198.71	888,974.35	888,974.35
Loan - Orca Global Financial Services Ltd	48,609.08	48,609.08	48,609.08
Loan - Other Related Parties	403,824.00	403,824.00	401,404.00
Loan - Palante Pty Ltd	1,462,800.05	927,122.00	926,682.00
Loan - SOFC	2,930,504.13	2,801,812.01	2,701,812.01
Loan - Tesoriero Investment Group Pty Ltd	1,157,051.34	960,347.00	960,347.00
Loan to Spartan Consulting Group	886,673.23	886,673.23	879,583.23
Loans - 23 Margaret Street	364,638.17	364,638.17	364,638.17
Loans - 26 Edmonstone Road	513,114.39	498,634.70	475,194.58
Loans - Canner Investments	1,042,437.37	1,037,122.98	1,037,122.98
Loans - Intrashield	1,000,569.10	1,000,569.10	958,046.92
New Finance Book - Forum Group	3,739,688.07	3,787,810.53	136,577.47
New Finance Book - Iugis AU	4,202,419.51	3,955,434.29	3,955,434.29
New Finance Book - Iugis UK	920,560.74	920,560.74	920,560.74
New Finance Book - Surfadice	2,264,440.00	2,346,440.00	2,346,440.00
Property - Bond Paid	(2,142.00)	(7,350.00)	(7,350.00)
Shares Purchased	640,000.00	640,000.00	640,000.00
TG Digesters	964,893.80	964,893.80	964,893.80
<b>Total Non-current Assets</b>	<b>179,179,498.80</b>	<b>173,574,450.57</b>	<b>164,486,742.62</b>
<b>Total Assets</b>	<b>189,977,843.10</b>	<b>185,636,355.27</b>	<b>172,238,873.68</b>

## Liabilities

<b>Current Liabilities</b>			
Accounts Payable	7,793,894.75	7,814,128.00	13,078,334.37
Accrued Annual Leave Liability	5,389.64	4,549.39	4,129.27
GST	(13,356,600.38)	(12,648,715.41)	(11,657,167.02)
PAYG Withholdings Payable	7,328.00	5,872.00	4,416.00
Rounding	0.00	0.01	0.00
Superannuation Payable	2,594.20	2,075.36	1,556.52
Suspense	0.00	(16,338.84)	(23,940.33)
<b>Total Current Liabilities</b>	<b>(5,547,393.79)</b>	<b>(4,838,429.49)</b>	<b>1,407,328.81</b>
<b>Non-current Liabilities</b>			
Accruals	10,344,426.90	10,337,427.81	10,337,427.81
Chattel Mortgage - Porsche GT2 RS	642,706.07	650,523.73	658,341.39
Chattel Mortgage - Porsche GT4	202,358.47	204,098.94	205,839.41
Clearing Account - BHO	144,681,305.27	144,182,627.27	148,711,734.27
Clearing Account - HP Finance	(7,664,989.92)	(7,391,833.05)	(7,118,676.18)
Clearing Account - NZ	32,813,539.19	29,477,962.16	28,693,509.74
Clearing Account - SMBC	9,542,647.74	666,631.56	(7,795,485.40)
Loan - Forum Enviro (Aust)	8,107,480.73	16,019,225.94	612,822.10
Loan - MAIA Financial	3,861,000.00	3,861,000.00	3,861,000.00
Loan - NMF	(39,729.36)	(39,729.36)	(39,729.36)
Loan - Think Tank - 126463	3,000,000.00	3,000,000.00	3,000,000.00
Loan - Think Tank - 126464	177,640.22	189,407.50	201,060.96
Unexpired Term Interest	(98,793.58)	(101,383.95)	(103,998.32)
<b>Total Non-current Liabilities</b>	<b>205,569,591.73</b>	<b>201,055,958.55</b>	<b>181,223,846.42</b>
<b>Total Liabilities</b>	<b>200,022,197.94</b>	<b>196,217,529.06</b>	<b>182,631,175.23</b>
<b>Net Assets</b>	<b>(10,044,354.84)</b>	<b>(10,581,173.79)</b>	<b>(10,392,301.55)</b>

## Equity

Current Year Earnings	57,538.83	(479,280.12)	(290,407.88)
Owner A Share Capital	(750,000.00)	(750,000.00)	(750,000.00)
Retained Earnings	(9,351,893.67)	(9,351,893.67)	(9,351,893.67)
<b>Total Equity</b>	<b>(10,044,354.84)</b>	<b>(10,581,173.79)</b>	<b>(10,392,301.55)</b>

# Balance Sheet

Forum Group Financial Services Pty Ltd

As at 31 December 2020

Account	31 Dec 2020	30 Nov 2020	31 Oct 2020
<b>Assets</b>			
<b>Bank</b>			
Forum Group Financial Services	9,044,684.65	10,222,946.73	6,071,200.46
<b>Total Bank</b>	<b>9,044,684.65</b>	<b>10,222,946.73</b>	<b>6,071,200.46</b>
<b>Current Assets</b>			
Accounts Receivable	251,385.20	125,692.60	18,959.52
Loan - CTEX Global	200,000.00	200,000.00	200,000.00
Loan - Kew Avenue Pty Ltd	52,500.00	52,500.00	52,500.00
Loan - VT	294,597.18	289,197.18	239,197.18
Prepayments	26,136.37	29,645.30	34,121.13
<b>Total Current Assets</b>	<b>824,618.75</b>	<b>697,035.08</b>	<b>544,777.83</b>
<b>Fixed Assets</b>			
2-4 Atherton Road, Oakleigh	4,210,000.00	4,210,000.00	4,210,000.00
Vehicles	1,868,017.03	1,868,017.03	1,928,616.85
<b>Total Fixed Assets</b>	<b>6,078,017.03</b>	<b>6,078,017.03</b>	<b>6,138,616.85</b>
<b>Non-current Assets</b>			
Clearing Account - FG Future Fund NMF/HP/WL/BHO	7,504,526.78	6,288,942.45	5,073,358.12
Clearing Account - FG NMF Non-Future Funded Deals	2,130,787.14	2,278,729.30	2,433,601.46
Clearing Account - Forum Group	(48,114.81)	(48,114.81)	(48,114.81)
Clearing Account - Forum Group Tranche 1	338,512.07	340,323.07	341,891.07
Clearing Account - Forum Group Tranche 2	1,092,334.43	1,125,248.28	1,219,086.15
Clearing Account - Future Funded BHO	6,662,704.37	6,662,704.37	6,662,704.37
Clearing Account - Future Funded HP	2,767,096.12	2,767,096.12	2,767,096.12
Clearing Account - Future Funded NMF	55,081,409.40	55,081,409.40	55,081,409.40
Clearing Account - Future Funded WL	3,840,548.19	3,840,548.19	3,840,548.19
Clearing Account - Purchased NMF Future Funded Contracts	22,114,124.12	22,114,124.12	22,114,124.12
Erim Downs	200,000.00	200,000.00	200,000.00
Giamouridis	10,111,898.56	9,703,455.22	9,046,414.20
iFish Finance Pty Ltd	100,000.00	100,000.00	50,000.00
Loan - 1160 Glen Huntly Road	803,192.73	795,782.73	765,608.76
Loan - 123 High St, Taradale	46,897.57	46,897.57	43,177.49
Loan - 14 James Street Pty Ltd	2,718,780.15	2,718,780.15	2,301,148.59
Loan - 14 Kirwin Road, Morwell	275,261.69	273,212.54	266,661.87
Loan - 160 Murray Valley Hwy, Lake Boga	231,643.40	230,082.40	224,380.58
Loan - 193 Carlisle Street Enterprises Pty Ltd	30,304.64	30,304.64	30,304.64
Loan - 22 High Street, Rushworth	11,777.18	11,777.18	11,690.91
Loan - 275 High St, Golden Square	218,302.74	218,302.74	198,664.80
Loan - 31 Ellerman Street, Dimboola	138,592.72	137,760.72	134,248.81
Loan - 4 Cowslip St, Violet Town	215,381.60	215,381.60	195,364.57
Loan - 5 Bulkara	3,319,999.39	3,319,999.39	3,222,082.63
Loan - 55 Nolan Street, Maryborough	155,358.18	154,470.18	150,805.05
Loan - 6 Bulkara	1,816,345.33	492,055.00	480,180.00
Loan - 64-66 Berkeley St, Hawthorn	1,495,049.12	1,439,584.62	404,271.00
Loan - 8-12 Natalia Ave Oakleigh Pty Ltd	1,853,897.89	1,629,379.94	1,545,083.88
Loan - 89 Betka Road, Mallacoota	102,982.24	102,982.24	100,567.51
Loan - 9 Gregory Street, Ouyen	11,983.18	11,983.18	11,690.91
Loan - 9 Main St, Derrinallum	88,006.93	88,006.93	80,391.49
Loan - Ellinikos Tourismus/Mazcon	7,407,829.00	7,407,415.71	7,388,111.31
Loan - FGOC	4,094,134.48	3,179,786.26	3,264,835.60
Loan - Forum Enviro	4,339,695.10	4,339,695.10	4,339,695.10
Loan - Forum Group/Enviro	(2,991.61)	0.00	(2,991.61)
Loan - Intrashield Investment Group Pty Ltd	9,976.78	(669.92)	0.00
Loan - Iugis	10,705,877.66	9,305,877.66	7,432,623.85
Loan - Iugis (EU) GmbH	1,140,074.82	1,140,074.82	1,140,074.82
Loan - Iugis Hellas IKE	784,660.65	124,583.75	124,583.75
Loan - Iugis Holdings Limited	14,185,911.91	13,616,823.12	13,318,474.79
Loan - Iugis UK Ltd	4,933,895.15	4,933,895.15	4,835,478.91
Loan - Mark Menzies	300,000.00	300,000.00	300,000.00
Loan - Orca Comercio De Sistemas Ambientais Ltd	71,493.07	66,989.48	66,989.48
Loan - Orca Environmental Solutions DMCC	2,356,930.20	2,141,430.20	1,796,430.20
Loan - Orca Global Financial Services Ltd	48,609.08	48,609.08	48,609.08
Loan - Other Related Parties	603,824.00	603,824.00	603,824.00
Loan - Palante Pty Ltd	1,462,800.05	1,462,800.05	1,462,800.05

Loan - SOFC	2,981,117.17	2,969,510.95	2,961,287.54
Loan - Tesoriero Investment Group Pty Ltd	1,159,120.34	1,159,120.34	1,157,120.34
Loan to Spartan Consulting Group	908,340.06	908,340.06	886,673.23
Loans - 23 Margaret Street	414,864.39	406,864.39	397,748.44
Loans - 26 Edmonstone Road	240,122.89	593,364.59	519,019.85
Loans - Canner Investments	1,099,289.30	1,099,289.30	1,073,228.37
Loans - Intrashield	1,195,861.34	1,155,861.34	1,000,569.10
New Finance Book - Forum Group	4,290,680.14	4,247,646.35	3,671,335.82
New Finance Book - Iugis AU	3,982,621.51	4,055,887.51	4,129,153.51
New Finance Book - Iugis UK	837,072.74	837,072.74	837,072.74
New Finance Book - Surfacide	2,141,440.00	2,182,440.00	2,223,440.00
Property - Bond Paid	(2,142.00)	(2,142.00)	(2,142.00)
Shares Purchased	1,390,000.00	1,390,000.00	1,390,000.00
TG Digesters	964,893.80	964,893.80	964,893.80
<b>Total Non-current Assets</b>	<b>199,475,585.07</b>	<b>193,010,493.29</b>	<b>186,277,381.95</b>
<b>Total Assets</b>	<b>215,422,905.50</b>	<b>210,008,492.13</b>	<b>199,031,977.09</b>

## Liabilities

<b>Current Liabilities</b>			
Accounts Payable	13,411,145.76	10,001,686.60	10,365,287.64
Accrued Annual Leave Liability	0.00	0.00	5,746.74
GST	(15,762,058.55)	(14,793,665.80)	(14,061,006.49)
PAYG Withholdings Payable	2,144.00	2,144.00	2,144.00
Superannuation Payable	3,372.46	3,372.46	3,372.46
Suspense	(500,000.00)	(2,500,000.00)	(500,000.00)
<b>Total Current Liabilities</b>	<b>(2,845,396.33)</b>	<b>(7,286,462.74)</b>	<b>(4,184,455.65)</b>
<b>Non-current Liabilities</b>			
Accruals	8,813,140.27	10,337,427.81	10,337,427.81
Chattel Mortgage - Porsche GT2 RS	619,253.09	627,070.75	634,888.41
Chattel Mortgage - Porsche GT4	197,137.06	198,877.53	200,618.00
Clearing Account - BHO	157,620,578.27	152,266,882.27	148,242,288.27
Clearing Account - HP Finance	(8,484,460.53)	(8,211,303.66)	(7,938,146.79)
Clearing Account - NZ	36,680,192.79	33,612,169.68	34,494,539.92
Clearing Account - SMBC	20,795,751.97	21,995,201.97	11,801,775.83
Loan - Forum Enviro (Aust)	6,592,627.13	9,808,850.24	8,926,480.00
Loan - MAIA Financial	3,861,000.00	3,861,000.00	3,861,000.00
Loan - NMF	(39,729.36)	(39,729.36)	(39,729.36)
Loan - Think Tank - 126463	3,000,000.00	3,000,000.00	3,000,000.00
Loan - Think Tank - 126464	141,540.16	153,712.32	165,702.04
Unexpired Term Interest	(91,167.35)	(93,685.20)	(96,227.31)
<b>Total Non-current Liabilities</b>	<b>229,705,863.50</b>	<b>227,516,474.35</b>	<b>213,590,616.82</b>
<b>Total Liabilities</b>	<b>226,860,467.17</b>	<b>220,230,011.61</b>	<b>209,406,161.17</b>

<b>Net Assets</b>	<b>(11,437,561.67)</b>	<b>(10,221,519.48)</b>	<b>(10,374,184.08)</b>
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## Equity

Current Year Earnings	(1,335,668.00)	(119,625.81)	(272,290.41)
Owner A Share Capital	(750,000.00)	(750,000.00)	(750,000.00)
Retained Earnings	(9,351,893.67)	(9,351,893.67)	(9,351,893.67)
<b>Total Equity</b>	<b>(11,437,561.67)</b>	<b>(10,221,519.48)</b>	<b>(10,374,184.08)</b>



# Balance Sheet

Forum Group Financial Services Pty Ltd

As at 31 March 2021

Account	31 Mar 2021	28 Feb 2021	31 Jan 2021
<b>Assets</b>			
<b>Bank</b>			
Forum Group Financial Services	12,850,056.60	5,840,517.01	6,396,955.83
<b>Total Bank</b>	<b>12,850,056.60</b>	<b>5,840,517.01</b>	<b>6,396,955.83</b>
<b>Current Assets</b>			
Accounts Receivable	200,000.00	1,182,507.18	539,269.12
Loan - CTEX Global	200,000.00	200,000.00	200,000.00
Loan - Kew Avenue Pty Ltd	52,500.00	52,500.00	52,500.00
Loan - VT	294,597.18	294,597.18	294,597.18
Prepayments	15,030.39	18,897.34	23,373.17
<b>Total Current Assets</b>	<b>762,127.57</b>	<b>1,748,501.70</b>	<b>1,109,739.47</b>
<b>Fixed Assets</b>			
2-4 Atherton Road, Oakleigh	4,210,000.00	4,210,000.00	4,210,000.00
Vehicles	2,718,730.28	1,868,017.03	1,868,017.03
<b>Total Fixed Assets</b>	<b>6,928,730.28</b>	<b>6,078,017.03</b>	<b>6,078,017.03</b>
<b>Non-current Assets</b>			
Clearing Account - FG Future Fund NMF/HP/WL/BHO	11,121,661.77	9,924,383.44	8,714,455.11
Clearing Account - FG NMF Non-Future Funded Deals	1,697,464.42	1,835,927.06	1,983,357.10
Clearing Account - Forum Group	(48,114.81)	(48,114.81)	(48,114.81)
Clearing Account - Forum Group Tranche 1	327,138.07	328,416.07	329,694.07
Clearing Account - Forum Group Tranche 2	1,214,667.55	1,026,494.27	1,059,414.35
Clearing Account - Future Funded BHO	6,662,704.37	6,662,704.37	6,662,704.37
Clearing Account - Future Funded HP	2,767,096.12	2,767,096.12	2,767,096.12
Clearing Account - Future Funded NMF	55,081,409.40	55,081,409.40	55,081,409.40
Clearing Account - Future Funded WL	3,840,548.19	3,840,548.19	3,840,548.19
Clearing Account - Purchased NMF Future Funded Contracts	22,114,124.12	22,114,124.12	22,114,124.12
Erim Downs	200,000.00	200,000.00	200,000.00
Giamouridis	10,111,898.56	10,111,898.56	10,111,898.56
iFish Finance Pty Ltd	110,000.00	110,000.00	100,000.00
Loan - 1160 Glen Huntly Road	877,473.34	838,071.55	830,682.55
Loan - 123 High St, Taradale	51,337.79	50,085.65	48,070.01
Loan - 14 James Street Pty Ltd	2,838,193.39	2,777,749.65	2,777,749.65
Loan - 14 Kirwin Road, Morwell	247,822.69	261,778.23	286,778.23
Loan - 160 Murray Valley Hwy, Lake Boga	173,852.43	194,612.13	244,612.13
Loan - 193 Carlisle Street Enterprises Pty Ltd	30,304.64	30,304.64	30,304.64
Loan - 22 High Street, Rushworth	17,406.69	12,233.39	12,071.61
Loan - 275 High St, Golden Square	209,542.42	209,431.63	223,760.31
Loan - 286 Carlisle Street Pty Ltd	815,000.00	100,000.00	0.00
Loan - 31 Ellerman Street, Dimboola	103,250.85	120,732.54	145,732.54
Loan - 4 Cowslip St, Violet Town	208,740.29	208,649.06	220,766.14
Loan - 5 Bulkara	3,649,511.85	3,482,999.37	3,420,499.37
Loan - 55 Nolan Street, Maryborough	116,278.18	138,442.13	163,442.13
Loan - 6 Bulkara	3,519,239.06	2,913,403.96	2,411,753.96
Loan - 64-66 Berkeley St, Hawthorn	1,734,508.30	1,637,203.22	1,587,203.22
Loan - 8-12 Natalia Ave Oakleigh Pty Ltd	2,087,155.18	1,904,848.46	1,900,245.34
Loan - 89 Betka Road, Mallacoota	84,598.58	82,535.20	109,535.20
Loan - 9 Gregory Street, Ouyen	15,818.58	12,282.76	12,282.76
Loan - 9 Main St, Derrinallum	80,654.94	78,687.75	90,207.10
Loan - Ellinikos Tourismos/Mazcon	11,376,835.04	9,505,560.94	8,815,604.19
Loan - FGO	3,833,521.73	3,921,006.53	4,007,876.00
Loan - Forum Enviro	4,339,695.10	4,339,695.10	4,339,695.10
Loan - Forum Group/Enviro	2,192,374.47	1,394,016.78	2,494,016.78
Loan - Intrashield Investment Group Pty Ltd	38,733.09	28,733.09	15,343.47
Loan - Iugis	18,704,499.04	14,384,828.75	13,748,948.14
Loan - Iugis (EU) GmbH	1,197,791.11	1,168,576.69	1,168,576.69
Loan - Iugis Energy SA	572,382.37	0.00	0.00
Loan - Iugis Hellas IKE	895,828.16	804,277.17	804,277.17
Loan - Iugis Holdings Limited	15,553,209.03	14,683,206.65	14,683,206.65
Loan - Iugis UK Ltd	6,135,790.23	5,877,749.97	5,774,134.02
Loan - Iugis Waste Solutions Pty Ltd	427.43	417.00	417.00
Loan - Mark Menzies	300,000.00	300,000.00	300,000.00
Loan - Matt Ingram Family Trust	1,002,500.00	1,000,000.00	0.00
Loan - Orca Comercio De Sistemas Ambientais Ltd	71,493.07	71,493.07	71,493.07

Loan - Orca Environmental Solutions DMCC	2,697,669.17	2,630,067.19	2,415,853.46
Loan - Orca Global Financial Services Ltd	48,609.08	48,609.08	48,609.08
Loan - Other Related Parties	404,437.00	404,437.00	604,437.00
Loan - Palante Pty Ltd	2,621,666.81	2,457,393.72	1,849,370.05
Loan - SOFC	3,182,143.83	3,068,813.57	3,062,574.64
Loan - Tesoriero Investment Group Pty Ltd	1,159,393.34	1,159,393.34	1,159,120.34
Loan to Iugis Investments for Autonomous Energy	1,496,454.90	4,300,356.00	0.00
Loan to Spartan Consulting Group	954,324.77	931,048.56	931,048.56
Loans - 23 Margaret Street	553,741.90	460,236.00	445,236.00
Loans - 26 Edmonstone Road	507,017.45	315,873.54	283,240.88
Loans - Canner Investments	1,170,315.82	1,141,771.53	1,126,771.53
Loans - Intrashield	1,283,130.10	1,251,834.24	1,251,834.24
New Finance Book - Forum Group	4,093,722.50	4,179,609.81	4,265,647.14
New Finance Book - Iugis AU	3,721,823.51	3,836,089.51	3,909,355.51
New Finance Book - Iugis UK	837,072.74	837,072.74	837,072.74
New Finance Book - Surfacide	2,059,440.00	2,059,440.00	2,100,440.00
Property - Bond Paid	(2,142.00)	(2,142.00)	(2,142.00)
Shares Purchased	1,390,000.00	1,390,000.00	1,390,000.00
TG Digesters	964,893.80	964,893.80	964,893.80
<b>Total Non-current Assets</b>	<b>227,420,081.55</b>	<b>217,923,297.48</b>	<b>210,299,234.72</b>
<b>Total Assets</b>	<b>247,960,996.00</b>	<b>231,590,333.22</b>	<b>223,883,947.05</b>

## Liabilities

<b>Current Liabilities</b>			
Accounts Payable	9,891,153.02	8,905,034.97	8,563,072.03
GST	(18,491,131.67)	(17,514,276.38)	(16,483,199.20)
PAYG Withholdings Payable	2,144.00	2,144.00	2,144.00
Superannuation Payable	3,372.46	3,372.46	3,372.46
Suspense	(55,273.00)	0.00	0.00
<b>Total Current Liabilities</b>	<b>(8,649,735.19)</b>	<b>(8,603,724.95)</b>	<b>(7,914,610.71)</b>
<b>Non-current Liabilities</b>			
Accruals	10,337,427.81	10,337,427.81	10,337,427.81
Chattel Mortgage - Audi RSQ8	270,586.55	0.00	0.00
Chattel Mortgage - Porsche GT2 RS	595,800.11	603,617.77	611,435.43
Chattel Mortgage - Porsche GT4	191,915.65	193,656.12	195,396.59
Clearing Account - BHO	160,766,032.27	159,680,505.27	156,000,697.27
Clearing Account - HP Finance	(9,303,931.14)	(9,030,774.27)	(8,757,617.40)
Clearing Account - NZ	37,801,124.97	37,006,285.05	35,718,790.46
Clearing Account - SMBC	46,377,579.32	35,594,697.31	30,665,033.52
Clearing Account - SocGen via BHO	4,128,757.00	0.00	0.00
Loan - Forum Enviro (Aust)	11,671,694.95	12,666,534.87	11,704,029.46
Loan - MAIA Financial	3,861,000.00	3,861,000.00	3,861,000.00
Loan - NMF	(39,729.36)	(39,729.36)	(39,729.36)
Loan - Think Tank - 126463	2,955,375.00	2,970,250.00	2,985,125.00
Loan - Think Tank - 126464	100,721.83	114,327.94	127,934.05
Unexpired Term Interest	(111,963.42)	(86,204.75)	(88,673.84)
<b>Total Non-current Liabilities</b>	<b>269,602,391.54</b>	<b>253,871,593.76</b>	<b>243,320,848.99</b>
<b>Total Liabilities</b>	<b>260,952,656.35</b>	<b>245,267,868.81</b>	<b>235,406,238.28</b>
<b>Net Assets</b>	<b>(12,991,660.35)</b>	<b>(13,677,535.59)</b>	<b>(11,522,291.23)</b>

## Equity

Current Year Earnings	(2,889,766.68)	(3,575,641.92)	(1,420,397.56)
Owner A Share Capital	(750,000.00)	(750,000.00)	(750,000.00)
Retained Earnings	(9,351,893.67)	(9,351,893.67)	(9,351,893.67)
<b>Total Equity</b>	<b>(12,991,660.35)</b>	<b>(13,677,535.59)</b>	<b>(11,522,291.23)</b>

# Balance Sheet

Forum Group Financial Services Pty Ltd

As at 30 June 2021

Account	30 Jun 2021	30 May 2021	30 Apr 2021
<b>Assets</b>			
<b>Bank</b>			
Forum Group Financial Services	570,142.80	12,443,204.07	8,719,878.11
<b>Total Bank</b>	<b>570,142.80</b>	<b>12,443,204.07</b>	<b>8,719,878.11</b>
<b>Current Assets</b>			
Accounts Receivable	204,773.80	612,771.39	274,045.87
Loan - CTEX Global	200,000.00	200,000.00	200,000.00
Loan - Kew Avenue Pty Ltd	52,500.00	52,500.00	52,500.00
Loan - VT	260,341.38	260,341.38	260,341.38
Prepayments	30,879.39	22,350.07	12,721.18
<b>Total Current Assets</b>	<b>748,494.57</b>	<b>1,147,962.84</b>	<b>799,608.43</b>
<b>Fixed Assets</b>			
2-4 Atherton Road, Oakleigh	4,210,000.00	4,210,000.00	4,210,000.00
Office Equipment	5,800,000.00	2,300,000.00	1,200,000.00
Vehicles	2,948,730.28	2,948,730.28	2,948,730.28
<b>Total Fixed Assets</b>	<b>12,958,730.28</b>	<b>9,458,730.28</b>	<b>8,358,730.28</b>
<b>Non-current Assets</b>			
Clearing Account - FG Future Fund NMF/HP/WL/BHO	13,516,218.43	13,516,218.43	12,318,940.10
Clearing Account - FG NMF Non-Future Funded Deals	1,534,814.50	1,587,843.14	1,640,871.78
Clearing Account - Forum Group	(48,114.81)	(48,114.81)	(48,114.81)
Clearing Account - Forum Group Tranche 1	323,304.07	324,582.07	325,860.07
Clearing Account - Forum Group Tranche 2	673,870.96	701,616.33	725,545.66
Clearing Account - Future Funded BHO	6,662,704.37	6,662,704.37	6,662,704.37
Clearing Account - Future Funded HP	2,767,096.12	2,767,096.12	2,767,096.12
Clearing Account - Future Funded NMF	55,081,409.40	55,081,409.40	55,081,409.40
Clearing Account - Future Funded WL	3,840,548.19	3,840,548.19	3,840,548.19
Clearing Account - Purchased NMF Future Funded Contracts	22,114,124.12	22,114,124.12	22,114,124.12
Erim Downs	200,000.00	200,000.00	200,000.00
Giamouridis	10,111,898.56	10,111,898.56	10,111,898.56
iFish Finance Pty Ltd	140,000.00	140,000.00	130,000.00
Loan - 1160 Glen Huntly Road	900,473.34	890,473.34	885,473.34
Loan - 123 High St, Taradale	53,353.43	53,353.43	53,353.43
Loan - 14 James Street Pty Ltd	2,838,193.39	2,838,193.39	2,838,193.39
Loan - 14 Kirwin Road, Morwell	255,794.93	255,794.93	255,794.93
Loan - 160 Murray Valley Hwy, Lake Boga	185,202.74	185,202.74	185,202.74
Loan - 193 Carlisle Street Enterprises Pty Ltd	30,304.64	30,304.64	30,304.64
Loan - 22 High Street, Rushworth	25,274.64	20,250.99	20,225.34
Loan - 275 High St, Golden Square	222,213.74	222,213.74	222,213.74
Loan - 286 Carlisle Street Pty Ltd	2,202,000.00	1,852,000.00	1,237,000.00
Loan - 31 Ellerman Street, Dimboola	110,261.69	110,261.69	110,261.69
Loan - 4 Cowslip St, Violet Town	221,623.21	221,623.21	221,623.21
Loan - 5 Bulkara	3,712,011.85	3,712,011.85	3,694,511.85
Loan - 55 Nolan Street, Maryborough	123,906.95	123,906.95	123,906.95
Loan - 6 Bulkara	4,944,239.06	4,939,239.06	4,009,239.06
Loan - 64-66 Berkeley St, Hawthorn	1,865,508.30	1,839,508.30	1,789,508.30
Loan - 8-12 Natalia Ave Oakleigh Pty Ltd	2,122,155.18	2,087,155.18	2,087,155.18
Loan - 89 Betka Road, Mallacoota	93,201.89	93,201.89	93,201.89
Loan - 9 Gregory Street, Ouyen	18,968.58	15,818.58	15,818.58
Loan - 9 Main St, Derrinallum	85,135.59	85,135.59	85,135.59
Loan - Ellinikos Tourismos/Mazcon	16,347,143.74	14,337,038.03	12,314,549.02
Loan - FGOE	4,567,331.64	3,656,688.69	3,833,521.73
Loan - Forum Enviro	4,339,695.10	4,339,695.10	4,339,695.10
Loan - Forum Group/Enviro	1,836,754.24	2,192,374.47	2,192,374.47
Loan - Intrashield Investment Group Pty Ltd	51,733.09	48,733.09	43,733.09
Loan - Iugis	26,281,598.64	23,882,946.84	21,552,946.84
Loan - Iugis (EU) GmbH	1,197,791.11	1,197,791.11	1,197,791.11
Loan - Iugis Energy SA	572,382.37	572,382.37	572,382.37
Loan - Iugis Hellas IKE	895,828.16	895,828.16	895,828.16
Loan - Iugis Holdings Limited	16,120,770.75	16,120,770.75	16,085,398.50
Loan - Iugis UK Ltd	6,526,810.05	6,526,810.05	6,271,242.48
Loan - Iugis Waste Solutions Pty Ltd	1,000,427.43	1,000,427.43	1,000,427.43
Loan - Mark Menzies	300,000.00	300,000.00	300,000.00
Loan - Matt Ingram Family Trust	1,002,500.00	1,002,500.00	1,002,500.00

Loan - Orca Comercio De Sistemas Ambientais Ltd	71,493.07	71,493.07	71,493.07
Loan - Orca Environmental Solutions DMCC	3,189,665.27	3,125,481.59	2,797,669.17
Loan - Orca Global Financial Services Ltd	48,609.08	48,609.08	48,609.08
Loan - Other Related Parties	404,710.00	404,710.00	404,710.00
Loan - Palante Pty Ltd	2,621,939.81	2,621,939.81	2,621,939.81
Loan - SOFC	3,343,403.37	3,293,727.62	3,233,727.62
Loan - Tesoriero Investment Group Pty Ltd	1,159,393.34	1,159,393.34	1,159,393.34
Loan to Iugis Investments for Autonomous Energy	4,548,209.90	4,548,209.90	2,146,454.90
Loan to Spartan Consulting Group	1,419,324.77	1,419,324.77	954,324.77
Loans - 23 Margaret Street	687,741.90	687,741.90	613,741.90
Loans - 26 Edmonstone Road	614,628.95	562,481.21	528,737.19
Loans - Canner Investments	1,180,315.82	1,170,315.82	1,170,315.82
Loans - Intrashield	1,283,130.10	1,283,130.10	1,283,130.10
New Finance Book - Forum Group	5,661,453.42	4,092,702.62	4,014,780.72
New Finance Book - Iugis AU	3,379,025.51	3,493,291.51	3,607,557.51
New Finance Book - Iugis UK	670,096.74	690,968.74	711,840.74
New Finance Book - Surfacide	2,059,440.00	2,059,440.00	2,059,440.00
Problem Contracts	400,729.41	400,729.41	400,729.41
Property - Bond Paid	9,408.00	9,408.00	9,408.00
Refinance Balance to Clear	5,013,005.00	5,013,005.00	0.00
Shares Purchased	1,390,000.00	1,390,000.00	1,390,000.00
TG Digesters	964,893.80	964,893.80	964,893.80
<b>Total Non-current Assets</b>	<b>258,089,080.64</b>	<b>251,160,558.80</b>	<b>235,624,294.66</b>
<b>Total Assets</b>	<b>272,366,448.29</b>	<b>274,210,455.99</b>	<b>253,502,511.48</b>

## Liabilities

<b>Current Liabilities</b>			
Accounts Payable	10,644,789.34	5,856,079.96	4,020,908.16
GST	(21,682,406.35)	(20,284,118.00)	(19,309,345.02)
PAYG Withholdings Payable	2,144.00	2,144.00	2,144.00
Suspense	(409,155.06)	(63.74)	(16,865.18)
<b>Total Current Liabilities</b>	<b>(11,444,628.07)</b>	<b>(14,425,957.78)</b>	<b>(15,303,158.04)</b>
<b>Non-current Liabilities</b>			
Accruals	10,337,427.81	10,337,427.81	10,337,427.81
Chattel Mortgage - Audi RSQ8	260,565.20	263,905.65	267,246.10
Chattel Mortgage - Porsche GT2 RS	572,347.13	580,164.79	587,982.45
Chattel Mortgage - Porsche GT4	186,694.24	188,434.71	190,175.18
Clearing Account - BHO	178,296,233.27	172,162,941.27	163,032,824.27
Clearing Account - HP Finance	(10,123,401.75)	(9,850,244.88)	(9,577,088.01)
Clearing Account - NZ	40,362,063.45	36,842,063.45	37,907,735.54
Clearing Account - SMBC	60,990,674.07	62,939,724.07	55,844,509.46
Clearing Account - SocGen via BHO	8,987,198.00	8,987,198.00	4,128,757.00
Loan - Forum Enviro (Aust)	1,137,916.47	13,010,756.47	12,665,084.38
Loan - MAIA Financial	3,861,000.00	3,861,000.00	3,861,000.00
Loan - NMF	(39,729.36)	(39,729.36)	(39,729.36)
Loan - Think Tank - 126463	2,910,750.00	2,925,625.00	2,940,500.00
Loan - Think Tank - 126464	59,903.50	73,509.61	87,115.72
Unexpired Term Interest	(102,652.50)	(105,723.84)	(108,827.42)
<b>Total Non-current Liabilities</b>	<b>297,696,989.53</b>	<b>302,177,052.75</b>	<b>282,124,713.12</b>
<b>Total Liabilities</b>	<b>286,252,361.46</b>	<b>287,751,094.97</b>	<b>266,821,555.08</b>
<b>Net Assets</b>	<b>(13,885,913.17)</b>	<b>(13,540,638.98)</b>	<b>(13,319,043.60)</b>

## Equity

Current Year Earnings	(3,784,019.50)	(3,438,745.31)	(3,217,149.93)
Owner A Share Capital	(750,000.00)	(750,000.00)	(750,000.00)
Retained Earnings	(9,351,893.67)	(9,351,893.67)	(9,351,893.67)
<b>Total Equity</b>	<b>(13,885,913.17)</b>	<b>(13,540,638.98)</b>	<b>(13,319,043.60)</b>

**Cash Summary**  
**Forum Group Financial Services Pty Ltd**  
**For the month ended 30 June 2021**  
**Excluding GST**

	Jun 2021	May 2021	Apr 2021	Mar 2021	Feb 2021	Jan 2021	Dec 2020	Nov 2020	Oct 2020	Sep 2020	Aug 2020	Jul 2020
<b>Income</b>												
Contract Revenue	\$0.00	\$14,775.21	\$10,862.17	\$22,739.49	\$21,146.33	\$20,846.69	\$20,311.74	\$30,861.83	\$38,573.88	\$20,444.55	\$18,529.14	\$11,963.12
Interest Income	\$17,246.52	\$36,374.10	\$0.00	\$2,102,033.01	\$19,734.10	\$94,873.02	\$1,545,239.33	\$404,739.78	\$22,152.42	\$892,614.67	\$47,258.10	\$0.00
Rental Income	\$3,319.93	\$2,784.86	\$4,600.08	\$0.00	\$8,644.95	\$6,308.75	\$6,308.75	\$6,308.75	\$6,308.75	\$6,231.17	\$6,386.33	\$6,308.75
<b>Total Income</b>	<b>\$20,566.45</b>	<b>\$53,934.17</b>	<b>\$15,462.25</b>	<b>\$2,124,772.50</b>	<b>\$49,525.38</b>	<b>\$122,028.46</b>	<b>\$1,571,859.82</b>	<b>\$441,910.36</b>	<b>\$67,035.05</b>	<b>\$919,290.39</b>	<b>\$72,173.57</b>	<b>\$18,271.87</b>
<b>Less Operating Expenses</b>												
Accommodation	\$0.00	\$695.01	\$0.00	\$0.00	\$0.00	\$582.35	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Advertising & Marketing	\$0.00	\$7,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$863.64	\$0.00	\$0.00
Annual Leave Expense	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$357.10	\$420.13	\$420.12	\$420.12
Application Fees	\$218.18	\$0.00	\$0.00	\$15.45	\$0.00	\$15.71	\$176.11	\$126.00	\$0.00	\$0.00	\$0.00	\$0.00
Bank Fees	\$675.49	\$651.84	\$997.88	\$882.85	\$504.62	\$697.39	\$1,221.19	-\$188.96	\$377.65	\$408.75	\$425.89	-\$707.99
Boat Expense	\$2,060.00	\$0.00	\$4,880.00	\$2,060.00	\$2,060.00	\$5,304.00	\$2,150.91	\$5,324.05	\$4,802.91	\$2,060.00	\$440.00	\$0.00
Brokerage Fee	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$110.00	\$0.00
Cleaning	\$156.87	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Construction Expenses	\$0.00	\$0.00	\$0.00	\$130,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Consulting & Accounting	\$61,300.00	\$50,000.00	\$105,000.00	\$1,013,145.45	\$2,050,000.00	\$0.00	\$2,681,247.97	\$55,200.00	\$62,218.00	\$100,000.00	\$33,990.91	\$126,100.00
Contractor Payments	\$32,166.66	\$24,166.66	\$22,000.04	\$28,333.32	\$24,166.66	\$39,166.66	\$24,166.66	\$32,847.34	\$25,185.02	\$25,283.56	\$25,316.42	\$36,827.51
Cost of Goods Sold	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$112,081.82	\$0.00	\$0.00	\$0.00
Council Fees	\$845.45	-\$456.00	\$3,029.77	\$0.00	\$1,837.00	\$0.00	\$0.00	\$3,684.15	\$0.00	\$0.00	\$0.00	\$0.00
Design Expenses	\$3,075.00	\$9,942.50	\$22,957.50	\$34,065.00	\$44,372.50	\$0.00	\$0.00	\$30,617.50	\$12,805.00	\$41,740.00	\$73,678.75	\$120,000.00
Employee Amenities	\$0.00	\$0.00	\$36.37	\$0.00	\$5,454.55	\$428.95	\$339.44	\$2,536.00	\$0.00	\$150.00	\$2,815.00	\$0.00
Engineering Expenses	\$0.00	\$0.00	\$0.00	\$0.00	\$3,000.00	\$0.00	\$25,560.00	\$10,680.00	\$1,800.00	\$0.00	\$61,760.00	\$24,000.00
Foreign Exchange Gain/Loss	\$0.00	\$0.00	\$0.00	\$0.00	\$23.95	\$0.00	\$0.00	\$0.00	\$5,047.60	\$0.00	\$0.00	\$18.00
Freight & Courier	\$0.00	\$0.00	\$111,562.50	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
General Expenses	\$0.00	\$0.00	\$16.35	\$62.72	\$0.00	\$0.00	\$0.00	\$17.45	\$145.78	\$0.00	\$0.00	\$0.00
Insurance	\$463.87	\$201.10	\$558.58	\$671.07	\$814.83	\$471.77	\$309.17	\$295.43	\$1,800.93	\$4,078.89	\$309.17	\$309.17
Interest Expense	\$50,000.00	\$50,002.48	\$50,000.00	\$50,000.00	\$50,000.00	\$0.00	\$116,308.95	\$66,491.39	\$66,943.20	\$117,099.97	\$99,031.97	\$99,078.33
Interest Expense - Chattel Mortg	\$3,071.34	\$3,103.58	\$3,136.00	\$3,168.33	\$2,469.09	\$2,493.51	\$2,517.85	\$2,542.11	\$2,566.27	\$2,590.37	\$2,614.37	\$2,638.28
IT Expense	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,005.00	\$0.00	\$0.00	\$0.00	\$0.00
Leasing Charges (Operating Lea	\$5,400.76	\$5,400.76	\$5,400.76	\$5,400.76	\$5,400.76	\$8,392.37	\$8,392.37	\$8,392.37	\$8,392.37	\$8,392.37	\$8,392.37	\$8,392.37
Legal expenses	\$273.00	\$273.00	\$0.00	\$25,292.47	\$3,164.00	\$0.00	\$0.00	\$11,400.00	\$6,500.00	\$27,027.03	\$6,757.30	\$0.00
Light, Power, Heating	\$38.93	\$75.79	\$0.00	\$614.20	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Meals	\$916.87	\$265.10	\$157.64	\$397.75	\$0.00	\$236.05	\$179.01	\$317.63	\$265.54	\$0.00	\$145.77	\$83.13
Motor Vehicle Expenses	\$146,900.34	\$112,757.73	\$24,456.11	\$81,432.78	\$10,511.08	\$5,597.81	\$4,602.65	\$35,147.52	\$1,844.90	\$60,619.39	\$8,727.18	\$1,653.44
Office Expenses	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$204.55	\$0.00	\$0.00	\$150.73	\$0.00	\$0.00	\$0.01
Parking	\$3.64	\$0.00	\$0.00	\$5.08	\$0.00	\$0.00	\$7.26	\$5.00	\$3.08	\$0.00	\$3.55	\$3.64
Payroll Tax	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$412.53	\$450.60	\$104.05	\$148.37	\$0.00
Printing & Stationery	\$145.45	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$40.05	\$0.00	\$0.00	\$0.00
Professional Fees	\$168.48	\$141.74	\$232.51	\$0.00	\$5,363.50	\$317.94	\$317.94	\$317.94	\$317.94	\$314.05	\$321.82	\$317.94
Rent	\$25,333.33	\$28,027.38	\$28,027.38	\$28,027.38	\$28,027.38	\$30,721.43	\$17,779.76	\$45,140.47	\$32,807.14	\$34,867.14	\$20,627.14	\$19,807.14
Repairs and Maintenance	\$121.15	\$55.32	\$198.18	\$62.63	\$805.00	\$234.34	\$113.85	\$426.18	\$70.63	\$402.00	\$0.00	\$49.58
Sponsorships	\$9,081.82	\$0.00	\$5,700.00	\$2,163.64	\$0.00	\$0.00	\$2,154.54	\$0.00	\$4,077.27	\$500.00	\$0.00	\$3,563.64
Subscriptions	\$44.91	\$167.41	\$44.91	\$118.30	\$112.04	\$117.45	\$117.58	\$118.49	\$117.72	\$117.36	\$116.02	\$117.56
Superannuation	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$657.68	\$1,216.72	\$518.84	\$957.30	\$738.07
Survey Expenses	\$0.00	\$0.00	\$0.00	\$0.00	\$12,600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$12,500.00	\$9,200.00	\$0.00

Taxi Fares	\$341.65	\$202.14	\$210.20	\$563.48	\$1,368.67	\$265.39	\$266.30	\$326.25	\$599.28	\$0.00	\$1,513.30	\$1,396.46
Telephone & Internet	\$14.51	\$49.55	\$13.64	\$31.82	\$0.00	\$0.00	\$30.55	\$110.20	\$0.00	\$0.00	\$0.00	\$0.00
Tolls	\$316.15	\$436.38	\$218.19	\$436.38	\$145.46	\$145.46	\$218.19	\$290.92	\$436.38	\$290.92	\$218.19	\$290.92
Travel - National	\$3,419.66	\$1,946.51	\$719.04	\$0.00	\$0.00	\$645.63	\$0.00	\$0.00	\$0.00	\$3,650.00	\$0.00	\$0.00
Wages and Salaries	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$6,923.07	\$12,807.69	\$5,461.54	\$10,076.92	\$7,769.23
Water Rates	\$0.00	-\$79.06	\$291.79	\$0.00	\$0.00	\$151.85	\$0.00	-\$343.30	\$665.30	\$0.00	-\$191.82	\$371.75
Workers Compensation	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$105.05	\$0.00	\$0.00	\$0.00	\$264.14
Loan - VT	\$0.00	\$0.00	-\$34,255.80	\$0.00	\$0.00	\$0.00	\$5,400.00	\$50,000.00	\$239,197.18	-\$166,341.24	\$0.00	-\$17,660.00
Prepayments	\$8,529.32	\$9,628.89	-\$2,309.21	-\$3,866.95	-\$2,763.20	-\$3,508.93	-\$4,475.83	-\$4,475.83	-\$4,475.83	\$30,537.63	-\$309.17	-\$309.17
Accrued Annual Leave Liability	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,746.74	-\$357.10	-\$420.13	-\$420.12	-\$420.12
PAYG Withholdings Payable	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,368.00	\$0.00	\$816.00	-\$1,456.00	-\$1,456.00	-\$1,456.00
Rounding	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$1.00	\$0.00
Superannuation Payable	\$0.00	\$0.00	\$3,372.46	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$778.26	-\$518.84	-\$518.84	-\$518.84
Suspense	\$369,430.06	\$99,867.00	-\$14,066.25	\$59,701.75	\$92,289.91	-\$500,596.16	-\$2,178,330.30	\$1,960,822.80	\$490,311.25	-\$10,000.00	-\$9,277.36	\$13,227.36
<b>Total Operating Expenses</b>	<b>\$724,512.89</b>	<b>\$404,522.81</b>	<b>\$342,586.54</b>	<b>\$1,462,785.66</b>	<b>\$2,341,879.65</b>	<b>-\$408,066.33</b>	<b>\$715,140.12</b>	<b>\$2,335,809.07</b>	<b>\$1,091,607.91</b>	<b>\$301,261.42</b>	<b>\$355,943.52</b>	<b>\$446,365.67</b>

<b>Operating Surplus (Deficit)</b>	<b>-\$703,946.44</b>	<b>-\$350,588.64</b>	<b>-\$327,124.29</b>	<b>\$661,986.84</b>	<b>-\$2,292,354.27</b>	<b>\$530,094.79</b>	<b>\$856,719.70</b>	<b>-\$1,893,898.71</b>	<b>-\$1,024,572.86</b>	<b>\$618,028.97</b>	<b>-\$283,769.95</b>	<b>-\$428,093.80</b>
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**Plus Non Operating Movements**

Office Equipment	-\$3,500,000.00	-\$1,100,000.00	-\$1,200,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Vehicles	\$0.00	\$0.00	-\$230,000.00	-\$850,713.25	\$0.00	\$0.00	\$0.00	-\$15,784.74	\$528.00	-\$1,800.41	-\$354,777.02	-\$30,350.00
Clearing Account - FG Future Fu	\$0.00	-\$1,197,278.33	-\$1,197,278.33	-\$1,197,278.33	-\$1,209,928.33	-\$1,209,928.33	-\$1,215,584.33	-\$1,215,584.33	-\$2,361,143.06	\$0.00	-\$2,712,215.06	\$0.00
Clearing Account - FG NMF Non	\$162,649.92	\$0.00	\$0.00	\$285,892.68	\$0.00	\$147,430.04	\$147,942.16	\$154,872.16	\$155,899.70	\$162,829.70	\$162,829.70	\$163,543.42
Clearing Account - Forum Group	\$3,107.15	\$0.00	\$726.85	\$11,374.00	\$0.00	\$0.00	\$1,811.00	\$1,568.00	\$1,568.00	\$1,568.00	\$2,848.45	\$1,568.00
Clearing Account - Forum Group	\$145,416.67	-\$4,196.04	\$399,575.96	-\$101,031.54	-\$10,650.79	-\$10,650.79	\$32,913.85	\$93,837.87	\$98,496.61	\$35,972.57	\$136,134.57	\$268,269.77
Clearing Account - Purchased NI	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$422,020.10	\$0.00	\$0.00	\$0.00
Giamouridis	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$408,443.34	-\$657,041.02	-\$675,094.09	-\$660,523.80	-\$667,579.02	-\$1,322,002.19
iFish Finance Pty Ltd	\$0.00	-\$10,000.00	-\$20,000.00	\$0.00	-\$10,000.00	\$0.00	\$0.00	-\$50,000.00	-\$50,000.00	\$0.00	\$0.00	\$0.00
Loan - 10 James - Warehouse	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$59,677.87	\$0.00	-\$59,677.87
Loan - 1160 Glen Huntly Road	-\$10,000.00	-\$5,000.00	-\$8,000.00	-\$39,401.79	-\$7,389.00	-\$27,489.82	-\$7,410.00	-\$30,173.97	\$144,950.00	-\$7,410.00	-\$11,150.00	-\$7,616.86
Loan - 12 James - Warehouse	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$60,143.87	\$0.00	-\$60,143.87
Loan - 123 High St, Taradale	\$0.00	\$0.00	-\$2,015.64	-\$1,252.14	-\$2,015.64	-\$1,172.44	\$0.00	-\$3,720.08	\$25,000.00	\$0.00	-\$3,068.74	-\$2,305.44
Loan - 14 James Street Pty Ltd	\$0.00	\$0.00	\$0.00	-\$60,443.74	\$0.00	-\$58,969.50	\$0.00	-\$417,631.56	\$0.00	-\$251,328.96	-\$378.40	-\$310,505.23
Loan - 14 Kirwin Road, Morwell	\$0.00	\$0.00	-\$7,972.24	\$13,955.54	\$25,000.00	-\$11,516.54	-\$2,049.15	-\$6,550.67	-\$4,635.00	-\$2,554.46	-\$10,600.00	-\$239,781.50
Loan - 16 James - Warehouse	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,694.87	\$0.00	-\$20,694.87
Loan - 160 Murray Valley Hwy, L	\$0.00	\$0.00	-\$11,350.31	\$20,759.70	\$50,000.00	-\$12,968.73	-\$1,561.00	-\$5,701.82	-\$7,486.94	-\$3,929.75	-\$12,302.50	-\$191,570.48
Loan - 18 James - Warehouse	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,694.87	\$0.00	-\$20,694.87
Loan - 19 Parsons - Warehouse	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,694.87	\$0.00	-\$20,694.87
Loan - 22 High Street, Rushwortl	-\$5,023.65	-\$25.65	-\$2,818.65	-\$5,173.30	-\$161.78	-\$294.43	\$0.00	-\$86.27	\$0.00	\$0.00	-\$2,600.00	\$0.00
Loan - 275 High St, Golden Squa	\$0.00	\$0.00	-\$12,671.32	-\$110.79	\$14,328.68	-\$5,457.57	\$0.00	-\$19,637.94	\$80,000.00	\$0.00	-\$19,121.55	-\$14,098.00
Loan - 286 Carlisle Street Pty Ltc	-\$350,000.00	-\$615,000.00	-\$422,000.00	-\$715,000.00	-\$100,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Loan - 29 Parsons - Warehouse	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,694.87	\$0.00	-\$20,694.87
Loan - 31 Ellerman Street, Dimbr	\$0.00	\$0.00	-\$7,010.84	\$17,481.69	\$25,000.00	-\$7,139.82	-\$832.00	-\$3,511.91	-\$4,424.64	-\$5,560.68	-\$7,644.05	-\$107,528.53
Loan - 39 Parsons - Warehouse	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,694.87	\$0.00	-\$20,694.87
Loan - 4 Cowslip St, Violet Town	\$0.00	\$0.00	-\$12,882.92	-\$91.23	\$12,117.08	-\$5,384.54	\$0.00	-\$20,017.03	\$90,000.00	\$0.00	-\$19,427.17	-\$14,313.62
Loan - 5 Bulkara	\$0.00	-\$17,500.00	-\$45,000.00	-\$166,512.48	-\$62,500.00	-\$100,499.98	\$0.00	-\$97,916.76	-\$5,412.18	-\$34,982.36	-\$20,000.00	-\$37,660.00
Loan - 55 Nolan Street, Marybor	\$0.00	\$0.00	-\$7,628.77	\$22,163.95	\$25,000.00	-\$8,083.95	-\$888.00	-\$3,665.13	-\$4,200.00	-\$2,637.14	-\$5,768.00	-\$129,109.00
Loan - 6 Bulkara	-\$5,000.00	-\$930,000.00	-\$490,000.00	-\$605,835.10	-\$501,650.00	-\$595,408.63	-\$1,324,290.33	-\$1,187.50	-\$5,180.00	\$0.00	\$0.00	-\$475,000.00
Loan - 64-66 Berkeley St, Hawth	-\$26,000.00	-\$50,000.00	-\$55,000.00	-\$97,305.08	-\$50,000.00	-\$92,154.10	-\$55,464.50	-\$1,035,313.62	-\$4,271.00	\$0.00	\$0.00	\$0.00
Loan - 65 Nelson Street Enterpri	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$30,363.10	\$0.00	\$0.00
Loan - 8 Olive Street - Warehouse	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$28,032.87	\$0.00	-\$28,032.87
Loan - 8-12 Natalia Ave Oakleigt	-\$35,000.00	\$0.00	\$0.00	-\$182,306.72	-\$4,603.12	-\$46,347.45	-\$224,517.95	-\$84,296.06	-\$68,430.13	-\$71,625.00	-\$218,485.00	-\$4,370.00
Loan - 89 Betka Road, Mallacool	\$0.00	\$0.00	-\$8,603.31	-\$2,063.38	\$27,000.00	-\$6,552.96	\$0.00	-\$2,414.73	-\$3,978.40	-\$3,541.51	-\$22,600.00	-\$61,356.69

Loan - 9 Gregory Street, Ouyen	-\$3,150.00	\$0.00	\$0.00	-\$3,535.82	\$0.00	-\$299.58	\$0.00	-\$292.27	\$0.00	\$0.00	-\$2,600.00	\$0.00
Loan - 9 Main St, Derrinallum	\$0.00	\$0.00	-\$4,480.65	-\$1,967.19	\$11,519.35	-\$2,200.17	\$0.00	-\$7,615.44	\$45,000.00	\$0.00	-\$6,831.32	-\$5,134.99
Loan - Ellinikos Tourisimos/Mazcr	-\$2,011,463.44	-\$2,021,131.28	-\$938,908.42	-\$1,840,079.66	-\$689,956.75	-\$1,407,775.19	-\$413.29	-\$19,304.40	-\$972.83	-\$180,154.72	-\$4,101,017.58	\$0.00
Loan - FGOc	-\$910,642.95	\$176,833.04	\$0.00	\$87,484.80	\$86,869.47	\$86,258.48	-\$914,348.22	\$85,049.34	\$415,660.15	\$83,857.16	\$165,949.04	\$0.00
Loan - Forum Enviro	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$889,309.26	\$0.00
Loan - Forum Group/Enviro	\$355,620.23	\$0.00	\$0.00	-\$798,357.69	\$1,100,000.00	-\$2,497,008.39	\$2,991.61	-\$2,991.61	\$2,991.61	-\$1,488,317.60	\$2,440,703.23	-\$952,385.63
Loan - Intrashield Investment Gr	-\$3,000.00	-\$5,000.00	-\$5,000.00	-\$10,000.00	-\$13,389.62	-\$5,366.69	-\$10,646.70	\$669.92	\$0.00	\$0.00	\$0.00	\$0.00
Loan - Iugis	-\$2,150,000.00	-\$2,578,651.80	-\$2,848,447.80	-\$4,319,670.29	-\$635,880.61	-\$3,043,070.48	-\$1,400,000.00	-\$1,873,253.81	-\$1,915,327.30	\$165,431.79	-\$2,367,727.63	-\$1,787,500.00
Loan - Iugis (EU) GmbH	\$0.00	\$0.00	\$0.00	-\$29,214.42	\$0.00	-\$28,501.87	\$0.00	\$0.00	\$0.00	-\$27,806.70	\$0.00	\$0.00
Loan - Iugis Energy SA	\$0.00	\$0.00	\$0.00	-\$572,382.37	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Loan - Iugis Hellas IKE	\$0.00	\$0.00	\$0.00	-\$91,550.99	\$0.00	-\$19,616.52	-\$660,076.90	\$0.00	\$0.00	-\$3,038.63	\$0.00	\$0.00
Loan - Iugis Holdings Limited	\$0.00	-\$35,372.25	-\$532,189.47	-\$870,002.38	\$0.00	-\$497,294.74	-\$569,088.79	-\$298,348.33	-\$1,011,861.67	-\$1,030,464.90	-\$339,012.77	-\$814,209.28
Loan - Iugis UK Ltd	\$0.00	-\$255,567.57	-\$135,452.25	-\$258,040.26	-\$103,615.95	-\$840,238.87	\$0.00	-\$98,416.24	\$0.00	-\$94,760.58	\$0.00	\$0.00
Loan - Iugis Waste Solutions Pty	\$0.00	\$0.00	-\$1,000,000.00	-\$10.43	\$0.00	-\$417.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Loan - Matt Ingram Family Trust	\$0.00	\$0.00	\$0.00	-\$2,500.00	-\$1,000,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Loan - Orca Comercio De Sisterr	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$4,503.59	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Loan - Orca Enviro Systems Pty	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$80,736.42	\$0.00
Loan - Orca Environmental Solut	-\$64,183.68	-\$327,812.42	-\$100,000.00	-\$67,601.98	-\$214,213.73	-\$58,923.26	-\$215,500.00	-\$345,000.00	-\$885,231.49	-\$22,224.36	\$0.00	\$0.00
Loan - Other Related Parties	\$0.00	\$0.00	\$199,727.00	\$0.00	\$0.00	-\$613.00	\$0.00	\$0.00	-\$200,000.00	\$0.00	-\$2,420.00	\$0.00
Loan - Palante Pty Ltd	\$0.00	\$0.00	-\$273.00	-\$164,273.09	-\$608,023.67	-\$386,570.00	\$0.00	\$0.00	\$0.00	-\$535,678.05	-\$440.00	\$0.00
Loan - SOFC	-\$44,205.26	-\$65,470.49	-\$51,583.79	-\$113,330.26	-\$6,238.93	-\$81,457.47	-\$11,606.22	-\$8,223.41	-\$30,783.41	-\$103,692.12	-\$125,000.00	-\$50,337.50
Loan - Tesoriero Investment Gro	\$0.00	\$0.00	\$0.00	\$0.00	-\$273.00	\$0.00	\$0.00	\$0.00	-\$2,000.00	-\$69.00	-\$196,704.34	\$0.00
Loan to Iugis Investments for Au	\$0.00	-\$2,401,755.00	-\$650,000.00	\$2,803,901.10	-\$4,300,356.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Loan to Spartan Consulting Gro	\$0.00	-\$465,000.00	\$0.00	-\$23,276.21	\$0.00	-\$22,708.50	\$0.00	-\$21,666.83	\$0.00	\$0.00	-\$7,090.00	\$0.00
Loans - 23 Margaret Street	\$0.00	-\$74,000.00	-\$60,000.00	-\$93,505.90	-\$15,000.00	-\$30,371.61	-\$8,000.00	-\$9,115.95	-\$33,110.27	\$0.00	\$0.00	\$0.00
Loans - 26 Edmonstone Road	-\$50,000.00	-\$35,891.76	-\$21,719.74	-\$191,143.91	-\$32,632.66	-\$43,117.99	\$353,241.70	-\$74,344.74	-\$5,905.46	-\$14,479.69	-\$23,440.12	\$61.42
Loans - Canner Investments	-\$10,000.00	\$0.00	\$0.00	-\$28,544.29	-\$15,000.00	-\$27,482.23	\$0.00	-\$26,060.93	-\$30,791.00	-\$5,314.39	\$0.00	\$0.00
Loans - Intrashield	\$0.00	\$0.00	\$0.00	-\$31,295.86	\$0.00	-\$55,972.90	-\$40,000.00	-\$155,292.24	\$0.00	\$0.00	-\$42,522.18	\$0.00
New Finance Book - Forum Gro	\$346,707.41	-\$1,892,900.20	-\$17,381.09	\$277,477.95	-\$10,495.54	-\$70,024.77	-\$43,033.79	-\$576,310.53	\$68,352.25	\$41,549.31	-\$3,644,659.91	\$5,308.44
New Finance Book - Iugis AU	\$0.00	\$114,266.00	\$114,266.00	\$407,330.00	\$0.00	\$0.00	\$0.00	\$0.00	\$298,355.00	-\$472,074.22	\$0.00	\$0.00
New Finance Book - Iugis UK	\$0.00	\$20,872.00	\$125,232.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$83,488.00	\$0.00	\$0.00	\$0.00
New Finance Book - Surfacide	\$0.00	\$0.00	\$0.00	\$164,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$123,000.00	\$0.00	\$0.00	\$0.00
Problem Contracts	\$0.00	\$0.00	-\$400,729.41	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Property - Bond Paid	\$0.00	\$0.00	-\$11,550.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$5,208.00	\$0.00	\$0.00
Refinance Balance to Clear	\$0.00	-\$5,013,005.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Shares Purchased	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$750,000.00	\$0.00	\$0.00	-\$500,000.00
TG Digesters	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$403,658.85
Accruals	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,524,287.54	-\$1,524,287.54	\$0.00	-\$6,999.09	\$6,999.09	\$0.00	-\$6,876.93
Chattel Mortgage - Audi RSQ8	-\$3,340.45	-\$3,340.45	-\$3,340.45	\$270,586.55	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Chattel Mortgage - Porsche GT2	-\$7,817.66	-\$7,817.66	-\$7,817.66	-\$7,817.66	-\$7,817.66	-\$7,817.66	-\$7,817.66	-\$7,817.66	-\$7,817.66	-\$7,817.66	-\$7,817.66	-\$7,817.66
Chattel Mortgage - Porsche GT4	-\$1,740.47	-\$1,740.47	-\$1,740.47	-\$1,740.47	-\$1,740.47	-\$1,740.47	-\$1,740.47	-\$1,740.47	-\$1,740.47	-\$1,740.47	-\$1,740.47	-\$1,740.47
Clearing Account - BHO	-\$1,251,212.00	\$20,259,308.00	-\$1,673,658.00	\$2,365,986.00	\$3,642,498.00	-\$5,609,760.00	\$8,206,290.00	\$3,786,364.00	\$5,263,597.00	\$480,988.00	-\$3,802,100.00	\$2,738,741.00
Clearing Account - HP Finance	\$0.00	\$0.00	-\$273,156.87	-\$546,313.74	-\$273,156.87	-\$273,156.87	-\$273,156.87	-\$273,156.87	-\$273,156.87	-\$546,313.74	\$0.00	-\$235,320.00
Clearing Account - NZ	\$3,520,000.00	-\$1,065,672.09	\$106,610.57	\$794,839.92	\$1,287,494.59	-\$961,402.33	\$3,068,023.11	-\$882,370.24	\$1,681,000.73	\$3,335,577.03	\$1,468,043.60	-\$683,591.18
Clearing Account - SMBC	-\$564,000.00	\$7,468,714.61	\$8,137,980.14	\$10,613,132.01	\$5,419,413.79	\$9,335,531.55	-\$1,027,400.00	\$10,193,426.14	\$2,881,928.09	-\$744,500.00	\$17,832,483.14	\$0.00
Clearing Account - SocGen via E	\$0.00	\$4,858,441.00	\$0.00	\$4,128,757.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Loan - Forum Enviro (Aust)	-\$1,908,000.00	-\$9,619,167.91	\$993,389.43	-\$994,839.92	\$962,505.41	\$5,111,402.33	-\$3,216,223.11	\$882,370.24	\$818,999.27	\$2,083,120.97	\$1,590,345.12	\$4,434,014.64
Loan - Think Tank - 126463	-\$14,875.00	-\$14,875.00	-\$14,875.00	-\$14,875.00	-\$14,875.00	-\$14,875.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Loan - Think Tank - 126464	-\$13,606.11	-\$13,606.11	-\$13,606.11	-\$13,606.11	-\$13,606.11	-\$13,606.11	-\$12,172.16	-\$11,989.72	-\$11,938.18	-\$11,767.28	-\$11,653.46	-\$11,607.10
Unexpired Term Interest	\$3,071.34	\$3,103.58	\$3,136.00	-\$25,758.67	\$2,469.09	\$2,493.51	\$2,517.85	\$2,542.11	\$2,566.27	\$2,590.37	\$2,614.37	\$2,638.28
<b>Total Non Operating Movemen</b>	<b>-\$8,405,687.95</b>	<b>\$3,074,760.75</b>	<b>-\$2,425,498.56</b>	<b>\$7,145,369.45</b>	<b>\$2,776,044.23</b>	<b>-\$1,994,005.80</b>	<b>-\$1,365,324.63</b>	<b>\$6,824,465.45</b>	<b>\$3,499,400.44</b>	<b>\$144,224.53</b>	<b>\$4,419,588.77</b>	<b>-\$1,044,931.12</b>

**GST Movements**

GST Inputs	-\$837,731.81	-\$1,061,860.05	-\$2,044,771.46	-\$949,041.37	-\$1,041,690.39	-\$1,199,321.51	-\$719,228.67	-\$825,344.81	-\$536,107.97	-\$783,036.36	-\$1,513,729.13	-\$96,737.37
GST Outputs	\$70,082.17	\$65,236.66	\$667,215.82	\$151,224.67	\$1,561.55	\$15,503.70	\$49,571.63	\$46,524.49	\$91,088.71	\$43,057.61	\$46,206.22	\$45,852.37
<b>Net GST Movements</b>	<b>-\$767,649.64</b>	<b>-\$996,623.39</b>	<b>-\$1,377,555.64</b>	<b>-\$797,816.70</b>	<b>-\$1,040,128.84</b>	<b>-\$1,183,817.81</b>	<b>-\$669,657.04</b>	<b>-\$778,820.32</b>	<b>-\$445,019.26</b>	<b>-\$739,978.75</b>	<b>-\$1,467,522.91</b>	<b>-\$50,885.00</b>

**Foreign Currency Gains and Losses**

Realised Currency Gains	\$0.00	\$0.00	\$0.00	\$0.00	\$0.06	\$0.00	-\$0.11	-\$0.15	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Foreign Currency Gains</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.06</b>	<b>\$0.00</b>	<b>-\$0.11</b>	<b>-\$0.15</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

<b>Net Cash Movement</b>	<b>-\$9,877,284.03</b>	<b>\$1,727,548.72</b>	<b>-\$4,130,178.49</b>	<b>\$7,009,539.59</b>	<b>-\$556,438.82</b>	<b>-\$2,647,728.82</b>	<b>-\$1,178,262.08</b>	<b>\$4,151,746.27</b>	<b>\$2,029,808.32</b>	<b>\$22,274.75</b>	<b>\$2,668,295.91</b>	<b>-\$1,523,909.92</b>
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**Summary**

Opening Balance	\$10,447,426.83	\$8,719,878.11	\$12,850,056.60	\$5,840,517.01	\$6,396,955.83	\$9,044,684.65	\$10,222,946.73	\$6,071,200.46	\$4,041,392.14	\$4,019,117.39	\$1,350,821.48	\$2,874,731.40
Plus Net Cash Movement	-\$9,877,284.03	\$1,727,548.72	-\$4,130,178.49	\$7,009,539.59	-\$556,438.82	-\$2,647,728.82	-\$1,178,262.08	\$4,151,746.27	\$2,029,808.32	\$22,274.75	\$2,668,295.91	-\$1,523,909.92
Closing Balance	\$570,142.80	\$10,447,426.83	\$8,719,878.11	\$12,850,056.60	\$5,840,517.01	\$6,396,955.83	\$9,044,684.65	\$10,222,946.73	\$6,071,200.46	\$4,041,392.14	\$4,019,117.39	\$1,350,821.48



# Profit and Loss

Forum Group Financial Services Pty Ltd

For the year ended 30 June 2021

Account	Jul 2020	Aug 2020	Sep 2020	Oct 2020	Nov 2020	Dec 2020	Jan 2021	Feb 2021	Mar 2021	Apr 2021	May 2021	Jun 2021	2021
<b>Trading Income</b>													
Contract Revenue	11,963.12	18,529.14	20,444.55	38,573.88	30,861.83	20,311.74	20,846.69	21,146.33	22,739.49	10,862.17	14,775.21	0.00	231,054.15
Interest Income	0.00	47,258.10	892,614.67	22,152.42	404,739.78	1,545,239.33	94,873.02	19,734.10	2,102,033.01	0.00	36,374.10	17,246.52	5,182,265.05
Rental Income	6,308.75	6,386.33	6,231.17	6,308.75	6,308.75	6,308.75	6,308.75	8,644.95	0.00	4,600.08	2,784.86	3,319.93	63,511.07
<b>Total Trading Income</b>	<b>18,271.87</b>	<b>72,173.57</b>	<b>919,290.39</b>	<b>67,035.05</b>	<b>441,910.36</b>	<b>1,571,859.82</b>	<b>122,028.46</b>	<b>49,525.38</b>	<b>2,124,772.50</b>	<b>15,462.25</b>	<b>53,934.17</b>	<b>20,566.45</b>	<b>5,476,830.27</b>
<b>Cost of Sales</b>													
Cost of Goods Sold	0.00	0.00	0.00	112,081.82	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	112,081.82
<b>Total Cost of Sales</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>112,081.82</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>112,081.82</b>
<b>Gross Profit</b>	<b>18,271.87</b>	<b>72,173.57</b>	<b>919,290.39</b>	<b>(45,046.77)</b>	<b>441,910.36</b>	<b>1,571,859.82</b>	<b>122,028.46</b>	<b>49,525.38</b>	<b>2,124,772.50</b>	<b>15,462.25</b>	<b>53,934.17</b>	<b>20,566.45</b>	<b>5,364,748.45</b>
<b>Operating Expenses</b>													
Accommodation	0.00	0.00	0.00	0.00	0.00	0.00	582.35	0.00	0.00	695.01	0.00	0.00	1,277.36
Advertising & Marketing	0.00	0.00	863.64	0.00	0.00	0.00	0.00	0.00	0.00	7,000.00	0.00	0.00	7,863.64
Annual Leave Expense	420.12	420.12	420.13	357.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,617.47
Application Fees	0.00	0.00	0.00	0.00	126.00	176.11	15.71	15.45	0.00	0.00	0.00	218.18	551.45
Bank Fees	(723.54)	425.89	420.75	365.65	(188.96)	1,221.19	697.39	516.62	873.33	995.40	651.84	675.49	5,931.05
Boat Expense	0.00	440.00	4,802.91	2,060.00	5,324.05	2,150.91	5,304.00	2,060.00	4,880.00	2,060.00	2,060.00	15,505.37	46,647.24
Brokerage Fee	110.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	110.00
Cleaning	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	156.87	156.87
Construction Expenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	130,000.00	0.00	0.00	0.00	130,000.00
Consulting & Accounting	125,000.00	83,990.91	50,000.00	62,218.00	55,200.00	2,631,247.97	55,000.00	2,050,000.00	1,058,145.45	55,000.00	61,300.00	50,000.00	6,337,102.33
Contractor Payments	36,827.51	25,316.42	25,283.56	25,365.70	32,666.66	24,166.66	39,166.66	24,166.66	24,166.66	26,166.70	24,166.66	32,166.66	339,626.51
Council Fees	0.00	0.00	0.00	0.00	3,684.15	0.00	0.00	1,837.00	0.00	3,029.77	(456.00)	845.45	8,940.37
Design Expenses	17,490.00	26,047.50	25,962.50	15,160.00	34,065.00	8,725.00	0.00	0.00	29,050.00	0.00	3,075.00	3,506.25	163,081.25
Employee Amenities	0.00	2,815.00	150.00	0.00	2,536.00	339.44	428.95	5,454.55	0.00	36.37	0.00	0.00	11,760.31
Engineering Expenses	0.00	0.00	11,320.00	26,720.00	3,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	41,040.00
Foreign Exchange Gain/Loss	18.00	0.00	0.00	5,047.60	0.00	0.00	0.00	23.95	0.00	0.00	0.00	0.00	5,089.55
Freight & Courier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	111,562.50	0.00	0.00	111,562.50
General Expenses	0.00	0.00	105.45	40.33	17.45	0.00	0.00	62.72	0.00	16.35	0.00	0.00	242.30
Insurance	309.17	3,281.59	1,593.54	1,800.93	(191.64)	471.77	814.83	309.17	671.07	558.58	201.10	463.87	10,283.98
Interest Expense	99,078.33	67,213.79	67,099.97	66,943.20	66,491.39	66,308.95	50,000.00	50,000.00	50,000.00	50,002.48	50,000.00	50,000.00	733,138.11
Interest Expense - Chattel Mortgage	2,638.28	2,614.37	2,590.37	2,566.27	2,542.11	2,517.85	2,493.51	2,469.09	3,168.33	3,136.00	3,103.58	3,071.34	32,911.10
IT Expense	0.00	0.00	4,005.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4,005.00
Leasing Charges (Operating Lease)	8,392.37	8,392.37	8,392.37	8,392.37	8,392.37	8,392.37	8,392.37	5,400.76	5,400.76	5,400.76	5,400.76	5,400.76	85,750.39
Legal expenses	0.00	0.00	27,027.03	7,448.77	10,451.23	0.00	3,164.00	0.00	25,292.47	0.00	273.00	273.00	73,929.50
Light, Power, Heating	0.00	0.00	0.00	0.00	0.00	0.00	0.00	579.91	34.29	38.20	37.59	38.93	728.92
Meals	0.00	145.77	108.59	156.95	317.63	179.01	236.05	153.55	244.20	343.29	79.45	916.87	2,881.36
Motor Vehicle Expenses	957.00	9,915.23	61,595.17	4,303.07	30,525.52	4,602.65	5,597.81	18,055.62	76,035.99	40,890.04	95,735.84	162,020.14	510,234.08
Office Expenses	0.01	0.00	150.73	0.00	0.00	0.00	204.55	0.00	0.00	0.00	0.00	0.00	355.29
Parking	0.00	3.55	0.00	3.08	5.00	7.26	0.00	5.08	0.00	0.00	0.00	3.64	27.61
Payroll Tax	0.00	148.37	276.19	278.46	412.53	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,115.55
Printing & Stationery	0.00	0.00	0.00	40.05	0.00	0.00	0.00	0.00	0.00	0.00	0.00	145.45	185.50

Professional Fees	317.94	321.82	314.05	317.94	317.94	317.94	5,224.19	457.25	0.00	232.51	141.74	168.48	8,131.80
Realised Currency Gains	0.00	0.00	0.00	0.00	0.15	0.11	0.00	(0.06)	0.00	0.00	0.00	0.00	0.20
Rent	20,627.14	19,807.14	34,867.14	32,807.14	32,807.14	32,807.14	28,027.38	28,027.38	28,027.38	28,027.38	28,027.38	28,027.38	341,887.12
Repairs and Maintenance	0.00	0.00	432.36	40.27	426.18	113.85	234.34	805.00	62.63	198.18	55.32	121.15	2,489.28
Sponsorships	3,563.64	0.00	1,409.09	3,168.18	0.00	2,154.54	0.00	2,163.64	1,172.73	4,527.27	0.00	9,081.82	27,240.91
Subscriptions	117.56	116.02	117.36	117.77	118.49	117.58	117.45	112.04	118.30	106.20	106.12	44.91	1,309.80
Superannuation	738.07	957.30	957.30	1,435.94	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4,088.61
Survey Expenses	0.00	5,200.00	12,500.00	1,000.00	0.00	0.00	0.00	11,600.00	0.00	0.00	0.00	0.00	30,300.00
Taxi Fares	2,832.83	58.75	268.29	330.99	326.25	1,634.97	265.39	165.23	398.25	352.38	161.76	239.85	7,034.94
Telephone & Internet	0.00	0.00	0.00	79.65	30.55	30.55	0.00	31.82	0.00	13.64	49.55	14.51	250.27
Tolls	290.92	218.19	290.92	436.38	290.92	218.19	145.46	145.46	436.38	218.19	436.38	316.15	3,443.54
Travel - National	0.00	0.00	3,650.00	0.00	0.00	0.00	645.63	0.00	719.04	1,946.51	3,419.66	0.00	10,380.84
Wages and Salaries	7,769.23	10,076.92	10,076.92	15,115.38	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	43,038.45
Water Rates	371.75	(191.82)	0.00	665.30	(343.30)	0.00	0.00	151.85	0.00	291.79	(79.06)	0.00	866.51
Workers Compensation	264.14	0.00	0.00	0.00	(105.05)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	159.09
<b>Total Operating Expenses</b>	<b>327,410.47</b>	<b>267,735.20</b>	<b>357,051.33</b>	<b>284,782.47</b>	<b>289,245.76</b>	<b>2,787,902.01</b>	<b>206,758.02</b>	<b>2,204,769.74</b>	<b>1,438,897.26</b>	<b>342,845.50</b>	<b>277,947.67</b>	<b>363,422.52</b>	<b>9,148,767.95</b>
<b>Net Profit</b>	<b>(309,138.60)</b>	<b>(195,561.63)</b>	<b>562,239.06</b>	<b>(329,829.24)</b>	<b>152,664.60</b>	<b>(1,216,042.19)</b>	<b>(84,729.56)</b>	<b>(2,155,244.36)</b>	<b>685,875.24</b>	<b>(327,383.25)</b>	<b>(224,013.50)</b>	<b>(342,856.07)</b>	<b>(3,784,019.50)</b>



Account details

Account balance summary

**Account name**  
FORUM GRP FS  
**Account number**  
082-080 27-105-8642  
**Currency**  
AUD

**Opening balance:** 10,447,426.83 CR  
**Total credits:** 6,494,114.77 CR  
**Total debits:** 16,371,398.80 DR  
**Closing balance:** 570,142.80 CR  
  
Date from: 01 June 2021  
Date to: 30 June 2021

Transaction details

Date	Narrative	Reference number	Debit amount	Credit amount	EOD balance
01/06/2021	INTER-BANK CREDIT ATHE2-4 CRABTREES REAL E FORUM GROUP FINA			3,466.59 CR	
01/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183246443 June 2021 Rent		13,000.00 DR		
01/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183246676 June 2021 Rent		13,566.66 DR		
01/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183246065 Westrac May21		180,400.00 DR		
01/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183245474 Veolia May21		4,837,237.90 DR		5,406,688.86 CR
02/06/2021	TRANSFER CREDITS Loan from FGFS 8-12 NATALIA A			43,697.50 CR	
02/06/2021	TRANSFER CREDITS Intercompany Clear CANNER INVESTMENTS P			70.11 CR	
02/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183348119 INV-2168		2,530.00 DR		
02/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183347340 KKP Bouch 1034		4,166.66 DR		
02/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183344288 Loan to Canner Inv		10,000.00 DR		
02/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183347574 000186		12,430.00 DR		
02/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183343910 loan to Natalia		35,000.00 DR		

**Transaction History Report (Continued)**

<b>Date</b>	<b>Narrative</b>	<b>Reference number</b>	<b>Debit amount</b>	<b>Credit amount</b>	<b>EOD balance</b>
02/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183344148 Loan to 26 Edmon		50,000.00 DR		
02/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183346937 Consulting Jun21		55,000.00 DR		
02/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183347157 2047		55,273.00 DR		
02/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183327426 Loan to 286 Carl		170,000.00 DR		
02/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183342990 Loan to Iugis AU		1,000,000.00 DR		4,056,056.81 CR
03/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183446353 GTI Greece Insur		250.00 DR		
03/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183432659 Loan to Iugis AU		150,000.00 DR		3,905,806.81 CR
04/06/2021	TRANSFER DEBITS TT3021825900 Payment-Id 183544367MAZCON PANOS		1,366.17 DR		
04/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183526664 26ed SOFC Invoices		4,148.86 DR		
04/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183481392 Up to 11 INV-0372		9,990.00 DR		3,890,301.78 CR
07/06/2021	AUTOMATIC DRAWING 00764506 AUDI FORUM GROUP FINA		3,287.76 DR		3,887,014.02 CR
08/06/2021	AUTOMATIC DRAWING 0000000333310680 HIRE PURCHASE FORUM GROUP FINA		3,340.45 DR		3,883,673.57 CR
09/06/2021	TRANSFER CREDITS FORUM FINANCE PTY LTFINS WESTLAWN			2,750,277.00 CR	
09/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183809220 Intercom-Rushworth		25.65 DR		
09/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183807699 16902		110.00 DR		
09/06/2021	TRANSFER DEBITS INTERNET BPAY PMT 000183809638 ASIC		273.00 DR		
09/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183807309 Intercompany clear		1,526.20 DR		
09/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183808312 10030		3,382.50 DR		
09/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183808157 75318		9,595.25 DR		
09/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183791282 Loan to 1160 Glen		10,000.00 DR		
09/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183808545 3272		33,000.00 DR		

**Transaction History Report (Continued)**

<b>Date</b>	<b>Narrative</b>	<b>Reference number</b>	<b>Debit amount</b>	<b>Credit amount</b>	<b>EOD balance</b>
09/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183808013 1569715		157,158.20 DR		
09/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183795725 Loan to Nicholas		400,000.00 DR		6,018,879.77 CR
10/06/2021	TRANSFER CREDITS SP Loan Jun21 FGO C			106,603.57 CR	
10/06/2021	AUTOMATIC DRAWING RTA2982084859 E-TOLL PH 131865 Forum group Fina		80.00 DR		6,125,403.34 CR
11/06/2021	AUTOMATIC DRAWING 001-1435031-002 LEASE PAY Forum Group of C		7,825.91 DR		
11/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184019421 Loan to 286 Carlis		20,000.00 DR		
11/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183966988 1120		30,800.00 DR		
11/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 183969645 Loan to Iugis AU		300,000.00 DR		
11/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184027353 397844		550,000.00 DR		
11/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184027271 397838		1,100,000.00 DR		4,116,777.43 CR
15/06/2021	AUTOMATIC DRAWING 1634617 FLEXIRENT FORUM GROUP FINA		2,113.00 DR		
15/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184115095 Loan to IIG		3,000.00 DR		
15/06/2021	AUTOMATIC DRAWING 126464 BNY Trust Compan FORUM FROUP		13,606.11 DR		
15/06/2021	AUTOMATIC DRAWING 126463 BNY Trust Compan FORUM GROUP		14,875.00 DR		
15/06/2021	TRANSFER DEBITS TT3021872624 Payment-Id 184018315IUGIS DMCC		64,183.68 DR		
15/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184142554 Loan to 286 Carlis		160,000.00 DR		
15/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184117230 Loan to Env Aus		500,000.00 DR		
15/06/2021	TRANSFER DEBITS TT3021877545 Payment-Id 184142417MAZCON		989,111.86 DR		2,369,887.78 CR
16/06/2021	TRANSFER CREDITS FORUM GROUP PTY LTD Loan to FGFS			70,000.00 CR	
16/06/2021	AUTOMATIC DRAWING XeroAUIINV_Jg65terd XEROAUSTRALIAPTY FORUM GRP FS		49.40 DR		
16/06/2021	TRANSFER DEBITS Sydney Olympic Footb184211767 Loan to SOFC		40,000.00 DR		

**Transaction History Report (Continued)**

<b>Date</b>	<b>Narrative</b>	<b>Reference number</b>	<b>Debit amount</b>	<b>Credit amount</b>	<b>EOD balance</b>
16/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184268613 Loan to Env Aus		78,000.00 DR		
16/06/2021	TRANSFER DEBITS TT3021880614 Payment-Id 184202317MAZCON		990,993.85 DR		
16/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184267969 Loan to Env Aus		1,330,000.00 DR		844.53 CR
17/06/2021	INTER-BANK CREDIT RTGS (ANZ-001432) ORCA ENVIRO SOLUTIONNEW SOUTH WALES AUST			3,000,000.00 CR	
17/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184270240 Kerim Baba - Water		56.40 DR		
17/06/2021	AUTOMATIC DRAWING RTA2987021019 E-TOLL PH 131865 Forum group Fina		80.00 DR		3,000,708.13 CR
21/06/2021	AUTOMATIC DRAWING RTA2988680456 E-TOLL PH 131865 Forum group Fina		80.00 DR		
21/06/2021	AUTOMATIC DRAWING 00888136 VW FINANCE FORUM GROUP FINA		1,740.47 DR		
21/06/2021	AUTOMATIC DRAWING 70246 Forum Group - OK Forum Group Fina		4,577.53 DR		
21/06/2021	AUTOMATIC DRAWING 70246 Forum Group - OK Forum Group Fina		4,577.53 DR		
21/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184411427 Loan to 6 Bulkara		5,000.00 DR		2,984,732.60 CR
22/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184633985 Loan to Berkeley		26,000.00 DR		
22/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184633638 Loan to Iugis AU		400,000.00 DR		2,558,732.60 CR
23/06/2021	TRANSFER DEBITS Aksara Holding Pty L184634201 Aksara Petrol T3		7,875.00 DR		
23/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184679435 397917		2,200,000.00 DR		350,857.60 CR
24/06/2021	INTER-BANK CREDIT RTGS (ANZ-000699) ORCA ENVIRO SOLUTIONNEW SOUTH WALES AUST			520,000.00 CR	
24/06/2021	TRANSFER DEBITS Internet Transfer PYMT-ID 184802504 Loan to Iugis Au		300,000.00 DR		570,857.60 CR
25/06/2021	AUTOMATIC DRAWING RTA2992794803 E-TOLL PH 131865 Forum group Fina		80.00 DR		570,777.60 CR
29/06/2021	MISCELLANEOUS DEBIT NAB Connect Fee Access and Usage		634.80 DR		570,142.80 CR

**End of report**

# Balance Sheet

## Forum Group Financial Services Pty Ltd As at 30 June 2021

30 JUN 2021

### Assets

#### Bank

Forum Group Financial Services	570,142.80
<b>Total Bank</b>	<b>570,142.80</b>

#### Current Assets

Accounts Receivable	204,773.80
Loan - CTEX Global	200,000.00
Loan - Kew Avenue Pty Ltd	52,500.00
Loan - VT	260,341.38
Prepayments	30,879.39
<b>Total Current Assets</b>	<b>748,494.57</b>

#### Fixed Assets

2-4 Atherton Road, Oakleigh	4,210,000.00
Office Equipment	5,800,000.00
Vehicles	2,948,730.28
<b>Total Fixed Assets</b>	<b>12,958,730.28</b>

#### Non-current Assets

Clearing Account - FG Future Fund NMF/HP/WL/BHO	13,516,218.43
Clearing Account - FG NMF Non-Future Funded Deals	1,534,814.50
Clearing Account - Forum Group	(48,114.81)
Clearing Account - Forum Group Tranche 1	323,304.07
Clearing Account - Forum Group Tranche 2	673,870.96
Clearing Account - Future Funded BHO	6,662,704.37
Clearing Account - Future Funded HP	2,767,096.12
Clearing Account - Future Funded NMF	55,081,409.40
Clearing Account - Future Funded WL	3,840,548.19
Clearing Account - Purchased NMF Future Funded Contracts	22,114,124.12
Erim Downs	200,000.00
Giamouridis	10,111,898.56
iFish Finance Pty Ltd	140,000.00
Loan - 1160 Glen Huntly Road	900,473.34
Loan - 123 High St, Taradale	53,353.43
Loan - 14 James Street Pty Ltd	2,838,193.39
Loan - 14 Kirwin Road, Morwell	255,794.93
Loan - 160 Murray Valley Hwy, Lake Boga	185,202.74
Loan - 193 Carlisle Street Enterprises Pty Ltd	30,304.64
Loan - 22 High Street, Rushworth	25,274.64
Loan - 275 High St, Golden Square	222,213.74
Loan - 286 Carlisle Street Pty Ltd	2,202,000.00
Loan - 31 Ellerman Street, Dimboola	110,261.69

30 JUN 2021

Loan - 4 Cowslip St, Violet Town	221,623.21
Loan - 5 Bulkara	3,712,011.85
Loan - 55 Nolan Street, Maryborough	123,906.95
Loan - 6 Bulkara	4,944,239.06
Loan - 64-66 Berkeley St, Hawthorn	1,865,508.30
Loan - 8-12 Natalia Ave Oakleigh Pty Ltd	2,122,155.18
Loan - 89 Betka Road, Mallacoota	93,201.89
Loan - 9 Gregory Street, Ouyen	18,968.58
Loan - 9 Main St, Derrinallum	85,135.59
Loan - Ellinikos Tourismos/Mazcon	16,347,143.74
Loan - FGOc	4,567,331.64
Loan - Forum Enviro	4,339,695.10
Loan - Forum Group/Enviro	1,836,754.24
Loan - Intrashield Investment Group Pty Ltd	51,733.09
Loan - Iugis	26,281,598.64
Loan - Iugis (EU) GmbH	1,197,791.11
Loan - Iugis Energy SA	572,382.37
Loan - Iugis Hellas IKE	895,828.16
Loan - Iugis Holdings Limited	16,120,770.75
Loan - Iugis UK Ltd	6,526,810.05
Loan - Iugis Waste Solutions Pty Ltd	1,000,427.43
Loan - Mark Menzies	300,000.00
Loan - Matt Ingram Family Trust	1,002,500.00
Loan - Orca Comercio De Sistemas Ambientais Ltd	71,493.07
Loan - Orca Environmental Solutions DMCC	3,189,665.27
Loan - Orca Global Financial Services Ltd	48,609.08
Loan - Other Related Parties	404,710.00
Loan - Palante Pty Ltd	2,621,939.81
Loan - SOFC	3,343,403.37
Loan - Tesoriero Investment Group Pty Ltd	1,159,393.34
Loan to Iugis Investments for Autonomous Energy	4,548,209.90
Loan to Spartan Consulting Group	1,419,324.77
Loans - 23 Margaret Street	687,741.90
Loans - 26 Edmonstone Road	614,628.95
Loans - Canner Investments	1,180,315.82
Loans - Intrashield	1,283,130.10
New Finance Book - Forum Group	5,661,453.42
New Finance Book - Iugis AU	3,379,025.51
New Finance Book - Iugis UK	670,096.74
New Finance Book - Surfacide	2,059,440.00
Problem Contracts	400,729.41
Property - Bond Paid	9,408.00
Refinance Balance to Clear	5,013,005.00
Shares Purchased	1,390,000.00



30 JUN 2021

TG Digesters	964,893.80
<b>Total Non-current Assets</b>	<b>258,089,080.64</b>
<b>Total Assets</b>	<b>272,366,448.29</b>

**Liabilities****Current Liabilities**

Accounts Payable	10,644,789.34
GST	(21,682,406.35)
PAYG Withholdings Payable	2,144.00
Suspense	(409,155.06)
<b>Total Current Liabilities</b>	<b>(11,444,628.07)</b>

**Non-current Liabilities**

Accruals	10,337,427.81
Chattel Mortgage - Audi RSQ8	260,565.20
Chattel Mortgage - Porsche GT2 RS	572,347.13
Chattel Mortgage - Porsche GT4	186,694.24
Clearing Account - BHO	178,296,233.27
Clearing Account - HP Finance	(10,123,401.75)
Clearing Account - NZ	40,362,063.45
Clearing Account - SMBC	60,990,674.07
Clearing Account - SocGen via BHO	8,987,198.00
Loan - Forum Enviro (Aust)	1,137,916.47
Loan - MAIA Financial	3,861,000.00
Loan - NMF	(39,729.36)
Loan - Think Tank - 126463	2,910,750.00
Loan - Think Tank - 126464	59,903.50
Unexpired Term Interest	(102,652.50)
<b>Total Non-current Liabilities</b>	<b>297,696,989.53</b>

<b>Total Liabilities</b>	<b>286,252,361.46</b>
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<b>Net Assets</b>	<b>(13,885,913.17)</b>
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**Equity**

Current Year Earnings	(3,784,019.50)
Owner A Share Capital	(750,000.00)
Retained Earnings	(9,351,893.67)
<b>Total Equity</b>	<b>(13,885,913.17)</b>

# Balance Sheet

## Forum Group Financial Services Pty Ltd As at 30 June 2021

	30 JUN 2021	30 JUN 2020
<b>Assets</b>		
<b>Bank</b>		
Forum Group Financial Services	570,142.80	2,874,731.40
<b>Total Bank</b>	<b>570,142.80</b>	<b>2,874,731.40</b>
<b>Current Assets</b>		
Accounts Receivable	204,773.80	-
Loan - CTEX Global	200,000.00	200,000.00
Loan - Kew Avenue Pty Ltd	52,500.00	52,500.00
Loan - VT	260,341.38	184,001.24
Prepayments	30,879.39	8,677.67
<b>Total Current Assets</b>	<b>748,494.57</b>	<b>445,178.91</b>
<b>Fixed Assets</b>		
2-4 Atherton Road, Oakleigh	4,210,000.00	4,210,000.00
Office Equipment	5,800,000.00	-
Vehicles	2,948,730.28	1,465,832.86
<b>Total Fixed Assets</b>	<b>12,958,730.28</b>	<b>5,675,832.86</b>
<b>Non-current Assets</b>		
Clearing Account - FG Future Fund NMF/HP/WL/BHO	13,516,218.43	-
Clearing Account - FG NMF Non-Future Funded Deals	1,534,814.50	3,078,703.98
Clearing Account - Forum Group	(48,114.81)	(48,114.81)
Clearing Account - Forum Group Tranche 1	323,304.07	349,443.52
Clearing Account - Forum Group Tranche 2	673,870.96	1,757,959.67
Clearing Account - Future Funded BHO	6,662,704.37	6,662,704.37
Clearing Account - Future Funded HP	2,767,096.12	2,767,096.12
Clearing Account - Future Funded NMF	55,081,409.40	55,081,409.40
Clearing Account - Future Funded WL	3,840,548.19	3,840,548.19
Clearing Account - Purchased NMF Future Funded Contracts	22,114,124.12	21,692,104.02
Erim Downs	200,000.00	200,000.00
Giamouridis	10,111,898.56	5,721,215.10
iFish Finance Pty Ltd	140,000.00	-
Loan - 1160 Glen Huntly Road	900,473.34	884,381.90
Loan - 123 High St, Taradale	53,353.43	62,803.31
Loan - 14 James Street Pty Ltd	2,838,193.39	1,738,936.00
Loan - 14 Kirwin Road, Morwell	255,794.93	9,090.91
Loan - 160 Murray Valley Hwy, Lake Boga	185,202.74	9,090.91
Loan - 193 Carlisle Street Enterprises Pty Ltd	30,304.64	30,304.64
Loan - 22 High Street, Rushworth	25,274.64	9,090.91
Loan - 275 High St, Golden Square	222,213.74	245,445.25
Loan - 286 Carlisle Street Pty Ltd	2,202,000.00	-
Loan - 31 Ellerman Street, Dimboola	110,261.69	9,090.91

	30 JUN 2021	30 JUN 2020
Loan - 4 Cowslip St, Violet Town	221,623.21	251,623.78
Loan - 5 Bulkara	3,712,011.85	3,124,028.09
Loan - 55 Nolan Street, Maryborough	123,906.95	9,090.91
Loan - 6 Bulkara	4,944,239.06	-
Loan - 64-66 Berkeley St, Hawthorn	1,865,508.30	400,000.00
Loan - 65 Nelson Street Enterprises Pty Ltd	-	30,363.10
Loan - 8-12 Natalia Ave Oakleigh Pty Ltd	2,122,155.18	1,236,703.75
Loan - 89 Betka Road, Mallacoota	93,201.89	9,090.91
Loan - 9 Gregory Street, Ouyen	18,968.58	9,090.91
Loan - 9 Main St, Derrinallum	85,135.59	113,425.18
Loan - Ellinikos Tourismos/Mazcon	16,347,143.74	3,105,966.18
Loan - FGOC	4,567,331.64	3,930,301.95
Loan - Forum Enviro	4,339,695.10	3,450,385.84
Loan - Forum Group/Enviro	1,836,754.24	-
Loan - Intrashield Investment Group Pty Ltd	51,733.09	-
Loan - Iugis	26,281,598.64	1,527,500.71
Loan - Iugis (EU) GmbH	1,197,791.11	1,112,268.12
Loan - Iugis Energy SA	572,382.37	-
Loan - Iugis Hellas IKE	895,828.16	121,545.12
Loan - Iugis Holdings Limited	16,120,770.75	10,122,926.17
Loan - Iugis UK Ltd	6,526,810.05	4,740,718.33
Loan - Iugis Waste Solutions Pty Ltd	1,000,427.43	-
Loan - Mark Menzies	300,000.00	300,000.00
Loan - Matt Ingram Family Trust	1,002,500.00	-
Loan - Orca Comercio De Sistemas Ambientais Ltd	71,493.07	66,989.48
Loan - Orca Enviro Systems Pty Ltd	-	80,736.42
Loan - Orca Environmental Solutions DMCC	3,189,665.27	888,974.35
Loan - Orca Global Financial Services Ltd	48,609.08	48,609.08
Loan - Other Related Parties	404,710.00	401,404.00
Loan - Palante Pty Ltd	2,621,939.81	926,682.00
Loan - SOFC	3,343,403.37	2,651,474.51
Loan - Tesoriero Investment Group Pty Ltd	1,159,393.34	960,347.00
Loan to Iugis Investments for Autonomous Energy	4,548,209.90	-
Loan to Spartan Consulting Group	1,419,324.77	879,583.23
Loans - 23 Margaret Street	687,741.90	364,638.17
Loans - 26 Edmonstone Road	614,628.95	475,256.00
Loans - Canner Investments	1,180,315.82	1,037,122.98
Loans - Intrashield	1,283,130.10	958,046.92
New Finance Book - Forum Group	5,661,453.42	141,885.91
New Finance Book - Iugis AU	3,379,025.51	3,955,434.29
New Finance Book - Iugis UK	670,096.74	920,560.74
New Finance Book - Surfacide	2,059,440.00	2,346,440.00
Problem Contracts	400,729.41	-
Property - Bond Paid	9,408.00	(7,350.00)
Refinance Balance to Clear	5,013,005.00	-

	30 JUN 2021	30 JUN 2020
Shares Purchased	1,390,000.00	140,000.00
TG Digesters	964,893.80	561,234.95
<b>Total Non-current Assets</b>	<b>258,089,080.64</b>	<b>155,494,403.38</b>
<b>Total Assets</b>	<b>272,366,448.29</b>	<b>164,490,146.55</b>
<b>Liabilities</b>		
<b>Current Liabilities</b>		
Accounts Payable	10,644,789.34	7,020,781.63
Accrued Annual Leave Liability	-	4,129.27
GST	(21,682,406.35)	(11,060,061.43)
PAYG Withholdings Payable	2,144.00	2,960.00
Superannuation Payable	-	1,037.68
Suspense	(409,155.06)	(3,015.00)
<b>Total Current Liabilities</b>	<b>(11,444,628.07)</b>	<b>(4,034,167.85)</b>
<b>Non-current Liabilities</b>		
Accruals	10,337,427.81	10,344,304.74
Chattel Mortgage - Audi RSQ8	260,565.20	-
Chattel Mortgage - Porsche GT2 RS	572,347.13	666,159.05
Chattel Mortgage - Porsche GT4	186,694.24	207,579.88
Clearing Account - BHO	178,296,233.27	145,834,107.27
Clearing Account - HP Finance	(10,123,401.75)	(6,845,519.31)
Clearing Account - NZ	40,362,063.45	28,693,509.74
Clearing Account - SMBC	60,990,674.07	(7,201,235.40)
Clearing Account - SocGen via BHO	8,987,198.00	-
Loan - Forum Enviro (Aust)	1,137,916.47	-
Loan - MAIA Financial	3,861,000.00	3,861,000.00
Loan - NMF	(39,729.36)	(39,729.36)
Loan - Think Tank - 126463	2,910,750.00	3,000,000.00
Loan - Think Tank - 126464	59,903.50	212,668.06
Unexpired Term Interest	(102,652.50)	(106,636.60)
<b>Total Non-current Liabilities</b>	<b>297,696,989.53</b>	<b>178,626,208.07</b>
<b>Total Liabilities</b>	<b>286,252,361.46</b>	<b>174,592,040.22</b>
<b>Net Assets</b>	<b>(13,885,913.17)</b>	<b>(10,101,893.67)</b>
<b>Equity</b>		
Current Year Earnings	(3,784,019.50)	(7,130,770.21)
Owner A Share Capital	(750,000.00)	(750,000.00)
Retained Earnings	(9,351,893.67)	(2,221,123.46)
<b>Total Equity</b>	<b>(13,885,913.17)</b>	<b>(10,101,893.67)</b>

# Aged Receivables Summary

## Forum Group Financial Services Pty Ltd

As at 30 June 2021


CONTACT	CURRENT	< 1 MONTH	1 MONTH	2 MONTHS	3 MONTHS	OLDER	TOTAL
6 Bulkara Street Pty Ltd	6,050.00	-	-	-	-	-	6,050.00
64-66 Berkeley St Hawthorn Pty Ltd	4,840.00	-	-	-	-	-	4,840.00
8-12 Natalia Avenue Oakleigh Pty Ltd	45,232.00	-	-	-	-	-	45,232.00
Iugis Pty Ltd	22,959.20	125,692.60	-	-	-	-	148,651.80
<b>Total</b>	<b>79,081.20</b>	<b>125,692.60</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>204,773.80</b>

# Aged Payables Summary

## Forum Group Financial Services Pty Ltd

As at 30 June 2021

CONTACT	CURRENT	< 1 MONTH	1 MONTH	2 MONTHS	3 MONTHS	OLDER	TOTAL
<b>Aged Payables</b>							
Adams Consulting Engineers Pty Ltd	-	-	-	-	22,000.00	-	22,000.00
DNA AutoSport Australia	-	805.60	-	-	-	-	805.60
Forum Enviro (Aust) Pty Ltd	9,159,572.40	-	-	-	-	-	9,159,572.40
Forum Group Pty Ltd	654,442.66	659,015.40	-	-	-	-	1,313,458.06
Latep Legal	-	-	-	-	-	(3,015.00)	(3,015.00)
Leo Karis	-	33,000.00	-	-	-	-	33,000.00
Melbourne Performance Centre	-	16,349.60	-	-	-	-	16,349.60
Metier3 Pty Ltd	23,232.00	47,554.38	-	-	-	-	70,786.38
Mirvac Birkenhead Point Marina Pty Ltd	-	2,266.00	-	-	-	-	2,266.00
Panetta Lawyers	-	-	10,890.00	-	-	-	10,890.00
Short Marine	-	14,789.91	-	-	-	-	14,789.91
Sydney Olympic Football Club Ltd	-	2,694.05	-	-	-	-	2,694.05
UNITY	-	779.80	-	412.54	-	-	1,192.34
<b>Total Aged Payables</b>	<b>9,837,247.06</b>	<b>777,254.74</b>	<b>10,890.00</b>	<b>412.54</b>	<b>22,000.00</b>	<b>(3,015.00)</b>	<b>10,644,789.34</b>
<b>Total</b>	<b>9,837,247.06</b>	<b>777,254.74</b>	<b>10,890.00</b>	<b>412.54</b>	<b>22,000.00</b>	<b>(3,015.00)</b>	<b>10,644,789.34</b>



**Forum Finance Pty Limited (In Liquidation) (Receivers Appointed)**  
**ACN 153 301 172**

**Forum Group Financial Services Pty Ltd**  
**(Provisional Liquidators Appointed)**  
**ACN 623 033 705**

**Report to creditors**

**8 October 2021**



**McGrathNicol**



## Contents

1	Introduction .....	3
2	Update on the progress of the Liquidations .....	3
3	Assets and liabilities .....	8
5	Receipts and payment.....	21
6	Likelihood of a dividend.....	21
7	Cost of the liquidations .....	22
8	Meetings of creditors.....	22
9	Participating and voting in the meetings .....	23
10	Appointment of a Committee of Inspection.....	23
11	Other resolutions .....	23
12	What happens next?.....	24
13	What you should do next?.....	24
14	Where can you get more information? .....	24



# 1 Introduction

We refer to:

- our appointment as Liquidators of Forum Finance Pty Limited (**Forum Finance**) on 9 July 2021;
- our appointment as Provisional Liquidators of Forum Group Financial Services Pty Ltd (**FGFS**) on 15 July 2021; and
- our initial information for creditors dated 6 August 2021 for Forum Finance in which we advised you of our appointment and your rights as a creditor in the liquidation, copies of which can be found on our website (<https://www.mcgrathnicol.com/creditors/forum-finance-pty-ltd/>).

Section 70-40 of the Insolvency Practice Rules (Corporations) 2016 (**IPR**) requires the Liquidators of Forum Finance to provide a report to creditors, within three months of commencement of the liquidation, on:

- the progress of the liquidation; and
- the likelihood of a dividend being paid in the liquidation.

The purpose of this report is to provide creditors of Forum Finance with the above information.

While the Provisional Liquidators of FGFS are not bound by this statutory reporting requirement, we will also report to creditors on the provisional liquidation of FGFS given the relationship between FGFS and Forum Finance.

We will also be requesting that you consider our and the Former Voluntary Administrators' detailed remuneration approval reports.

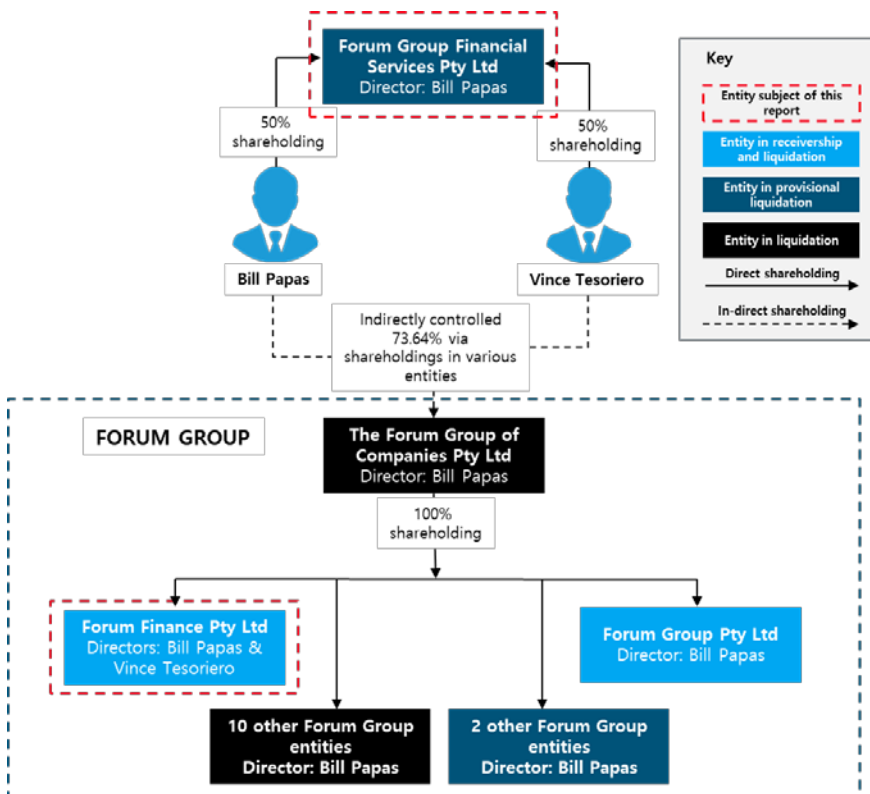
Forum Finance and FGFS are collectively referred to as the "Companies". For simplicity and the purposes of this report, we may interchangeably refer our appointment as the Provisional Liquidators of FGFS as the "Liquidators" and the provisional liquidation of FGFS as the "Liquidation".

# 2 Update on the progress of the Liquidations

## 2.1 Background

### 2.1.1 Corporate structure

An overview of the corporate structure of the Companies at our appointment dates is set out:



Further details on the Companies are set out in sections 2.1.2 and 2.1.3 below. The Liquidators note the following in relation to the corporate structure:

- The Companies are not part of the same group but are related by virtue of common directors (including a former director) and ultimate controlling shareholders, Basile Papadimitriou (**Bill Papas/Mr Papas**) and Vincenzo Francesco Tesoriero (**Vince Tesoriero/Mr Tesoriero**).
- Forum Finance along with thirteen other wholly-owned Australian subsidiaries of The Forum Group of Companies Pty Ltd (**FGOC**) were known as the "Forum Group" (**Forum Group**).
- Mr Papas and Mr Tesoriero indirectly control 73.64% of Forum Finance through their interests in various shareholders of FGOC, Forum Finance's parent.
- Mr Papas and Mr Tesoriero each hold 50% of the shares in FGFS in their personal names.
- The Liquidators of the Companies are also the appointed Liquidators/Provisional Liquidators of the other thirteen Forum Group companies, along with fourteen other entities associated with Mr Papas outside the Forum Group (which are not shown in the structure chart above).
- Andrew Grenfell and Kare Johnstone of McGrathNicol NZ were separately appointed to two other entities located in New Zealand, associated with Bill Papas.

### 2.1.2 Forum Finance

Forum Finance was incorporated in New South Wales in September 2011. The directors of Forum Finance recorded by ASIC at the date of our appointment were Bill Papas and Vince Tesoriero (**Forum Finance Directors**).

Jason Preston and I were appointed Liquidators of Forum Finance on 9 July 2021 by order of the Federal Court of Australia (**Court**).

On 12 July 2021, Antony Resnick and Mark Robinson of dVT Group were appointed Receivers (**Receivers**) over Forum Finance's assets pursuant to a registered general security interest granted to Octet Finance Pty Ltd (**Secured Lender**) by Forum Finance as guarantor of a funding facility entered into between the Secured Lender and the Forum Group.

Forum Finance was primarily an equipment leasing arranger/broker, operating in the managed print services and environmental services sectors, among others.

Forum Finance would typically enter equipment leasing and maintenance contracts with customers as principal (and in some cases agent) with the economic interest in and security associated with those contracts passed to a range of third-party financiers through various structures, generally on an undisclosed basis. Forum Finance would typically earn commissions as part of these arrangements.

At the time of our appointment, there were considerable amounts owing to Westpac Banking Corporation and Westpac New Zealand (together, **WBC**), SMBC Leasing and Finance Inc (**SMBC**), and Societe Generale (**SocGen**) as third party financiers.

In a small number of instances, the economic interest in contracts were not passed through to any financier and Forum Finance maintained an economic interest in these leases.

Despite these arrangements with financiers, Forum Finance would maintain an active role in the lease and be responsible for provision of services to customers under the lease and retain the credit risk associated with customer defaults (i.e. it would still be required to make payment to the financiers even if the customer did not make payment).

Forum Finance did not have any employees at the date of our appointment. Forum Finance operated primarily under the direction of Mr Papas, Director and through employees of Forum Group Pty Ltd and associated entities, including Moussa 'Tony' Bouchahine (**Mr Bouchahine**), the Chief Financial Officer.

Forum Finance typically outsourced the supply, maintenance and administrative components of the contracts (including invoicing, collections and remittance of funds to the financier) to other entities within the Forum Group, primarily Forum Group Pty Limited in respect of managed print services contracts, and notionally Forum Enviro Pty Limited / Orca Enviro Solutions Pty Limited (later Iugis Pty Ltd) in respect of the environmental services contracts.

### 2.1.3 FGFS

FGFS was established in New South Wales in November 2017. Bill Papas was the sole director of FGFS (**FGFS Director**) at the date of our appointment. Vince Tesoriero was a director of FGFS from 13 November 2018 to 30 April 2020.

Jason Preston and I were appointed Provisional Liquidators of FGFS on 15 July 2021 by order of the Federal Court of Australia.

Prior to our appointment, Domenico Alessandro Calabretta, Grahame Robert Ward and Thyge Trafford-Jones of Mackay Goodwin were appointed as voluntary administrators of FGFS on 8 July 2021 (**Former Voluntary Administrators**), with their appointment terminating upon our appointment.

FGFS primarily acted as the Forum Group's treasury entity, acting as the conduit for funds transfers between Forum Group entities, as well as providing loans to associated entities and associates of Mr Papas and Mr Tesoriero. FGFS did not operate a trading business.

Separately, FGFS utilised funds to acquire a property (which it allegedly intended to develop), and acquire and maintain various 'lifestyle assets' including high end vehicles, race cars, boats and jet skis (which were in many cases used by one or more of the Forum Finance Directors for their personal use and registered in their personal names).

FGFS did not have any employees at the date of our appointment. Prior to the Liquidators' appointment, FGFS operated primarily through an employee and a contractor who acted under the supervision and direction of Mr Bouchahine who in turn acted under the direction of Mr Papas.

Based on the Provisional Liquidators' investigations to date, the majority of the funds received by FGFS were obtained through transfers from other entities within or related to the Forum Group, primarily Forum Finance, Forum Enviro (Aust) Pty Ltd (Provisional Liquidators Appointed) and Iugis (NZ) Ltd (In Liquidation) (a New Zealand registered entity). We have not been able to identify a valid underlying basis for the transfer of funds to FGFS from these entities.

## 2.2 Reasons for the failure of the Companies

The Liquidators have not received a completed Report on Company Activities and Property (**ROCAP**) for either of the Companies that provides an explanation on the failure of the Companies. Please refer to section 3.1 for further detail on the ROCAPs.

In conversations with Mr Papas, he suggested the failure of Forum Finance as part of the broader Forum Group, was as a result of the impact of COVID and the resulting disruption and inability for the companies to operate effectively. This is inconsistent with our findings.

We consider that:

- the real reason for the Companies' failure was the business they were operating included the preparation of false customer contracts which were then financed by third parties. A significant proportion of the proceeds generated from this activity was then paid away to other entities. This resulted in the Companies incurring liabilities far in excess of their assets and an inability to meet the payment demands that were made;
- those payment demands were made after concerns were raised about allegedly fraudulent behaviour undertaken by (or at the direction of) Mr Papas which resulted in freezing orders being issued by the Federal Court of Australia against Mr Papas and Mr Tesoriero personally, as well as the assets of Forum Finance and litigation being commenced against numerous Forum Group entities; and
- this resulted in the Companies being unable to meet their trading and financing obligations, nor access further funding.

We note Mr Papas departed Australia for Greece in mid-June 2021 shortly after the allegedly fraudulent behaviour was identified and ahead of the various insolvency appointments. Mr Papas has not returned to Australia despite stating his intention to do so.

While Mr Papas initially engaged with the Liquidators to a limited extent, he has not provided any meaningful assistance to the liquidators in respect of their investigations. Mr Papas has shut down the email address that the Liquidators were using to contact him. Further, Mr Papas is no longer represented in the various proceedings commenced against him in respect of the fraudulent activities.

## 2.3 Timeline of key events

Below is a timeline of key events leading to the appointment of the Liquidators and Provisional Liquidators.

Date	Event
May to June 2021	WBC identified a number of its customers, which were allegedly customers under Forum Finance contracts funded by WBC, claimed that they did not enter into the purported contracts with Forum Finance.
16 June 2021	Mr Papas departed Australia for Greece.
28 June 2021	WBC obtained: <ul style="list-style-type: none"> <li>▪ freezing orders against Forum Finance and Mr Papas prohibiting them from disposing, dealing with or diminishing the value (i.e. freezing) of all their Australian and New Zealand assets up to the unencumbered value of approximately \$254 million; and</li> <li>▪ search orders against Forum Finance and Bill Papas.</li> </ul>
2 July 2021 to 27 August 2021	The Court amended the freezing orders outlined above on multiple occasions. The current freezing orders against the Directors are as follows: <ul style="list-style-type: none"> <li>▪ Mr Papas was made on 15 July 2021. It freezes his global assets up to the unencumbered value of approximately \$361 million.</li> <li>▪ Mr Tesoriero was made on 27 August 2021. It freezes his global assets up to the unencumbered value of approximately \$254 million plus NZ\$44 million.</li> </ul>
8 July 2021	The Former Voluntary Administrators were appointed to FGFS (along with other associated entities) by resolution of Mr Papas, its sole director.
9 July 2021	The Court made orders appointing the Liquidators to Forum Finance.
9 July to 15 July 2021	The Liquidators initial investigations identified that the vast majority of funding secured by Forum Finance were transferred to FGFS (with no appropriate accounting entries being made in the accounts of Forum Finance to reflect these transactions).
15 July 2021	The Court made orders appointing the Provisional Liquidators to FGFS and two other entities within the Forum Group.  The appointment of the Former Voluntary Administrators to FGFS ended upon the appointment of Provisional Liquidators.
20 October 2021	A hearing is scheduled to occur at which time the Court will be asked to wind up and place in liquidation, FGFS and other entities currently in provisional liquidation.

## 2.4 Liquidators' actions to date

To date, we have undertaken the following:

- Liaised with Mr Papas, Mr Tesoriero and their legal advisors, in their capacity as Directors (or former Directors) of the Companies and Mr Bouchahine, in his capacity as former CFO of the Forum Group, in respect of the outstanding/incomplete ROCAPs, and causes of failure.
- Liaised with personnel of the various Forum Group entities including Mr Craig Rollinson, General Manager of Operations of the Forum Group, to gain an understanding of the business and financial position of the Companies.
- Liaised with and issued requests for information to financiers and other financial institutions in relation to the Companies.
- Gained access to books and records of the Companies including electronic accounting and financial records/systems.
- Undertook detailed sources and applications analysis for funds received and utilised by Forum Finance, FGFS and associated entities.

- Investigated the circumstances surrounding funds advanced by financiers to Forum Finance as a result of allegedly fraudulent contracts, including WBC, Westpac New Zealand, SocGen and SMBC (collectively, **the Financiers**), for equipment leases or contracts where there was no underlying customer. Further details regarding the alleged fraud committed and ongoing investigations undertaken to date by the Liquidators are set out in section 4.1 of this report.
- Undertook public examinations to progress investigations into how and by whom the alleged fraud was perpetrated, how funds had been utilised and to identify any further assets that may be available to creditors.
- Sought legal advice on the public examinations and investigations into the alleged fraud, realisation of assets and approach to deal with the potential competing claims by the financiers and other secured lenders.
- Liaised with the Receivers on the progress of the realisation and potential surplus available for the benefit of the creditors of Forum Finance.
- Sought and secured FGFS's assets and sought indicative valuations (where applicable) to determine their realisation value. Further details on the assets of the Companies are set out in section 3 of this report.
- Located, secured and sought to realise vehicles registered to FGFS.
- Liaised with parties who have registered PPSR security interest over the assets of the Companies.
- Carried out preliminary investigations in order to prepare a confidential report which will be lodged with the Australian Securities & Investments Commission (ASIC) pursuant to section 533 of the Corporations Act (**Act**) in due course.
- Reported to and filed lodgements with ASIC and creditors.

## 2.5 Funding agreement

Upon our appointment, noting the freezing orders in place, variety of financier claims and alleged fraud, there were insufficient funds/assets available to us to undertake our role beyond our basic statutory obligations.

In order for us to undertake a comprehensive investigation and understand the claims or assets that may be available for the benefit of creditors, we engaged with the major Financiers in respect of providing funding to allow us to undertake this work.

An in-principle agreement was ultimately reached with Westpac to provide the Liquidators a loan for the purposes of funding the Liquidators' remuneration and expenses incurred in July, August and September 2021 (or other such longer period as agreed in writing) up to a value of \$4.5 million (excluding GST) (**Funding Facility**). The funding was put in place to allow the Liquidators to undertake investigations of the Forum Group and associated entities, and the identification of possible future sources of asset recoveries. The Funding Facility includes the following terms and conditions:

- interest charged at an interest rate of BBSY Bid plus 3% with any unpaid interest to be capitalised monthly.
- the drawn down amounts together with any interest accrued are to be reduced and repaid once and to the extent that there are sufficient funds in the liquidations of the Forum Group and the Liquidators reasonably form the view that those funds are not required for the purposes of that liquidation.
- the Liquidators' liability to repay the drawdown amounts together with any interest accrued is on a limited recourse basis, with Westpac's recourse being limited to the assets available in the liquidations.
- other financiers who have legal proceedings on foot against various Forum Group entities (being SMBC and SocGen) may accede as a funder to the Funding Agreement, with the written consent of the Liquidators and Westpac, for the purpose of furthering investigations and/or proceedings commenced in respect of entities.
- to ensure that priority employee creditors of the Forum Group are not disadvantaged, the agreement provides that to the extent there are any outstanding employee entitlements (which are afforded priority under sections 556 and 560 of the Corporations Act) in any entity, any recoveries made by that entity must first be used to pay those priority employee entitlements.
- the agreement provides that, regardless of whether the funding was used in the liquidation or provisional liquidation of a particular entity, the Liquidators of each entity are jointly and severally liable for the repayment of all amounts drawn down and any interest accrued under the Funding Facility.

We consider that entering into the Funding Agreement on those terms was in the best interests of Forum Group and its creditors on the basis that:

- there were clearly matters requiring detailed investigation in order to identify assets that may be able to be recovered for the benefit of creditors;
- no other funding has been offered to the Liquidators;
- the agreement retains certain protections discussed above;
- given the security that has been granted and the proprietary claims made (discussed further at Section 3.4.2 below), Forum Finance and FGFS do not have available assets to fund investigations and recovery actions;
- we have not identified any potential prejudice or oppression to the creditors of Forum Finance and FGFS that would arise by reason of entering into the Funding Agreement;
- we consider that the entry into the agreement presents little risk to Forum Finance and FGFS and their creditors; and
- given the absence of any security that can be offered, or the certainty of any recoveries, we consider it very unlikely that funding would be available from any other source. We consider the terms of the Funding Agreement are likely to be more favourable than those that would, in our experience, likely be available from a commercial litigation funder.

The agreement was entered into on 7 September 2021, following the Court granting approval for the Liquidators to enter into the agreement.

Apart from priority employee claims, the effect of this Funding Agreement is that all realisations across any of the entities subject to our appointment will first be applied in repayment of the Funding Facility, and amounts will only become available for unsecured creditors to the extent there is a surplus once the Funding Facility has been repaid in full.

The Funding Facility will only be drawn down based on costs actually incurred and properly approved (and to the extent there are insufficient recoveries in the respective liquidations). Liquidators' remuneration will still require approval by creditors. No amounts have been drawn under the Funding Facility to date.

## 3 Assets and liabilities

### 3.1 Report on Company Activities and Property (ROCAP)

Under section 475 of the Act, Directors, and company officers, can be required to complete a ROCAP, setting out an assessment of a company's asset and liability position and causes of failure.

The Liquidators requested Mr Papas and Mr Tesoriero, in their capacities as directors and/or former directors of the Companies, to submit a ROCAP each for both Companies and Tony Bouchahine in his capacity as former CFO (i.e. an officer) of the Forum Group to submit a ROCAP for Forum Finance.

To date, Mr Papas and Mr Bouchahine have each provided a ROCAP for Forum Finance which have the following limitations:

- Mr Papas supplied a draft ROCAP which is largely incomplete and unsigned; and
- Mr Bouchahine supplied an incomplete ROCAP on 7 October 2021 and has not answered certain queries in the ROCAP on the basis he wishes to involve privilege against self-crimination.

Mr Tesoriero has not provided a ROCAP in respect of either of the Companies as at the date of this Report. The Liquidators will be issuing a second and final request imminently. The Act provides for serious consequences for a failure to submit a ROCAP.

The Liquidators will be lodging Mr Papas and Mr Bouchahine's ROCAPs with ASIC shortly, noting they are largely incomplete and have not complied with the Liquidators' requests in substantiation. Additionally, in the event Mr Tesoriero does not comply with the above second and final request in the requested timeframe, he too will be reported to ASIC for non-compliance.

In the absence of useful ROCAPs and the ability to comment on them, we have relied on the following information to prepare this Report and comment on Companies' asset and liability position:

- books & records of the Companies;
- materials relating to the Companies produced by third parties in response to subpoenas;
- discussions with former staff of other Forum Group entities and parties with knowledge of the Companies;

- our detailed investigations; and
- company searches and verifiable public information, such as ASIC registers.

## 3.2 Forum Finance

We have based our analysis below on Forum Finance's balance sheet as at 30 June 2021 as extracted from the electronic accounting records. We note that there are a number of manual adjustments that appear to have been made to the accounts in the period between 30 June and the Liquidators appointment, however these are without adequate explanation and we have been unable to reconcile the basis of the adjustments.

We also note that based on our investigations to date, we do not consider that the Forum Finance accounting records accurately reflect the true nature of the underlying transactions (noting the apparent fraudulent activity), and are therefore likely misleading.

### 3.2.1 Assets

The below table summarises Forum Finance's asset position based on the information obtained from the balance sheet from the company's accounting system as at 30 June 2021 and our investigations.

Please note, all assets are subject to the appointment of the Receivers to Forum Finance. Any realisable value in the high case is currently unknown as it will be subject to the Secured Lender being repaid either directly from Forum Finance or from other Forum Group entities over which they hold security. The low case assumes all proceeds are applied to reduce the Secured Lender's debt.

Forum Finance - asset summary				
\$'000	Reference	Book Value	Liquidators' Est. Amt.	
		30-Jun-21	Low	High
<b>Assets reported in the Balance Sheet</b>				
Cash	3.2.1.1	138	-	160
Accounts receivable	3.2.1.2	19	-	Unknown
Other circulating assets	3.2.1.3	144	-	Unknown
Loans to related parties and appointment group entities	3.2.1.4	18,820	-	Unknown
<b>Sub total</b>		<b>19,121</b>	-	<b>160</b>
<b>Other assets not reported in the Balance Sheet</b>				
Legal action recoveries	3.2.1.5	-	-	Unknown
<b>Sub total</b>		-	-	-
<b>Total</b>		<b>19,121</b>	-	<b>160</b>

#### 3.2.1.1 Cash

Forum Finance maintained two bank accounts with National Australia Bank (**NAB**), which held combined balances totalling \$160k on appointment of the Liquidators.

Forum Finance's books and records record balance of \$138k at 30 June 2021, the difference between the two relates to transactions on the accounts between 30 June 2021 and the appointment on 9 July 2021, primarily relating to what appear to be debtor receipts.

This balance remains with the account bank and has not yet been released to either the Receivers or the Liquidators.

#### 3.2.1.2 Accounts receivable

Forum Finance's accounting records detail an accounts receivable balance of \$19k comprising lease receivables in respect of leases which Forum Finance maintained the economic interest (i.e. hadn't been transferred to an external financier).

The majority of these amounts appear to be the amounts receipted into the bank accounts beyond 30 June 2021, so we consider there to be limited scope for further material recoveries of accounts receivable.



### 3.2.1.3 Other circulating assets

Forum Finance's accounting records details circulating assets relating to net GST claimable and accrued interest in respect of certain financiers.

Given that these items are both linked to Forum Finance's financing operations and the alleged fraud identified in respect of those operations, the existence of these assets is questionable and any recovery remains inherently uncertain.

### 3.2.1.4 Loans to related parties and appointment group entities

Forum Finance's accounting records include \$18.8 million of related entity loans receivable outstanding, however we consider the true balance of funds advanced to related Forum Group entities to be well in excess of this figure based on our review of the bank statements.

We have identified "in and out" transfers totalling approximately \$290 million from Forum Finance to FGFS (relating to funds fraudulently obtained from financiers), which are not recorded in the accounting system. We understand these transfers made to FGFS, were intentionally omitted in an effort to conceal the existence and extent of the alleged fraudulent scheme.

Each of these entities is subject to various insolvency appointments. Proof of Debts (**POD**) will be submitted in those processes in due course. It is difficult to assess the ultimate likely realisations from these claims.

### 3.2.1.5 Legal action recoveries

As at the Liquidation date, there were 12 ongoing legal proceedings commenced by Forum Finance as plaintiff for recovery of amounts outstanding and damages. While these claims have a headline value of \$1.9 million, the majority of these claims require significant costs to be incurred in order to pursue them and consequently the quantum of recoveries is uncertain.

We understand the Receivers are not proactively pursuing these claims and we have not attributed any realisable value to these claims for our current purposes.

## 3.2.2 Liabilities

The below table summarises Forum Finance's liability position based on the information obtained from the balance sheet from the company's accounting system as at 30 June 2021 and our investigations.

Forum Finance - liability summary				
\$'000	Reference	Book Value	Liquidators' Est. Amt.	
		30-Jun-21	Low	High
<b>Liabilities reported in the Balance Sheet</b>				
Trade creditors	3.2.2.1	1,395	1,295	<i>Unknown</i>
Finance liabilities	3.2.2.2	472	472	<i>Unknown</i>
Loans from appointment group entities	3.2.2.3	1,232	1,837	<i>Unknown</i>
<b>Sub total</b>		<b>3,099</b>	<b>3,604</b>	-
<b>Other liabilities not reported in the Balance Sheet</b>				
Secured creditors	3.2.2.4	-	2,500	<i>Unknown</i>
<b>Sub total</b>		-	<b>2,500</b>	-
<b>Total</b>		<b>3,099</b>	<b>6,104</b>	-

### 3.2.2.1 Trade creditors

Forum Finance's accounting records detail trade creditors within their accounts payable of c. \$1.4 million, however the Liquidators review suggests \$605k of this balance appears to be payable to Forum Group Pty Ltd (In Liquidation), a related entity subject to our appointment.

The Liquidators have received PODs totalling \$505k from two unsecured creditors as at the date of this report.

The Liquidators have not yet called for formal PODs from creditors and accordingly, this amount may change.



### 3.2.2.2 Finance liabilities

Forum Finance's accounting records include c. \$472k owing to financiers, however we consider the true balance to be well in excess of this figure based on our review of the bank statements.

We have identified receipts totalling in excess of \$350 million from various financiers (relating to funds fraudulently obtained from those financiers), which are not recorded in the account system. We understand these receipts were intentionally omitted in an effort to conceal the existence and extent of the alleged fraudulent scheme.

We understand that other entities made payments to financiers in respect of Forum Finance's monthly obligations, predominantly funded by FGFS (which received a significant proportion of the fraudulently obtained funds), which served to reduce the net amount outstanding to those financiers.

### 3.2.2.3 Loans from intercompany entities

Forum Finance's accounting system recorded an intercompany loan payable to Forum Enviro Pty Ltd (In Liquidation) of c.\$1.2m as at 30 June 2021, however the Liquidators review of trade creditors suggests \$605k of this balance appears to be payable to Forum Group Pty Ltd (In Liquidation), a related entity subject to our appointment.

Separately, we understand that other entities made payments to financiers in respect of monthly obligations, predominantly funded by FGFS. While those payments served to reduce the net amount outstanding to those financiers, there would be a corresponding increase in the intercompany loan liabilities owing to those entities or FGFS that has not been recorded in the accounts.

### 3.2.2.4 Secured creditors

As detailed in section 2.1.2, the Secured Lender has enforced their general security interest by appointing the Receivers to Forum Finance and its assets to recover the amounts Forum Finance guaranteed in respect the Working Capital Facility.

The balance under the Working Capital Facility is understood to be c.\$2.5 million, comprising the estimated c.\$1.9 million as at the Liquidators' appointment, plus c.\$700k in costs associated with the Receivership accrued since that time. Given Forum Finance is just a guarantor to the Working Capital Facility, this remains a contingent claim however we note all the assets of Forum Finance are available to the Secured Lender to be applied to its debt until such time it has been repaid in full from those or other sources.

Including the All PAP to Octet, there are 130 interests registered against Forum Finance on the PPSR, summarised below:

Forum Finance - PPSR registrations							
	Chattel Paper	General Intangible	Account	Other Goods	All PAP	All PAP with Exception	Totals
Westlawn Finance Ltd	1	1	1	-	-	-	3
BHD Leasing Pty Ltd	1	1	1	35	-	-	38
Octet Finance Pty Ltd	-	-	-	-	1	-	1
HP Financial Services (Australia) Pty Ltd	-	-	-	2	-	-	2
Eqwe Pty Ltd	1	1	1	79	-	-	82
Societe Generale	1	-	1	-	-	1	3
Forum Finance Pty Ltd	-	-	-	1	-	-	1
<b>Totals</b>	<b>4</b>	<b>3</b>	<b>4</b>	<b>117</b>	<b>1</b>	<b>1</b>	<b>130</b>

Noting the Receivers are dealing with stock, we have not yet determined the validity or quantum of the majority of these registrations.

## 3.3 Forum Group Financial Services

We have based the analysis below on FGFS's balance sheet as at 8 July 2021, being the day the Former Voluntary Administrators' were appointed, on the basis the accounts have been reconciled to that day and appears to capture all transactions.

### 3.3.1 Assets

The below table summarises the book value of FGFS' assets, which are discussed in more detail in the below sections:

## FGFS - asset summary

\$'000	Reference	Book Value	Provisional Liquidators' Est. Amt.	
		8-Jul-21	Low	High
Cash	3.3.1.1	572	<i>Unknown</i>	572
Accounts receivables	3.3.1.2	606	-	<i>Unknown</i>
Loans to entities within appointment group	3.3.1.2	57,437	-	<i>Unknown</i>
Loans to other parties	3.3.1.2	77,506	-	<i>Unknown</i>
Clearing accounts - assets	3.3.1.2	111,398	-	<i>Unknown</i>
Lease receivables	3.3.1.2	11,882	-	<i>Unknown</i>
Other circulating assets	3.3.1.3	21,703	-	3,975
Real property	3.3.1.4	4,210	-	3,500
Office Equipment	3.3.1.5	5,800	-	-
Vehicles	3.3.1.6	2,949	-	1,267
<b>Total</b>		<b>294,062</b>	-	<b>9,314</b>

### 3.3.1.1 Cash

FGFS maintained a single bank account with NAB, which held a balance \$572k on appointment of the Provisional Liquidators.

This balance has not yet been released to the Provisional Liquidators given it remains subject to various competing claims, including as security from NAB in respect of a lease provided to FGFS in respect of a high-end vehicle (expected shortfall of c\$40k).

### 3.3.1.2 Loans receivables

#### *Accounts receivable*

FGFS's accounting records include an accounts receivable balance of \$606k at the date of our appointment comprising:

- \$556k properly classified as intercompany receivables (owing by related parties subject to our appointments); and
- the balance as related party loan receivables.

Each of these related entities is subject to various insolvency appointments. PODs will be submitted in those processes in due course, however, we consider it to be unlikely there will be any realisations from those claims.

#### *Loans to entities within appointment group*

FGFS's records include receivables associated with funds advanced by FGFS to other entities within the Forum Group that are currently subject to our appointment totalling \$57.4 million.

The funds advanced by FGFS to other entities within the appointment group were used for a wide variety of purposes, including;

- funding repayments to financiers of other Forum entities in respect of funds that are alleged to have been fraudulently obtained where there was no underlying customer;
- funding entities working capital requirements; and
- funding acquisitions.

Each of these related entities is subject to various insolvency appointments. PODs will be submitted in those processes in due course, however, we consider there it to be unlikely there will be any realisations from those claims.

#### *Loans to other parties*

FGFS's accounting records include loan receivables to other entities associated with Mr Papas and Mr Tesoriero (both in Australia and internationally) in the sum of \$77.5 million.

The loans provided by FGFS appear to have been used for a wide variety of purposes, including but not limited to funding;

- investments in overseas entities held directly or indirectly by Mr Papas;
- businesses' working capital, trading losses and start-up costs; and
- acquisition and maintenance of real properties held in a variety of different entities and trust structures associated with Mr Papas and Mr Tesoriero.

In some cases, there are underlying operating businesses or assets which we continue to review and assess recovery options.

Given the balances are associated with either entities associated with Mr Papas or Mr Tesoriero, are subject to freezing orders and a range of competing claims, we are unable to determine a realisable value at this time.

#### *Clearing accounts – assets*

FGFS's accounting records included a number of clearing accounts with asset balances in the sum of \$111.4 million as at appointment.

From our investigations to date we understand the clearing accounts largely provide an accounting of the alleged fraud scheme, and record payments to and from financiers regarding suspected fraudulent contracts (i.e contracts with no underlying customers). FGFS did not have a direct relationship with the financiers and these amounts would be more appropriately classified as intercompany loans.

It is unlikely these assets are recoverable.

#### *Lease receivables*

FGFS's accounting records included a number of lease receivable accounts with asset balances totalling \$11.9 million. These accounts relate to finance provided to related entities in respect of lease receivables, which were provided on an unsecured basis and in effect represent a loan to these related companies to fund their respective operations.

Each of these related entities is subject to various insolvency appointments. PODs will be submitted in those processes in due course, however, we consider there it to be unlikely there will be any realisations from those claims.

#### 3.3.1.3 Other circulating assets

FGFS's accounting records include a GST receivable as at appointment in the sum of \$21.7m. It appears based on our investigations to date that the majority of this balance relates to intercompany payments in connection with the alleged fraud scheme.

We are seeking further information to progress our investigations and determine FGFS's eligibility to claim GST credits generally and the extent to which GST can be claimed on bona fide payments to third parties. Our initial estimate of recovery is between nil to c.\$4 million.

The records of FGFS also include a prepayment of \$30.9k at appointment. These appear to relate to insurance premiums and are not considered to have any recoverable value.

FGFS' records included a bond paid in connection with a storage facility in of \$9.4k. The Provisional Liquidators do not consider this amount has any recoverable value.

#### 3.3.1.4 Real property

FGFS owns a commercial property in Oakleigh, Victoria, which had a carrying value at appointment of \$4.2m. This property is subject to a real property mortgage recorded as having a balance outstanding of \$3.0m.

The mortgagee has appointed an agent for the mortgagee in possession in respect of this property, and based on initial guidance from the agent for the mortgagee, we expect there to be some (limited) equity available to FGFS.

#### 3.3.1.5 Office equipment

FGFS's accounting records included office equipment with a book value \$5.8 million as at the date of appointment.

Based on our investigations to date, and confirmed by Forum staff under public examination, there does not appear to be underlying assets supporting this entry. It appears that these funds may have in fact been transferred to Forum Group Pty Limited (In Liquidation), although it is not clear on what basis.

### 3.3.1.6 Vehicles

FGFS' accounting records include \$2.9 million worth of vehicles at appointment.

The Provisional Liquidators understand the underlying assets comprising this vehicles balance includes high end vehicles, race cars, boats, jet skis and trailers. In a number of cases, these vehicles are subject to leases, have been damaged and others which are registered in either Mr Papas' or Mr Tesoriero' s personal name which complicates the realisation process.

We have secured a number of vehicles, which have been realised or are in the process of being realised. This includes a high-end vehicle leased through NAB which has been sold, crystallising a shortfall of c.\$40k which NAB propose to set off against the cash balance.

Consequently, recovery of this balance is currently ongoing. We estimate a recovery range of nil to c. \$1.2 million.

### 3.3.2 Liabilities

The book value of FGFS' liabilities at the time it entered liquidation were c. \$308.5 million, which is summarised in the table below:

FGFS - liabilities summary				
\$'000	Reference	Book Value	Provisional Liquidators' Est. Amt.	
		8-Jul-21	Low	High
Secured creditors	3.3.2.1	3,990	3,990	<i>Unknown</i>
Other liabilities	3.3.2.2	304,492	359,392	<i>Unknown</i>
<b>Total</b>		<b>308,483</b>	<b>363,383</b>	-

#### 3.3.2.1 Secured creditors

As at appointment, the books and records of FGFS include \$4.0 million in secured creditor liabilities. As detailed above, \$3.0m of this relates to the mortgage against FGFS' property in Oakleigh, Victoria and the balance relates to three chattel mortgages against various motor vehicles included in the balance sheet.

Below is a summary of the five interests registered against FGFS on the PPSR:

FGFS - PPSR registrations			
	All PAP	Motor Vehicle	Totals
BNY Trust Company of Australia Ltd	2	-	2
Volkswagen Financial Services Australia Pty Ltd	-	1	1
National Australia Bank Ltd	1	1	2
<b>Totals</b>	<b>3</b>	<b>2</b>	<b>5</b>

We have not yet determined the validity or quantum of the majority of these registrations.

#### 3.3.2.2 Other liabilities

The FGFS balance sheet includes unsecured creditors totalling \$304.5 million.

**Trade creditors** totalling \$10.7 million were reported in the balance, with \$10.6 million of this payable to entities within the appointment group and the balance seemingly relating to third party trade payable accounts.

**Clearing accounts - liabilities** totalling \$292.7m were disclosed in the balance sheet. As detailed in section 3.3.1.2, we understand the clearing accounts largely provide an accounting of the alleged fraud scheme, and record payments to and receipts from financiers regarding those suspected fraudulent contracts.

FGFS did not have a direct relationship with the Financiers and these amounts would be more appropriately classified as intercompany loans.

**Loans from appointment group entities** were reported in FGFS' balance sheet at appointment and totalled c. \$1.1m. This balance represents an unsecured intercompany loan from Forum Enviro (Australia) Pty Ltd (In Liquidation) to FGFS.

In addition to the above, the Provisional Liquidators have received one POD totalling \$54.9 million from Iugis (NZ) Ltd (In Liquidation), a related party of FGFS, as at the date of this report.

### 3.4 Competing claims

We note there are a range of competing claims being asserted over the assets of Forum Finance and FGFS by various parties, including trust and proprietary claims from various lenders and financiers.

If successful, these claims may reduce the pool of assets available or otherwise impact the statutory priorities, and impact the prospect of any dividend to unsecured creditors.

Given the uncertainty and complexities around the validity, extent and impact of these claims, we have not sought to reflect the impact of these claims in the above analysis.

#### 3.4.1 Trust claims

These claims relate to assertions by certain financiers that they are entitled to amounts received from customers pursuant to the terms of their agreements with Forum Finance. Specifically, that funds received from customers are held on trust until such time that they were remitted/passed through to the financier (**Trust Claims**).

#### 3.4.2 Proprietary interest claims

Separately, we have been put on notice that a number of Financiers are claiming proprietary interest claims (**Proprietary Claims**) against assets in the name of the Companies.

These claims are on the basis that funding to Forum Finance was alleged to have been fraudulently obtained, therefore any funds in bank accounts, or assets acquired (or in part funded) by the financiers remains the property of the financiers and is not available to the Companies or its creditors.

## 4 Investigations

Creditors will find a summary of offences under the Act, including details of voidable transactions and insolvent trading considerations in the Creditor Information Sheet – Offences, Recoverable Transactions and Insolvent Trading (Enclosure 7).

### 4.1 Fraudulent scheme

#### 4.1.1 Overview

As noted in section 2 above, our appointment as Liquidators to Forum Finance was ordered by the Court on an application by WBC following their discovery of alleged fraudulent contracts.

Following our appointment, we have undertaken a detailed investigation and funds tracing exercise to understand the extent of the alleged fraud and the related activities of individuals to:

- investigate the circumstances surrounding the collapse of the Companies;
- determine the extent of the alleged fraud;
- identify how the alleged fraud scheme was committed and who may have been involved;
- trace the application of funds; and
- consider assets that may be available to recover.

Our investigations have been undertaken at a "Group" level for all entities that we have been appointed to (and go beyond the two entities that are the subject of this report), given the extent of the alleged fraudulent scheme and the way in which funds were transferred and recycled within the Group.

An overview of our preliminary findings is set out below.

#### 4.1.2 Investigations undertaken

Our investigations to date have included, amongst other activities:

- analysis of sources and applications of funds, including tracing of funds through associated entities in Australia and overseas, and identification and review of recipient accounts;

- an analysis of over 110,000 transactions across approximately 150 bank accounts held by Forum Finance, FGFS, other Forum Group entities, associated entities/persons and beneficiaries obtained from financial institutions and in response to subpoenas (focused on the period from July 2018 to June 2021);
- upload and process over 4.9 million documents to an online review platform;
- conduct of targeted searches of key terms and of key individuals and review of relevant materials;
- review of clearing accounts and other accounting records that appear to pertain to or record the alleged fraud;
- compilation and analysis of equipment listings contained in the alleged fraudulent contracts;
- identification of contractual documentation to determine the veracity of same;
- identification of relevant correspondence relating to those contracts to identify the people involved in the production of the alleged fraudulent contracts;
- analysis of the accounting records, data extracted from available systems and bank statements provided by financial institutions/Financiers for accounts of the Companies and accounts of parties subject to subpoena in the proceedings brought by WBC; and
- conducting public examination of:
  - Tony Bouchahine (CFO of the Forum Group) – who had responsibility for the accounts of FGFS;
  - Craig Rollinson (General Manager of Operations of the Forum Group) – who had responsibility for certain associated entities in Australia and overseas; and
  - Brandon Chin (employee of an associated entity and formerly of FGFS) – who was responsible for accounting entries in FGFS.

#### 4.1.3 Key findings

Set out below are key findings based on our investigations to date:

- material funds are alleged to have been fraudulently obtained by Forum Finance from financiers through the provision of false documentation;
- primarily the scheme involved contracts being presented to Financiers for financing by Forum Finance, where the underlying contracts were never entered into by the named customer (with customer signatures forged or copied and applied without their knowledge) and where there was in fact no underlying customer and/or equipment supplied;
- the alleged fraudulent behaviours appear to have been undertaken over an extended period of time. While we have focused on the period from 1 July 2018 to 30 June 2021 for the purpose of our analysis to date, we have identified materials suggesting similar behaviour was evident as far back as at least 2013;
- while a significant quantum of funds are alleged to have been fraudulently obtained by Forum Finance, the behaviour was also undertaken in other Forum Group entities associated with Mr Papas in Australia and New Zealand with similar schemes operating through those entities;
- the extent of the alleged fraudulent activity and scheme escalated throughout the period of focus between 2018 to 2021, with new financiers being introduced to meet ongoing operational and financial obligations;
- it appears that FGFS was set up in 2017 as the scheme was escalating, predominantly to disguise the source and applications of the funds that had been obtained under the scheme within the Group;
- there were deliberate attempts by Mr Papas and others involved in the scheme to avoid the scheme being uncovered, including:
  - intentionally omitting making entries in the financial accounts of Forum Finance to conceal the funds obtained as part of the scheme;
  - manipulating financial accounts, in particular those presented to external parties to conceal the scheme;
  - establishing FGFS outside the Forum Group to account for the alleged fraud and disguise the source of funds, whilst also acting as the Group “treasurer” and ensuring that all financial commitments were met on a monthly basis (despite the lack of underlying customer receipts);

- leveraging assets acquired using the scheme as a way to conceal the true source of the funds;
- establishing other overseas entities and implementing contrived structures to disguise the source of funds from financiers and authorities;
- selecting financing structures that minimise the visibility the financiers have to the underlying customers; and
- historically refinancing financiers seeking to undertake any level of due diligence regarding the underlying customers and arrangements.
- the scale of the funds obtained in respect of alleged fraudulent contracts across the Forum Group and entities associated with Mr Papas was in excess of \$500 million;
- a significant proportion of the funding obtained was ultimately applied to meeting obligations to financiers arising out of that funding or to repay historical financiers;
- the balance of funds appear to have been utilised for a range of purposes including to:
  - provide unsecured loans to related and associated entities to:
    - > support (loss making) operations;
    - > to establish new businesses or invest in new activities;
    - > fund the acquisition of businesses;
    - > to act as a financier to associated entities;
    - > fund the acquisition of properties; and
    - > fund the acquisition of interests in a soccer club, a range of high end vehicles and race cars, vessels, interests in race horses;
  - provide loans to associates both in Australia and overseas for no commercial reason and on uncommercial terms; and
  - fund a lifestyle and personal expenses for Mr Papas and Mr Tesoriero.

The Liquidators are considering whether these circumstances may amount to breaches of s596 of the Act (Fraud by Officer) and s590 (offences by officers/employees).

## 4.2 Possible contraventions of the Act

### 4.2.1 Overview

In addition to the investigations carried out in respect of the alleged fraudulent scheme set out above, the Liquidators have also conducted investigations into the possible statutory offences and/or misconduct by the Directors, officers and employees of the Companies and potential Liquidator recoveries.

Based on the Liquidators investigations to date, we have identified a number of possible contraventions of the Act and potential recovery actions available.

### 4.2.2 Investigations undertaken

The investigations have included:

- review of the pre-appointment Court proceedings, including relevant materials such as affidavits and supporting annexures;
- review of the books and records of the Companies which includes accounting records and data extracted from available accounting systems of the Companies;
- enquiries with officers and employees in relation to the Companies' affairs and transactions;
- review of public register information;
- analysis of bank statements provided by the financial institutions/Financiers for accounts of the Companies and accounts of parties subject to subpoena in the WBC proceedings; and
- public examination of certain officers and employees of the Forum Group.

Whilst these investigations are at the preliminary stages and are subject to legal advice, the Liquidators provide the following update on the possible contraventions of the Act by the Directors, officers and/or employees of the Companies.

#### 4.2.3 Books and records

Based on a review of the books and records obtained from the Companies, the Liquidators are of the opinion that the financial records maintained by the Companies do not correctly record and explain the true financial position and performance and the presumption of insolvency could be relied upon.

In this regard, we note the following material deficiencies:

- close to \$300 million of inflows and outflows in the bank accounts of Forum Finance are not recorded in its accounts; and
- over \$300 million received by FGFS from associated entities is recorded against 'clearing accounts' when in fact they were essentially intercompany loan balances in respect of the alleged fraudulently obtained funds.

In light of the above, in our opinion both Forum Finance and FGFS Directors have breached sections 286 and 364 of the Act which requires a company to maintain proper financial records that correctly records and explains its transactions and financial position and performance.

The absence or failure to maintain proper books and records as required under section 286(1) of the Act gives rise to a presumption of insolvency pursuant to section 588E of the Act. This in turn facilitates action being taken against directors of a company for insolvent trading.

#### 4.2.4 Determining date of insolvency

In considering the matters identified to date from the Liquidator's investigations as outline above, the Liquidators consider that Forum Finance was likely insolvent from at least July 2018 and likely earlier, and consider FGFS was likely insolvent from its inception in November 2017 (**Insolvency Date**) on the following grounds:

- **Forum Finance**
  - Based on our investigations to date there is strong evidence funds were fraudulently obtained from at least 1 July 2018 (and potentially since 2013);
  - Forum Finance generated insufficient revenue and cash flow from the legitimate lease contracts/business at any point to meet its financial obligations to financiers beyond that time;
  - Forum Finance was reliant on an escalation of the scheme and obtaining further funds from financiers to meet ongoing obligations and commitments;
  - There was no realistic prospect that it could recover the amounts transferred to FGFS given that FGFS had disbursed those funds; and
  - It had no realistic prospect of repaying the amounts to financiers through legitimate means.
- **FGFS**
  - FGFS was set up in November 2017 to predominantly account for the alleged fraud and did not appear to carry on a trading business of its own;
  - FGFS was reliant on funds from Forum Finance to pay its liabilities;
  - There was no realistic prospect that it could recover the amounts disbursed to associated entities and associates given the funds were often expended without there being a commensurate asset and parties did not demonstrate capacity to repay the loans advanced; and
  - It had no realistic prospect of repaying the amounts to Forum Finance in respect of the funds passed through to it through legitimate means.

#### 4.2.5 Insolvent trading

Pursuant to section 588G of the Act, a director of a company has a duty to ensure that the company does not incur debts that it is unable to pay, i.e. that it does not trade whilst insolvent.

Before a court will order that a person pay compensation in respect of insolvent trading, a liquidator must establish that:



- the person was a director of the company at the time the company incurred the debt which is the subject of the claim;
- the company was insolvent at that time or became insolvent by incurring the debt;
- at that time, there were reasonable grounds for suspecting that the company was insolvent or would become insolvent by incurring the debt; and
- the debt, which is the subject of the claim, was wholly or partly unsecured and the creditors with outstanding amounts suffered loss and damage.

Prior to commencing any recovery action, due consideration needs to be given (in the context of available defences) to:

- the significant costs that may be incurred in prosecuting a potential insolvent trading claim;
- further detail regarding the financial position of the directors and in particular, the value of any assets that could be realised to satisfy any successful judgement; and
- challenges with obtaining funding, and potential exposure to litigation costs.

Any return to creditors from an insolvent trading claim would be delayed until the claim is resolved (either by negotiation or a judgement from a court). If a claim is ultimately commenced and prosecuted to a trial, the Liquidators expect it could be several years from the time of issuing proceedings before assets are recovered.

If proceedings are pursued, there is the risk that the claim will not be established or that a defence will be sustained. Further, even if a judgement is obtained, there is a risk that it cannot be satisfied, or that the amount recovered will be insufficient to meet the costs of investigation and prosecuting the claim.

#### *Directors' defences*

There are various statutory defences available to directors in defending an insolvent trading claim, as set out in section 588H of the Act. In summary, these are that the director:

- had reasonable grounds to expect that the company was solvent at the time the debt was incurred;
- had reasonable grounds to believe, and did believe, that a competent, reliable person was responsible for providing adequate information on the company's solvency and that person fulfilled that responsibility. On the basis of such information, the director believed that at the time the debt was incurred, and considering the other debts existing at the time, the company was solvent and remained solvent;
- was ill (and therefore did not take part in the management of the company) at the time the debt was incurred; and
- took reasonable steps to prevent the debts being incurred.

#### *Safe harbour defence*

In addition to statutory defences, section 588GA of the Act was introduced in September 2017, providing a protection for directors against insolvent trading claims, in certain circumstances. The Safe Harbour legislation was introduced to encourage directors, in circumstances where their company's insolvency is in question, to formulate and take courses of action that it expects to result in a better outcome than the immediate appointment of an administrator or liquidator.

The protection is available in circumstances where, as soon as the director suspected that the company was or could become insolvent, they engaged in activities that were reasonably like to lead to a "better outcome" for the company, and any new debts from that time were incurred directly or indirectly in relation to those activities.

Further, on 24 March 2020, temporary COVID-19 Safe Harbour provisions were introduced which provided relief to directors from potential personal liability for insolvent trading as long as the debt was incurred:

- in the ordinary course of business;
- during the period that the relief has been provided; and
- before any appointment of an administrator or liquidator during the temporary safe harbour application period.

This relief expired on 31 December 2020.

As stated above, the Liquidators have been in limited correspondence with Mr Papas however, he has not provided any meaningful assistance to the Liquidators in respect of their investigations. The Directors have also not provided a completed ROCAP that provides a meaningful background to the Companies' failures.

Based on our investigations to date, there is no evidence to suggest that the Directors took any action that would result in the Safe Harbour provisions found in section 588GA of the Act being available.

#### *Possible insolvent trading*

Solvency is a question of fact to be ascertained from a consideration of a company's financial position as a whole. However, Australian Court have determined that the primary test of solvency is a cash flow test.

Noting the presumption of insolvency from the failure to maintain adequate books and records, and the alleged fraud being a significant source of funds, the Directors of the Companies have likely breached section 588F of the Act in respect of their duties' to prevent insolvent trading by the Companies.

We are currently unable to comment on the likelihood of an insolvent trading claim that could be brought against the Directors, however note that the quantum of such claim would likely to be substantial, albeit at this stage unquantified and the availability of assets to meet any successful claim highly uncertain.

#### 4.2.6 General Directors' duties

Sections 180 to 184 of the Act set out the duties, obligations and responsibilities imposed on directors, which are designed to promote good governance and ensure that directors act in the interests of a company. These duties include:

- Duty of care and diligence;
- Duty of good faith;
- Duty not to make improper use of position; and
- Duty not to make improper use of information.

The Liquidators have undertaken preliminary investigations into whether any of the Directors (current or former) of the Companies have breached their duties set out in the above sections of the Act.

Based on the Liquidators' preliminary investigations, it appears that the Directors of the Companies have likely breached the directors' duties, obligations and responsibilities imposed on them pursuant to section 180 to 182, and 184 of the Act on the following grounds:

- Mr Papas engaged in dishonest and deceptive conduct in setting up and perpetrating the fraudulent scheme;
- Mr Papas did not exercise his power and discharge his duties in relation to Forum Finance in good faith or for a proper purpose;
- Whilst we are still investigating whether Mr Tesoriero was aware of or participated in the fraudulent scheme, he likely breached his duty to discharge his duties in respect of Forum Finance with a degree of care and diligence in understanding its true financial position; and
- Mr Papas and Mr Tesoriero have used their powers for their own benefit and for the benefit of their associated entities, by funding substantial personal expenditure and/or investments for related entities on uncommercial terms.

The list of possible contraventions above is not exhaustive as the Liquidators are still carrying out their investigations.

#### 4.3 Recovery actions

Under Part 5.7B of the Act, certain transactions that occurred prior to the Liquidations, including where property was disposed of or dealt with, are potentially recoverable by the Liquidators. This may result in, amongst other things, a requirement for a third party to return property and/or money and thereby increase the assets available to the Liquidations and creditors. These transactions are known as voidable transactions.

It is important to note that a number of voidable transactions can only be recovered if the company in question is proven to be insolvent at the time of the transaction.

The main voidable transactions that require insolvency to be established are:

- **unfair preferences:** transactions between the insolvent entity and a creditor resulting in the creditor receiving from the insolvent entity, in relation to an unsecured debt owed to the creditor, a greater amount than the creditor would have received in relation to the debt in a winding up of the company; and

- **uncommercial transactions:** transactions which a reasonable person in the place of an insolvent entity would not have entered into, taking into account the benefits and the detriment to the insolvent entity, the respective benefits to the other parties involved and any other related matters.

Other voidable transactions which may be claimed regardless of solvency are:

- **unfair loans:** a loan agreement where the interest or charges are considered to be extortionate. Unfair loans made to the entity at any time prior to the appointment of the liquidators may potentially be overturned by a liquidator, whether or not the entity was insolvent at the time the loan was entered into;
- **unreasonable director related transactions:** transactions with a director or a related entity of the director which a reasonable person in the place of the entity would not have entered into, taking into account the benefits and the detriment to the entity, the respective benefits to the other parties involved and any other related matters;
- **creditor defeating dispositions:** transfers of company assets for less than market value (or the best price reasonably obtainable) that prevents, hinders or significantly delay creditors' access to the company's assets; and
- **security interests created within six months of the appointment of the liquidators:** these may be unenforceable under certain circumstances.

Based on the Liquidators' preliminary investigations, we note that the Companies have entered into following transactions which may be considered voidable:

- uncommercial transactions:
  - advancing loans with no realistic prospect of repayment and no security;
  - advancing loans on uncommercial terms (i.e. 10 year terms, below market interest on unsecured basis); and
- unreasonable director related transactions were entered into as follows:
  - by the Companies with each other; and
  - by the Companies (individually) with other related entities, for example the loans provided to the Directors, Directors' entities they control and their associates both in Australia and overseas.

The Liquidators investigations are ongoing and we may determine other causes of action however, it is unclear whether any of these actions are commercial to pursue given the range of claims against Mr Papas and the other parties involved, and their capacity to meet any judgement.

#### 4.4 Reporting to ASIC

Based on the investigations to date, it is clear that certain Directors, officers and employees of the Companies have breached various offence provisions under the Act and possibly other legislations.

The Liquidators of the Companies intend to complete their statutory investigations and lodge a preliminary investigation report with ASIC pursuant to section 533 of the Act in the coming weeks.

## 5 Receipts and payment

There have been no receipts or payments in the Liquidations to date.

## 6 Likelihood of a dividend

A number of factors will impact the likelihood of a dividend being paid to creditors, including:

- the amount of assets realisable and the costs of realising those assets;
- the statutory priority of certain claims and costs; and
- the value of various classes of claims including secured, priority and unsecured creditor claims.

It is difficult for us to comment on the likely dividend payable however, we consider it will be unlikely that there will be a return to unsecured creditors of the Companies on the following grounds:

- the appointment of Receivers over the assets of Forum Finance;

- the quantum of the trust and proprietary interest claims being pursued and the extent to which if they are successful, they dissipate some or all of the assets available for unsecured creditors (as set out in section 3.4 of this report);
- that a number of the assets identified may require legal actions to pursue/realise, including in offshore jurisdictions; and
- the capacity of the Directors and/or other parties to meet any claims/judgement remains unclear.

If a dividend is going to be paid, you will be contacted before that happens and, if you have not already done so, you will be asked to lodge a POD. This formalises the record of your claim in the liquidations and is used to determine all claims against the Companies.

## 7 Cost of the liquidations

At the Meetings of Creditors, creditors will be asked to consider, and if thought fit, approve remuneration for the periods (as appropriate):

### McGrathNicol - Retrospective remuneration approvals sought

Entity	Capacity	Period	Amount \$ (ex GST)
Forum Finance Pty Ltd	Liquidators	9 July 2021 to 19 September 2021	511,930
Forum Group Financial Services Pty Ltd	Provisional Liquidators	15 July 2021 to 19 September 2021	2,848,126
<b>Total - Liquidators</b>			<b>3,360,056</b>

### Mackay Goodwin - Retrospective remuneration approvals sought

Entity	Capacity	Period	Amount \$ (ex GST)
Forum Group Financial Services Pty Ltd	Former Voluntary Administrators	8 July 2021 to 15 July 2021	12,345
<b>Total - Former Voluntary Administrators</b>			<b>12,345</b>

Details of the Liquidators' remuneration is set out in the Remuneration Approval Report (Annexure 1).

## 8 Meetings of creditors

Concurrent meetings of Forum Finance and FGFS' creditors have been convened to be held on **Friday 22 October 2021 at 2:00pm AEDT**. The meetings will be held virtually via webcast/teleconference on Zoom, in order to ensure compliance with any restrictions that may be in place as a result of COVID-19. There will not be an option to attend in person.

The purpose of the meetings is to:

- provide you with an update on the progress of the Liquidations;
- consider and if thought fit, to approve the retrospective fees of the Liquidators of the Companies;
- consider and if thought fit, to approve the retrospective fees of the Former Voluntary Administrators of FGFS;
- consider the appointment a Committee of Inspection (**COI**) for the Companies;
- authorise the Liquidators of Forum Finance to compromise debts greater than \$100,000 under section 477(2A) of the Act;
- authorise the Liquidators of Forum Finance to enter into agreements that may take longer than three months to complete under section 477(2B) of the Act; and
- discuss any other relevant business which may arise.

Please note that creditors intending to attend the meetings by Zoom webcast/teleconference, should register their intention to do so by sending an email to [forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com) or telephone (03) 9038 3148 before 4:00pm AEDT on Thursday 21 October 2021. You will be provided with a link on the evening before the meetings which will allow you to join the meetings.

For the purposes of the meeting, please find attached:

- a statutory notice convening the meetings (Enclosure 3);
- proof of debt forms and guidance notes (Enclosure 4 and 5);
- proxy forms and guidance notes (Enclosure 6 and 7); and
- general information for attending and voting at meetings of creditors (Enclosure 8).

## 9 Participating and voting in the meetings

To participate in the meetings, you must submit a proof of debt and information to substantiate your claim.

If the creditor is a person and will attend the virtual Zoom meeting, this is all that is required. However, if the creditor is another type of entity (such as a company), they must also appoint a person – a “proxy” or person authorised under a power of attorney – to vote on behalf of the creditor at the virtual Zoom meeting. A proxy should also be appointed if the creditor is a person, but is not available to attend the virtual Zoom meeting.

You can appoint the chairperson of the meeting as your proxy and direct the chairperson how you wish your vote to be cast. If you choose to do this, the chairperson must cast your vote as directed.

Creditors wishing to attend and participate at the meeting must submit a POD and a Proxy (if applicable) before 4:00pm (AEDT) on Thursday 21 October 2021, and can attend either themselves or by appointing a Proxy to attend on their behalf (both virtually via Zoom).

An information sheet on approving remuneration of an external administrator is provided for your information.

## 10 Appointment of a Committee of Inspection

Creditors in a liquidation may decide to appoint a Committee of Inspection (**COI**) to act as a representative body of the creditors to monitor the liquidations and give assistance/directions to the Liquidators.

The role of a COI is to amongst others, assist the Liquidators, monitor the conduction of the liquidations and to the extent the Liquidators need to canvas views of creditors, the COI can act as a representative body to consider the matter. A COI can also approve the Liquidators’ remunerations.

It is our opinion that a COI would be helpful for the Liquidations. The main benefits of appointing a COI is that a COI meeting can be called at short notice, and the Liquidators can obtain the COI’s view on urgent matters in respect to the liquidation. In addition, the appointment of a COI will also reduce the costs associated with convening a creditors’ meeting.

In accordance with IPR 80-5, to be eligible to be appointed as a member of the COI, the person must be:

- a creditor of the company; or
- the attorney, or power of attorney of a creditor; or
- a person authorised in writing by a creditor of the company to be a member of the COI; or
- a representative of the Commonwealth if a claim for financial assistance has been made or likely to be made, from the Commonwealth.

Should you wish to be nominated as a member of the COI of the Companies, please complete the nomination form(s) in Annexure 9 and return it to the Liquidators by sending an email to [forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com) before 4:00pm AEDT on Thursday 21 October 2021.

The eligible nominees will be tabled at the upcoming meeting on 22 October 2021, and all creditors will have the opportunity to comment on the COI prior to approving the resolution for its appointment.

## 11 Other resolutions

At the upcoming meetings of creditors, the Liquidators of Forum Finance intend to seek creditors approval of the following:

- authorising the Liquidators to compromise debts of the company greater than \$100,000 pursuant to section 477(2A) of the Act; and

- authorising the Liquidators to enter into agreements that may take longer than three months to complete pursuant to section 477(2B) of the Act.

The Provisional Liquidators of FGFS will not seek the above resolutions from the creditors of FGFS.

## 12 What happens next?

We will proceed with the liquidation, which will include:

- recovering any further available property;
- realising the remaining assets;
- completing our investigations into the Companies' affairs;
- if identified, pursuing any viable claims for statutory recovery actions subject to the availability of funding; and
- completing our reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (ASIC).

We will report to creditors or the COI (if appointed at the upcoming meeting of creditors) on progress of the liquidations.

Due to the complex nature of the investigations and potential recovery actions, including uncertainty regarding the duration of legal actions if commenced, we are currently unable to determine when the Liquidations will be completed but anticipate they will remain ongoing for at least 12 months. We will be in a better position to determine the timeframe once we have completed the investigations and determined the approach to realise the assets of the Companies.

## 13 What you should do next?

You should:

- decide whether you are going to participate in the meeting; and if so
- confirm your intention to participate by contacting Walter Jones by email ([forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com)) or telephone (03) 9038 3148 before **4:00 PM (AEDT) on Thursday, 21 October 2021**; and
- complete and return your proof of debt and proxy form (if required) by **4:00 PM (AEDT) on Thursday, 21 October 2021**.

## 14 Where can you get more information?

You can access information which may assist you on the following websites:

ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets").

If you have any queries, please contact Walter Jones on (03) 9038 3148. For further information about this engagement, please refer to the website <https://www.mcgrathnicol.com/creditors/forum-finance-pty-ltd/> page.

Dated: 8 October 2021



Jason Ireland  
*Liquidator and Provisional Liquidator*

Enclosures:

- 1** Remuneration Approval Report
- 2** ARITA Information Sheet – Approving remuneration of an external administrator
- 3** Notice of Meeting
- 4** Proof of Debt (Form 535)
- 5** Proof of debt guidance notes
- 6** Proxy Form
- 7** Proxy form guidance notes
- 8** General information for attending and voting at meetings of creditors
- 9** COI nomination form
- 10** ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading

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# Remuneration Approval Report

Forum Finance Pty Limited (In Liquidation) (Receivers Appointed)

ACN 153 301 172

Forum Finance

Forum Group Financial Services Pty Ltd

(Provisional Liquidators Appointed)

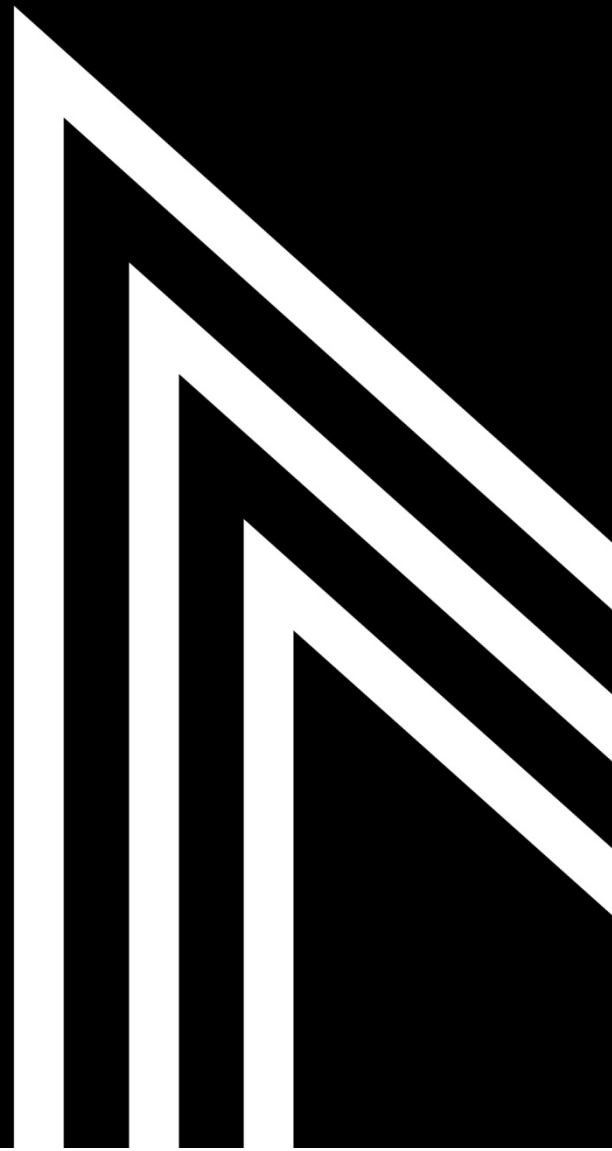
ACN 623 033 705

Forum Group Financial Services

8 October 2021



McGrathNicol





This remuneration approval report provides you with information to assist you to make an informed decision regarding the approval of our proposed remuneration for undertaking the Liquidations of Forum Finance and Forum Group Financial Services.

The report has the following information:

1	Executive Summary .....	2
2	Declaration .....	2
3	Remuneration sought .....	3
4	Disbursements sought.....	3
5	Likely impact on dividends .....	4
6	Funding received for remuneration and disbursements.....	4
7	Summary of receipts and payments.....	4
8	Queries.....	4
	Schedule A1 (Forum Finance) – Details of work.....	6
	Schedule A2 (FGFS) – Details of work.....	8
	Schedule B1 (Forum Finance) – Time spent by staff on each major task (work already done) .....	11
	Schedule B2 (FGFS) – Time spent by staff on each major task (work already done) .....	12
	Schedule C – Disbursements .....	13
	Schedule D – Schedule of Hourly Rates .....	15

## 1 Executive Summary

We are seeking creditor approval for the Liquidators remuneration of \$511,930 (excluding GST) and disbursements of \$5,248 (excluding GST) for Forum Finance for the period from 9 July 2021 to 19 September 2021 and the Provisional Liquidators remuneration of \$2,848,126 (excluding GST) and disbursements of \$42 (excluding GST) for Forum Group Financial Services for the period from 15 July 2021 to 19 September 2021.

We estimate the total cost of the Forum Finance Liquidation will be \$750,000. This has increased from my previous estimate due to the following:

- the extent of investigations required to be undertaken is higher than expected; and
- the extent of reporting to creditors is greater than anticipated.

For the avoidance of doubt this report covers the period when we were appointed Liquidators of Forum Finance Pty Limited (**Forum Finance**) and Provisional Liquidators of Forum Group Financial Services Pty Ltd (**FGFS**). Remuneration for the Former Voluntary Administrators' of FGFS, Domenico Alessandro Calabretta, Grahame Robert Ward and Thyge Trafford-Jones of Mackay Goodwin is detailed in the remuneration approval reports attached separately to the report to creditors dated 8 October 2021.

Please note that any defined terms in this report have the same meaning as those contained in the main body of the report to creditors dated 8 October 2021.

## 2 Declaration

We, Jason Preston and Jason Ireland of McGrathNicol have undertaken a proper assessment of this remuneration and disbursements claim in accordance with the law and applicable professional standards. We are satisfied that the remuneration and disbursements claimed is in respect of work properly performed in the conduct of these matters.

We have reviewed the work in progress (**WIP**) report for the liquidations to ensure that remuneration is only being claimed for necessary and proper work performed and have made the following adjustments as detailed below:

- Written off a total of \$342,844 from the recorded work in progress (WIP) (being 9.3% of the unreviewed time cost recorded) across FF and FGFS including:
  - general administrative matters including training, remuneration preparation and other non-chargeable time;
  - a portion of internal team project meetings on the basis that there is a large team working across the various concurrent workstreams required to support the appointments given their size and complexity;
  - time incurred by McGrathNicol employees who have undertaken less than 10 hours work across the liquidations to remove intermittent time and any perceived inefficiencies incurred;
  - time incurred by McGrathNicol employees who attended third party financiers update calls, above a two partner limit;
  - time incurred by McGrathNicol employees who attended the public examinations for FGFS above a two partner and director limit; and
  - time incurred by McGrathNicol undergraduate employees to remove any perceived inefficiencies incurred by junior members of the team.
- A direct reallocation of WIP from one entity time code to another entity time code was undertaken to ensure that the WIP was recorded against the appropriate entity. This reallocation ensures that the work was properly performed on the appropriate matter. A material reallocation of WIP was undertaken for the following workstreams:
  - those tasks relating to the investigations (mostly forensic investigations) have been reallocated to FGFS on the basis that FGFS was the key entity where proceeds from the alleged fraud were initially directed and then applied; and

- matters in relation to dealing with lease financiers including reporting and liaison with WBC, SMBC and SocGen has been charged to FF on the basis that FF was the principal contracting party for the various financiers.
- On the basis that work undertaken was not solely applicable to a particular corporate entity and had application to each of, or a subset of the other thirteen Forum Group companies and the fourteen other entities associated with Mr Papas outside the Forum Group subject to our appointment as Liquidators/Provisional Liquidators, WIP was apportioned on an appropriate pro rata basis as set out below:
  - tasks relating to unsecured creditors of the Forum Group entities and other entities has been charged equally across those entities;
  - PPSR/ROT work for the wider Forum Group entities and other entities been has charged equally across those entities; and
  - tasks relating to dealing with employee related issues where it is not directly referable to a specific entity, has been charged in proportion to the number of employees per employing entity.

### 3 Remuneration sought

The remuneration we are asking creditors to approve is as follows:

Remuneration sought				
Remuneration	Period	Amount \$ (ex GST)	Rates to apply	When it will be drawn
Work we have already done for <b>Forum Finance</b>	9 July 2021 to 19 September 2021	511,930	Refer to Schedule D.	Immediately, when funds are available.
Work we have already done for <b>Forum Group Financial Services</b>	15 July 2021 to 19 September 2021	2,848,126	Refer to Schedule D.	Immediately, when funds are available.
<b>Total</b>		<b>3,360,056</b>		

Details of the work already done are included at Schedule A for both Forum Finance and FGFS.

Schedule B includes a breakdown of time spent by the appointees and staff members on each major task for work we have already done.

Actual resolutions to be put to the meeting are detailed below for your information. These resolutions also appear in the proxy form for the meeting provided to you.

#### **Resolution 1 for Forum Finance: Retrospective remuneration during the liquidation of Forum Finance for the period 9 July 2021 to 19 September 2021:**

*"That the remuneration of the Liquidators for the period 9 July 2021 to 19 September 2021, calculated at hourly rates as detailed in the Initial Remuneration Notice dated 6 August 2021, is determined in the sum of \$511,930, exclusive of GST."*

#### **Resolution 1 for FGFS: Retrospective remuneration during the liquidation of Forum Group Financial Services for the period 15 July 2021 to 19 September 2021:**

*"That the remuneration of the Provisional Liquidators for the period 15 July 2021 to 19 September 2021, calculated at hourly rates as detailed in the Remuneration Approval Report dated 8 October 2021, is determined in the sum of \$2,848,126, exclusive of GST."*

### 4 Disbursements sought

We are not required to seek creditor approval for costs paid to third parties, or where we are recovering a cost incurred on behalf of the administration, but we must provide details to creditors. Details of these amounts are included in Schedule C.

## 5 Likely impact on dividends

It is both reasonable and appropriate for a professional service provider to be remunerated for their services. An external administrator is entitled to be remunerated for necessary work that is properly performed. That work generates the funds that may be recovered for the benefit of creditors and other stakeholders.

The impact of the approval of the Liquidators remuneration is that the remuneration will then be paid in accordance with the terms of the Funding Facility referred to in Section 6 below. The remuneration and/or repayment of the Funding Facility will be paid from those funds that are generated prior to the payment of most creditors in the Liquidation.

It is noted that funds would only be available to any stakeholder as a consequence of the work necessarily undertaken by the Liquidator.

If a dividend or distribution is to be paid to stakeholders, there is also necessary work that must be undertaken by the Liquidator to properly adjudicate on claims and distribute any available funds.

## 6 Funding received for remuneration and disbursements

On 7 September 2021 the Liquidators entered into a Funding Agreement with Westpac following receipt of the Court's approval. The Funding Agreement is to provide the Liquidators a loan for the purposes of funding the Liquidators' remuneration and expenses incurred in July, August and September 2021 (or other such longer period as agreed in writing) up to a value of \$4.5 million (ex GST) (**Funding Facility**).

The funding was put in place to allow the us to undertake our investigations of the Forum Group and associated entities and the identification of possible future sources of asset recoveries. Apart from priority employee claims, the effect of this Funding Agreement is that all realisations across any of the entities subject to our appointment will first be applied in repayment of the Facility, and amounts will only become available for unsecured creditors to the extent there is a surplus once the Facility has been repaid in full.

The Funding Facility terms and conditions are detailed in section 2.5 of the report to creditors dated 8 October 2021.

## 7 Summary of receipts and payments

There have been no receipts or payments in the Liquidations to date.

## 8 Queries

If you have any queries regarding the information in this report, please contact Richard Fernando Bahamondez on (02) 9338 2676.

You can also access information that may assist you on the following websites:

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "INFO 85").

Further supporting documentation for our remuneration claim can be provided to creditors on request.

Dated: 8 October 2021



Jason Ireland  
*Liquidator and Provisional Liquidator*

Enclosures:

Schedule A – Details of work

Schedule B – Time spent by staff on each major task

Schedule C – Disbursements

Schedule D – Schedule of hourly rates

## Schedule A1 (Forum Finance) – Details of work

		Work already done Forum Finance
Period	9 July 2021 to 19 September 2021	
Amount (ex GST)	\$511,930	
Task Area	General Description	Tasks
Assets 37 hours \$25,877	Monies	<ul style="list-style-type: none"> <li>▪ Secure bank account</li> </ul>
	Assets subject to specific charges and security interests	<ul style="list-style-type: none"> <li>▪ Search the PPS register</li> <li>▪ Prepare and issue correspondence to security interest holders</li> <li>▪ Dealings with the Former Administrators in relation to the sale process of Forum Group</li> <li>▪ Dealings with DVT Group in relation to any assets subject to their appointment</li> </ul>
	Debtors	<ul style="list-style-type: none"> <li>▪ Prepare schedule of pre-appointment debtors and related loan party accounts</li> </ul>
	Plant and equipment	<ul style="list-style-type: none"> <li>▪ Review asset listings and balance sheets to determine if any assets can be realised</li> </ul>
	Leasing	<ul style="list-style-type: none"> <li>▪ Review leasing documents</li> <li>▪ Liaise with owners/lessors</li> </ul>
Creditors 286 hours \$194,546	Creditor Enquiries, Requests & Directions	<ul style="list-style-type: none"> <li>▪ Receive and respond to creditor enquiries</li> <li>▪ Prepare initial correspondence to creditors and their representatives</li> <li>▪ Establishing and monitoring functional mailbox, attending to inbound creditor queries</li> <li>▪ Facilitate the upload of information relating to creditors on the McGrathNicol website</li> <li>▪ Maintain creditor request log</li> <li>▪ Consider reasonableness of creditor information requests</li> <li>▪ Obtain legal advice on requests from creditors for information, documents or a report</li> <li>▪ Document reasons for not complying with requests or directions</li> <li>▪ Compile information requested by creditors</li> </ul>
	Lease Financiers	<ul style="list-style-type: none"> <li>▪ Liaising with Westpac, SocGen and SMBC (either directly or via their legal advisors) in relation to their exposures</li> <li>▪ Attending calls, providing updates on the status of the external administrations and investigations to lease financiers</li> <li>▪ Liaising with Westpac, SocGen and SMBC in relation to tracing their funds</li> <li>▪ Responding to specific queries including numerous information requests from Westpac, SMBC, SocGen and others</li> <li>▪ Consider reasonableness of creditor information requests</li> <li>▪ Obtain legal advice on requests from creditors for information</li> <li>▪ Preparing written updates and reports</li> <li>▪ Liaising with financial crime teams in respect of funds advanced and underlying contracts (legitimate vs fraudulent)</li> <li>▪ Finalising the funding agreement with Westpac</li> </ul>
	Secured creditor reporting	<ul style="list-style-type: none"> <li>▪ Notify PPSR registered creditors of appointment</li> <li>▪ Consider updates from the Receivers DVT Group and the secured creditor Octet Finance Pty Ltd</li> <li>▪ Respond to secured creditor's queries</li> </ul>
	Creditor reports	<ul style="list-style-type: none"> <li>▪ Prepare the DIRRI</li> <li>▪ Maintain and review creditor position/lists</li> <li>▪ Preparing initial creditor circulars and notices</li> </ul>

		<ul style="list-style-type: none"> <li>Prepare Statutory Report by Liquidator and general reports to creditors</li> </ul>
	Deal with proofs of debt (POD)	<ul style="list-style-type: none"> <li>Receive PODs from claimants and maintain POD register</li> </ul>
Trade on 20 hours \$14,047	Business	<ul style="list-style-type: none"> <li>Dealings with counterparties to understand the business model</li> <li>Dealings with the Former Administrators in relation to the sale process of Forum Group and the operations of the Forum Finance lease contracts</li> <li>Attending operating locations, seeking access to property</li> </ul>
Investigation 90 hours \$56,696	Conduct investigations	<ul style="list-style-type: none"> <li>Review company's books and records</li> <li>Prepare comparative financial statements</li> <li>Review specific transactions and liaise with directors/contractors regarding certain transactions</li> <li>Issuing various demands of parties to deliver up records and provide assistance</li> <li>Undertake investigations to understand the role of Forum Finance in the broader fraud and the nature of the underlying documentation supporting the alleged contracts.</li> </ul>
	Litigation/Recoveries	<ul style="list-style-type: none"> <li>Considering competing claims to assets pools and approach to resolve disputes</li> <li>Considering strategy to pursue asset recovery and enforcement</li> </ul>
	Process proofs of debt	<ul style="list-style-type: none"> <li>Prepare correspondence to potential creditors inviting lodgement of POD</li> <li>Receive PODs and maintain POD register</li> <li>Correspond with claimants regarding PODs</li> </ul>
Administration 371 hours \$220,764	Correspondence	<ul style="list-style-type: none"> <li>Attending to statutory obligations in connection with appointment including notifying various stakeholders of appointment</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>Maintaining project task lists</li> <li>Maintaining physical and electronic engagement files</li> <li>Updating checklists</li> <li>Review of checklists to determine outstanding tasks and timelines</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>Identify potential issues requiring attention of insurance specialists</li> <li>Correspond with insurance broker regarding initial and ongoing insurance requirements</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>Prepare correspondence to open accounts</li> <li>Request bank statements</li> <li>Perform bank account reconciliations</li> </ul>
	ASIC	<ul style="list-style-type: none"> <li>Prepare and lodge ASIC forms</li> <li>Correspond with ASIC regarding statutory forms</li> </ul>
	ATO and other statutory reporting	<ul style="list-style-type: none"> <li>Notify of appointment</li> <li>Monitoring ATO portal in relation to correspondence</li> </ul>
	Legal actions	<ul style="list-style-type: none"> <li>Preparing and swearing various affidavits</li> <li>Supporting applications including provision liquidation appointments</li> <li>Attendance at the Forum Finance proceedings and proceedings in relation to wider Forum Group companies and the fourteen other entities associated with Mr Papas</li> </ul>
	Dealing with Directors	<ul style="list-style-type: none"> <li>Send initial request to directors and officer for Report on Company Activities &amp; Property (ROCAP)</li> <li>Issue follow up correspondence in relation to extensions of time requested by directors and officer for submission of ROCAP</li> </ul>
	Planning/Review	<ul style="list-style-type: none"> <li>Discuss status of external administration</li> <li>Discuss engagement strategy</li> </ul>
	Books and records/storage	<ul style="list-style-type: none"> <li>Obtain access to the Forum Finance books and records</li> <li>Maintaining backups of key information infrastructure</li> </ul>

## Schedule A2 (FGFS) – Details of work

		Work already done for FGFS
Period		15 July to 19 September 2021
Amount (ex GST)		\$2,848,126
Task Area	General Description	Tasks
Assets 378 hours \$224,563	Monies	<ul style="list-style-type: none"> <li>▪ Secure bank accounts</li> </ul>
	Plant and Equipment	<ul style="list-style-type: none"> <li>▪ Review asset listings and balance sheets to determine if any assets can be realised</li> <li>▪ Collate fixed asset and motor vehicle listing from various sources</li> <li>▪ Engage and liaise with Lloyds Auctioneers</li> <li>▪ Secure vehicles and vessel</li> <li>▪ Liaise with agents to secure and value fixed assets</li> <li>▪ Liaising with financiers where applicable</li> </ul>
	Sale of Real Property	<ul style="list-style-type: none"> <li>▪ Attend various sites</li> <li>▪ Liaise with valuers and agents in relation to five properties</li> <li>▪ Investigate interests and rights to the real property</li> <li>▪ Engage with managing agents and seek indicative valuations</li> <li>▪ Consider realisation strategy for the real property</li> <li>▪ Liaise with mortgagees and directors</li> </ul>
	Assets subject to specific charges and security interests	<ul style="list-style-type: none"> <li>▪ Search the PPS register</li> <li>▪ Prepare and issue correspondence to security interest holders</li> <li>▪ Liaise with suppliers regarding PPSR</li> <li>▪ Review submissions received from PPSR claimants</li> </ul>
	Debtors	<ul style="list-style-type: none"> <li>▪ Prepare schedule of pre-appointment debtors and related loan party accounts</li> <li>▪ Investigate legal position and underlying entitlement</li> <li>▪ Investigate status, consider various claims that may be available and discuss strategy with lawyers</li> <li>▪ Prepare realisation strategy with lawyers</li> <li>▪ Instruct preparation of demands and review</li> </ul>
	Other Assets	<ul style="list-style-type: none"> <li>▪ Developing and maintaining master asset schedule</li> <li>▪ Investigations into assets based on financial and other information available</li> </ul>
	Leasing	<ul style="list-style-type: none"> <li>▪ Review leasing documents</li> <li>▪ Liaise with owners/lessors</li> <li>▪ Disclaim leases</li> </ul>
Creditors 38 hours \$23,550	Creditor Enquiries, Requests & Directions	<ul style="list-style-type: none"> <li>▪ Receive and respond to creditor enquiries</li> <li>▪ Establishing and monitoring functional mailbox, attending to inbound creditor queries</li> <li>▪ Consider reasonableness of creditor information requests</li> <li>▪ Obtain legal advice on requests from creditors for information, documents or a report</li> <li>▪ Document reasons for not complying with requests or directions</li> <li>▪ Compile information requested by creditors</li> </ul>
	Secured creditor reporting	<ul style="list-style-type: none"> <li>▪ Notify PPSR registered creditors of appointment</li> <li>▪ Respond to secured creditor's queries</li> </ul>
	Creditor reports	<ul style="list-style-type: none"> <li>▪ Prepare the DIRRI</li> <li>▪ Prepare Statutory Report by Liquidator</li> <li>▪ Maintain and review creditor position/lists</li> </ul>



	Deal with proofs of debt (POD)	<ul style="list-style-type: none"> <li>Receive PODs from claimants and maintain POD register</li> </ul>
Trade on 1 hour \$726	Business	<ul style="list-style-type: none"> <li>Dealings with counterparties to understand the business model</li> </ul>
Investigation 4,237 hours \$2,454,855	Conduct investigations	<ul style="list-style-type: none"> <li>Review company's books and records</li> <li>Prepare comparative financial statements</li> <li>Review specific transactions and liaise with directors/contractors regarding certain transactions</li> <li>Issuing various demands of parties to deliver up records and provide assistance</li> <li>Undertake investigations to understand the role of FGFS in the broader fraud and the nature of the underlying documentation supporting the alleged contracts</li> <li>Undertake detailed investigations of the financial statements of FGFS to support the funds and asset tracing process, and assist in the identification of assets that may be available for realisation.</li> </ul>
	Technology and data investigations	<ul style="list-style-type: none"> <li>Identifying securing, processing and retrieval of data (across numerous live systems and backups) for use across all other workstreams</li> <li>Creating backups, cataloguing, extracting, ingesting and processing of devices</li> <li>Facilitating access for financiers' legal representatives to online review platform</li> <li>Indexing all data sets for further interrogation on the forensic review platform</li> <li>Applying forensic techniques for targeted searching of hosted data</li> </ul>
	Funds and Assets Tracing	<ul style="list-style-type: none"> <li>Trace the sources and applications of funds to identify and deal with claims to assets using legal tracing principles</li> <li>Converting, categorizing and matching approximately 110,000 transactions as part of preparing a financial model that underpins tracing analysis</li> <li>Obtaining information in respect of in excess of 144 bank accounts</li> <li>Conducting "source and application" analysis of key Forum accounts</li> <li>Identifying parties of interest and assets including conducting a range of asset, property, entity and name searches</li> <li>Tracing transactions using legal tracing principles</li> </ul>
	Fraud investigations	<ul style="list-style-type: none"> <li>Applying forensic techniques for targeted searching of hosted data to assist in determining relationships and nature of the transactions</li> <li>Identified existing legitimate and fraudulent contracts in order to ascertain value to the underlying Forum businesses</li> <li>Responding to requests made by financiers and their legal representatives in relation to entities and persons of interest</li> <li>Prepared detailed reporting</li> </ul>
	Examinations	<ul style="list-style-type: none"> <li>Undertake comprehensive searches of materials available and prepare detailed briefs to legal advisors to prepare for the examinations</li> <li>Attendance at examinations and ongoing assistance to legal advisors</li> <li>Review of examination transcripts</li> <li>Liaise with lawyer(s) regarding outcome of examinations and further actions available</li> </ul>
	Litigation/Recoveries	<ul style="list-style-type: none"> <li>Considering competing claims to assets pools and approach to resolve disputes</li> <li>Considering strategy to pursue asset recovery and enforcement</li> </ul>

Administration 249 hours \$144,430	Correspondence	<ul style="list-style-type: none"> <li>▪ Attending to statutory obligations in connection with appointment including notifying various stakeholders of appointment</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ Maintaining project task lists</li> <li>▪ Maintaining physical and electronic engagement files</li> <li>▪ Updating checklists</li> <li>▪ Review of checklists to determine outstanding tasks and timelines</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Identify potential issues requiring attention of insurance specialists</li> <li>▪ Correspond with insurance broker regarding initial and ongoing insurance requirements</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>▪ Prepare correspondence to open accounts</li> <li>▪ Request bank statements</li> <li>▪ Perform bank account reconciliations</li> </ul>
	ASIC	<ul style="list-style-type: none"> <li>▪ Prepare and lodge ASIC forms</li> <li>▪ Correspond with ASIC regarding statutory forms</li> <li>▪ Carried out preliminary investigations in order to prepare a confidential report which will be lodged with ASIC pursuant to section 533 of the Corporations Act</li> </ul>
	ATO and other statutory reporting	<ul style="list-style-type: none"> <li>▪ Notify of appointment</li> <li>▪ Monitoring ATO portal in relation to correspondence</li> </ul>
	Planning/Review	<ul style="list-style-type: none"> <li>▪ Discuss status of external administration</li> <li>▪ Discuss engagement strategy</li> </ul>
	Books and records/storage	<ul style="list-style-type: none"> <li>▪ Obtain access to the FGFS books and records</li> <li>▪ Maintaining backups of key information infrastructure</li> </ul>

## Schedule B1 (Forum Finance) – Time spent by staff on each major task (work already done)

Resolution 1 for Forum Finance: from 9 July 2021 to 19 September 2021

Forum Finance Pty Ltd (Receivers Appointed) (In Liquidation) - Remuneration for the period 9 July 2021 to 19 September 2021																		
Staff	Position	Rate	Total		Assets		Creditors		Employees		Trade on		Investigations		Dividend		Administration	
			Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)
Jason Ireland	Appointee	770	89	68,879	18	13,475	31	24,142	-	-	6	4,235	4	3,311	-	-	31	23,716
Jason Preston	Appointee	770	24	18,351	-	-	16	12,345	-	-	-	-	0	231	-	-	8	5,775
	Partner	770	123	94,581	-	-	57	43,684	-	-	4	3,080	16	11,935	-	-	47	35,882
	Director	660	280	184,710	13	8,818	138	91,214	-	-	10	6,732	38	24,750	-	-	81	53,196
	Senior Manager	620	74	46,082	-	-	2	1,380	-	-	-	-	8	4,774	-	-	64	39,928
	Manager	580	33	19,387	6	3,521	25	14,367	-	-	-	-	3	1,498	-	-	-	-
	Assistant Manager	530	1	390	0	62	1	327	-	-	-	-	-	-	-	-	-	-
	Senior Accountant	480	113	54,346	-	-	10	4,762	-	-	-	-	18	8,832	-	-	85	40,752
	Accountant	390	51	19,914	-	-	6	2,325	-	-	-	-	4	1,365	-	-	42	16,224
	Senior Client Admin	370	14	5,291	-	-	-	-	-	-	-	-	-	-	-	-	14	5,291
<b>Total (ex GST and disbursements)</b>			<b>803</b>	<b>511,930</b>	<b>37</b>	<b>25,877</b>	<b>286</b>	<b>194,546</b>	<b>-</b>	<b>-</b>	<b>20</b>	<b>14,047</b>	<b>90</b>	<b>56,696</b>	<b>-</b>	<b>-</b>	<b>371</b>	<b>220,764</b>

## Schedule B2 (FGFS) – Time spent by staff on each major task (work already done)

Resolution 1 for FGFS: from 15 July 2021 to 19 September 2021

Forum Group Financial Services Pty Ltd (Provisional Liquidators Appointed) - Remuneration for the period 15 July 2021 to 19 September 2021																		
Staff	Position	Rate	Total		Assets		Creditors		Employees		Trade on		Investigations		Dividend		Administration	
			Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)
Jason Ireland	Appointee	770	49	38,002	24	18,557	1	580	-	-	-	-	15	11,473	-	-	10	7,392
Jason Preston	Appointee	770	40	30,979	-	-	7	5,107	-	-	-	-	23	17,864	-	-	10	8,008
	Partner	770	240	184,517	17	12,705	3	2,104	-	-	-	-	215	165,858	-	-	5	3,850
	Director	660	1,349	890,514	90	59,374	13	8,714	-	-	1	726	1,197	789,822	-	-	48	31,878
	Senior Manager	620	220	136,416	-	-	0	78	-	-	-	-	156	96,658	-	-	64	39,680
	Manager	580	1,326	769,327	113	65,291	3	1,607	-	-	-	-	1,175	681,432	-	-	36	20,996
	Assistant Manager	530	607	321,517	115	60,800	3	1,546	-	-	-	-	484	256,467	-	-	5	2,703
	Senior Accountant	480	659	316,138	0	192	4	2,074	-	-	-	-	625	299,952	-	-	29	13,920
	Accountant	390	411	160,236	20	7,644	4	1,740	-	-	-	-	347	135,330	-	-	40	15,522
	Senior Client Admin	370	1	481	-	-	-	-	-	-	-	-	-	-	-	-	1	481
<b>Total (ex GST and disbursements)</b>			<b>4,902</b>	<b>2,848,126</b>	<b>378</b>	<b>224,564</b>	<b>38</b>	<b>23,550</b>	<b>-</b>	<b>-</b>	<b>1</b>	<b>726</b>	<b>4,237</b>	<b>2,454,856</b>	<b>-</b>	<b>-</b>	<b>249</b>	<b>144,430</b>

## Schedule C – Disbursements

### Costs paid to third parties

Costs paid to third parties are recovered at cost. Creditors are not required to approve these types of costs, but details are provided to account to creditors, including the basis of charging for these types of costs. Creditors are entitled to question the incurring of the costs and can challenge the costs in Court.

The following costs have been paid by McGrathNicol to third parties and relate to the Liquidations. These amounts will be reimbursed to McGrathNicol at cost from the Forum Finance and FGFS Liquidators bank account:

Costs paid to third parties for the period 9 July 2021 to 19 September 2021	Forum Finance Amount (\$) (GST exclusive)	FGFS Amount (\$) (GST exclusive)
Postage	7	Nil
Stationery and other incidental disbursements	5,144	42
Staff vehicle use *	97	Nil
<b>Total</b>	<b>5,248</b>	<b>42</b>

\* These rates are deemed reasonable by the Australian Taxation Office.

Future costs provided by McGrathNicol will be charged to the external administration on the following basis:

Cost type	Rate (\$) (GST exclusive)
Postage	At cost
Stationery and other incidental disbursements	At cost
Conference call phone charges	At cost
Searches	At cost
Advertising	At cost
Courier	At cost
Staff per diem travel allowance*	89.00 per day**
Staff vehicle use	0.72 per km**
ASIC user pays levy***	At cost

\* Payable when partners or staff are required for business purposes to stay away from their usual place of residence overnight.

\*\* These rates are deemed reasonable by the Australian Taxation Office.

\*\*\* This levy is charged by ASIC and is based on the number of notifiable events in a financial year directly related to the Liquidations. Notifiable events include notices published on ASIC's published notices website and some documents lodged with ASIC.

### Further explanation of data hosting costs

In the conduct of the Liquidations, we may use McGrathNicol's Forensic Technology team to extract, aggregate, electronically process and/or host electronic data, which could be used for the:

- trade or sale of the business or assets; and/or
- investigations regarding transactions or potential recoveries available to creditors.

If data hosting is required and we choose not to use the services of McGrathNicol's Forensic Technology team, we will otherwise have to purchase those services from an alternative provider and/or use another method to achieve the same end, which will not be as efficient as using these available internal services.

We note that the data hosting rates above are no more than our standard commercial pricing available for the same services when they are provided to external parties.

## Schedule D – Schedule of Hourly Rates

The rates for our remuneration calculation are set out in the following table, together with a general guide showing the qualifications and experience of staff engaged in the Liquidations and the role they take in the Liquidations. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

<b>Title</b>	<b>Description</b>	<b>Hourly rate (excl GST)</b>
Appointee/Partner	Registered liquidator, Chartered Accountant or equivalent and generally degree qualified with more than twelve years of experience. Leads assignments with full accountability for strategy and execution.	\$770
Director 1	Generally Chartered Accountant or comparable qualification and degree qualified with more than ten years of experience, including four years of Director or equivalent experience. Autonomously leads complex insolvency appointments reporting to Appointee/Partner.	\$710
Director	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than nine years of experience. Autonomously leads insolvency appointments reporting to Appointee/Partner.	\$660
Senior Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than seven years of experience. Self-sufficiently conducts small to medium insolvency appointments and leads major workstreams in larger matters.	\$620
Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than five years of experience. Self-sufficiently conducts small insolvency appointments and takes a supervisory role on workstreams in larger matters.	\$580
Assistant Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than three years of experience. Autonomously manages workstream activity within appointments.	\$530
Senior Accountant	Generally degree qualified and undertaking Chartered Accountant's qualification or comparable relevant qualification with more than 16 months of experience. Completes tasks within workstreams and appointments under supervision.	\$480
Accountant	Generally degree qualified and undertaking or about to undertake Chartered Accountant's qualification or comparable relevant qualification with less than one year of experience. Assists with tasks within workstreams and appointments under supervision.	\$390
Undergraduate/Cadet	Undertaking relevant degree. Assists with tasks within workstreams and appointments under supervision.	\$230

Title	Description	Hourly rate (excl GST)
Practice Services Director	National Practice Service leaders, generally degree qualified with more than ten years of experience and reporting directly to partners. Technical experts in their specific areas and have team management responsibilities.	\$710
Senior Treasury staff	Appropriately experienced and undertakes senior Treasury activities such as oversight of the processing of payment of receipts and banking administration. May be responsible for day to day management of projects or operations and may have supervisory responsibility for junior staff.	\$470
Senior Client Administration and Treasury	Appropriately experienced and undertakes senior level administrative support activities or Treasury activities. May be responsible for day to day management of projects or operations and may have supervisory responsibility for junior staff.	\$370
Administration	Appropriately experienced and undertakes support activities such as meeting coordination and preparation of materials where it is efficient and appropriate to do so.	\$210

McGrathNicol reviews its hourly rates on either 31 December or 30 June. Creditors will be advised of any change to the hourly rates for this external administration.



**Insolvency Practice Rules (Corporations) 2016  
Rules 70-35 and 75-130**

REMUNERATION APPROVAL REQUEST REPORT

**FORUM GROUP FINANCIAL SERVICES PTY LTD (IN LIQUIDATION)  
ACN 623 033 705  
("the Company")**

This remuneration report provides you with the information you need to be able to make an informed decision regarding the approval of our remuneration for undertaking the Administration of the Company.

This report has the following information included:

Part 1: Declaration .....	2
Part 2: Executive Summary .....	2
Part 3: Remuneration.....	2
3.1 Remuneration claim resolutions .....	2
3.2 Details of remuneration .....	3
3.3 Likely impact on dividends.....	13
3.4 Remuneration recovered from external sources .....	13
Part 4: Disbursements.....	13
4.1 Internal disbursement claim.....	13
4.2 Future basis of internal disbursements .....	13
Part 5: Report on Progress of the Administration.....	14
Part 6: Summary of Receipts and Payments.....	14
Part 7: Queries .....	14
Part 8: Approval of remuneration and internal disbursements .....	14

Creditors' requirements for meeting of creditors

You should read this report and the other documentation that have been sent to you and attend the meeting of creditors in order to voice your opinion by casting your vote on the resolutions put to the meeting. The meeting will also give you an opportunity to ask any questions that you may have.

Alternatively, should you be unable to attend the meeting, you may also appoint a representative to attend on your behalf by lodging a proxy form (i.e the Chairperson). Lodging a specific proxy form allows you to specify how your proxy must vote. Lodging a general proxy form allows your representative to choose how your vote is exercised. Creditors should direct all forms and queries in respect to the meeting to McGrathNicol's office.

## Part 1: Declaration

We, Domenic Calabretta, Thyge Trafford-Jones and Grahame Ward, of Mackay Goodwin, have undertaken a proper assessment of this remuneration claim for our appointment as Administrators of the Company in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the Administration.

## Part 2: Executive Summary

On 8 July 2012, we, Domenic Calabretta, Thyge Trafford-Jones, and Grahame Ward, of Mackay Goodwin we appointed joint and several Administrators of the Company.

On 15 July 2021, pursuant to an order of the Federal Court of New South Wales, the Company was wound up and Jason Ireland and Jason Preston of McGrathNicol were appointed provisional liquidators. This report has been prepared as a part of McGrathNicol's Statutory Report to Creditors.

Creditors are advised that Domenic Calabretta, Thyge Trafford-Jones and Grahame Ward of Mackay Goodwin are herein commonly referred to as 'the Administrators' throughout this remuneration report which is in respect to our time costs incurred during the Administration period.

**Creditors should note that any queries in respect to the Meeting of Creditors are to be directed to McGrathNicol. Any queries in respect to this remuneration report prepared by us is to be directed to Thanatorn Phadermchit of Mackay Goodwin at [tphadermchit@mackaygoodwin.com.au](mailto:tphadermchit@mackaygoodwin.com.au).**

Remuneration currently claimed is summarised below:

Period	Report Reference	Amount (\$) (excluding GST)
Voluntary Administration		
Resolution 1 - 8 July 2021 to 15 July 2021	3.1.1	12,345.49
<b>Total - Voluntary Administration</b>		<b>12,345.49</b>

Please refer to report section references detailed in the above table for full details of the calculation and composition of the remuneration approval sought.

## Part 3. Remuneration

### 3.1 Remuneration claim resolutions

#### 3.1.1 Resolution 1 – 8 July 2021 to 15 July 2021

*That the remuneration of the Administrators, their partners and staff from 8 July 2021 to 15 July 2021 be approved up to a maximum amount of \$12,345.49 plus GST, calculated in accordance with the Mackay Goodwin hourly rates as detailed in the Initial Report to Creditors dated 12 July 2021 and that the Administrators be authorised to draw the remuneration as required."*

### 3.2 Details of remuneration

The basis of calculating the remuneration claims, the details of the major tasks performed, and the costs associated with each of those major tasks are contained below.

#### 3.2.1 Resolution 1 – 8 July 2021 to 15 July 2021

The below table sets out time charged to each major task area by staff members working on the Administration for the periods 8 July 2021 to 15 July 2021 which is the basis of the Resolution 1 claim. More detailed descriptions of the tasks performed within each task area, matching the amounts below, are detailed below.

Task Area	General Description	Includes
Assets: Hours: 8.40 Cost: 2,777.50	Cash at Bank	Liaising with financial institutions regarding freezing of pre-appointment bank accounts and obtaining bank statements. Liaising with banking institutions in relation to any balance of funds held in the Company's pre-appointment bank accounts
	Plant and Equipment	Liaising with the Directors in relation to the Company's plant and equipment
	Motor Vehicle	Liaising with the Roads and Maritime Services ("RMS") and VicRoads with respect to current and historical motor vehicle searches.
	Assets subject to specific charges	All tasks associated with identifying assets which are subject to specific charges. Review of PPSR searches conducted.
	Other Assets	All tasks associated with identifying other assets.
Creditors Hours: 1.16 Cost: \$420.59	Creditor Enquiries	Receiving and following up creditor enquiries via telephone and email. Reviewing and prepare correspondence to creditors and their representatives via facsimile, email and post.
	Creditor reports	Preparing initial report to creditors, including annexures.
	Secured Creditors	Liaising with secured creditors regarding status of appointment and ongoing correspondence.
Trade On Hours: 0.10 Cost: \$62.00	Trade on Management	Liaising with Management and Staff. Attendance on site.

<p>Investigation</p> <p>Hours: 13.40 Cost: 7,050.00</p>	<p>Conducting investigations</p>	<p>Collection of company books and records. Reviewing the Company's books and records. Review and preparation of Company nature and history. Conducting and summarising statutory searches. Preparation of investigation file.</p>
<p>Administration</p> <p>Hours: 4.66 Cost: 2,035.40</p>	<p>General matters</p>	<p>Client setup</p>
	<p>Document maintenance/file review/checklist</p>	<p>Filing of documents File reviews Updating checklists</p>
	<p>Insurance</p>	<p>Identification of potential issues requiring attention of insurance specialists. Correspondence with Insurer regarding initial and ongoing insurance requirements.</p>
	<p>ASIC forms</p>	<p>Preparing and lodging ASIC forms including forms 505 and 531. Preparing and lodging ASIC advertisements.</p>
	<p>ATO &amp; other statutory reporting</p>	<p>Notification of appointment. Correspondence with ATO to collect RFD information.</p>
	<p>Planning / Review</p>	<p>Internal communication concerning administration. Discussions regarding status of administration.</p>
	<p>Bank account administration</p>	<p>Preparing correspondence opening accounts. Liaising with banking institutions Requesting bank statements.</p>

Part 3.1 A - Resolution 1 - Calculation of Remuneration

FORUM GROUP FINANCIAL SERVICES PTY LTD (Administrators Appointed) - Calculation of Remuneration														
For all Remuneration for the period 08 July 2021 to 15 July 2021														
Employee	Position	\$/hour (ex GST)	Total actual hours	Total (\$)	Task Area									
					Assets		Creditors		Trade On		Investigations		Administration	
					hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$
Domenic Calabretta	Appointee	750	1.30	975.00	0.00	0.00	0.00	0.00	0.00	0.00	1.20	900.00	0.10	75.00
Grahame Ward	Appointee	750	0.60	450.00	0.00	0.00	0.20	150.00	0.00	0.00	0.00	0.00	0.40	300.00
Edw in Narayan	Director	675	3.20	2,160.00	0.00	0.00	0.00	0.00	0.00	0.00	2.60	1,755.00	0.60	405.00
Nelson Huang	Senior Manager	620	0.70	434.00	0.00	0.00	0.10	62.00	0.10	62.00	0.40	248.00	0.10	62.00
Faress Azzam	Manager	525	2.40	1,260.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00	1,050.00	0.40	210.00
Andrew Quinn	Manager	525	1.60	840.00	1.40	735.00	0.00	0.00	0.00	0.00	0.20	105.00	0.00	0.00
Jack Michie	Supervisor	480	0.10	48.00	0.00	0.00	0.10	48.00	0.00	0.00	0.00	0.00	0.00	0.00
Rachel Brown	Supervisor	480	4.90	2,352.00	0.00	0.00	0.00	0.00	0.00	0.00	3.70	1,776.00	1.20	576.00
Lily Safa	Supervisor	480	0.90	432.00	0.00	0.00	0.00	0.00	0.00	0.00	0.90	432.00	0.00	0.00
Jordan Brittain	Senior Analyst 1	375	1.30	487.50	1.30	487.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Christopher Knight	Senior Analyst 2	350	0.20	70.00	0.20	70.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Thanatorn Phadermchit	Senior Analyst 2	350	1.80	630.00	0.00	0.00	0.10	35.00	0.00	0.00	1.70	595.00	0.00	0.00
Abby Xu	Analyst 1	290	0.30	87.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	87.00
Felix Bidwell	Analyst 2	270	1.10	297.00	1.10	297.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
George Huxtable	Analyst 2	270	4.50	1,215.00	4.40	1,188.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10	27.00
Ian Moffat	Analyst 2	270	0.50	135.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	81.00	0.20	54.00
Nelson Wells	Analyst 2	270	0.40	108.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40	108.00	0.00	0.00
Maria Boniao	Secretary	190	0.60	114.00	0.00	0.00	0.60	114.00	0.00	0.00	0.00	0.00	0.00	0.00
Sasiwimol Sumliphon	Secretary	190	0.15	28.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.15	28.50
Wanida Sriraksa	Secretary	190	0.37	70.49	0.00	0.00	0.01	2.09	0.00	0.00	0.00	0.00	0.36	68.40
Wasumon Jaterujikan	Secretary	190	0.80	152.00	0.00	0.00	0.05	9.50	0.00	0.00	0.00	0.00	0.75	142.50
<b>TOTAL HOURS</b>			<b>27.72</b>											
<b>TOTAL REMUNERATION</b>				<b>12,345.49</b>	8.40	2,777.50	1.16	420.59	0.10	62.00	13.40	7,050.00	4.66	2,035.40
GST				1,234.55										
<b>TOTAL (Including GST)</b>				<b>13,580.04</b>										

### 3.3 Likely impact on dividends

We note the following with respect to the dividend:

- Pursuant to Section 556 of the Corporations Act 2001 (“the Act”), the Administrators/Deed Administrators/Liquidators have priority over all claims of creditors with respect to their remuneration incurred.
- The work the Administrators are entitled to be remunerated for in accordance with the Act is necessary to ensure the greatest possible return to creditors.
- Creditors should refer to details of a likelihood of dividend as detailed in the statutory report to creditors issued by McGrathNicol.

### 3.4 Remuneration recovered from external sources

As disclosed in the DIRRI in the initial report to creditors dated 12 July 2021, we have not been provided with any upfront payments or indemnity for the conduct of this Voluntary Administration.

### Part 4: Disbursements

Disbursements are divided into three (3) types:

- A Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- B1 Externally provided non-professional costs - these are recovered at cost. Examples of externally provided non-professional costs are travel, accommodation, and search fees.
- B2 Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis. Details of the basis of recovery of each of these costs is discussed below.

We are required to seek creditor approval for disbursement types A and B1, but must provide a full summary of account of disbursements to creditors. We must be satisfied that these disbursements are appropriate, justified and reasonable.

We are required to seek creditor approval prior to the payment of internal disbursements (B2) where there may be a profit or advantage. Creditors will be asking to approve our internal disbursements where there is a profit or advantage prior to these disbursements being paid in the Administration.

#### Part 5: Report on Progress of the Administration

This remuneration report should be read in conjunction with the McGrathNicol's Statutory Report to Creditors which outlines the progress of the external administration.

#### Part 6: Summary of Receipts and Payments

A Summary of the Administrators' receipts and payments made up to 15 July 2021 is attached as Annexure.

#### Part 7: Queries

If you have any queries in relation to the information in this report, please contact Thanatorn Phadermchit of Mackay Goodwin via email at [tphadermchit@mackaygoodwin.com.au](mailto:tphadermchit@mackaygoodwin.com.au).

You can also access information which may assist you on the following websites:

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors); and
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets").

#### Part 8: Approval of remuneration and internal disbursements

As previously mentioned throughout this report, the resolutions will be put forward at the meeting of creditors. Please refer to the notice of meeting enclosed with McGrath Nicol's Statutory Report to Creditors for information regarding the meeting to be convened and the resolutions which will be put forward for creditor approval.

Dated this 6<sup>th</sup> day of October 2021



**DOMENIC CALABRETTA**  
**FORMER JOINT AND SEVERAL ADMINISTRATOR**

## Summarised Receipts & Payments

**FORUM GROUP FINANCIAL SERVICES PTY LTD**  
**(Administrators Appointed)**  
**Transactions From 08 July 2021 To 15 July 2021**

<b>A/C Code</b>	<b>Account</b>	<b>Gross Amount</b>
	<b>Total Receipts (inc GST)</b>	<b>\$0.00</b>
	<b>Total Payments (inc GST)</b>	<b>\$0.00</b>
	<b>Balance in Hand - By Bank Account</b>	<b>\$0.00</b>



## Information sheet: Approving remuneration of an external administrator

If you are a creditor in a liquidation, voluntary administration or deed of company arrangement you may be asked to approve the external administrator's remuneration. An external administrator can be a liquidator, voluntary administrator or deed administrator. The process for approving the remuneration for each of these is the same.

This information sheet gives general information to help you understand the process of approving an external administrator's remuneration and your rights in this process. The following topics are covered in this information sheet:

- About external administrations
- External administrator's remuneration and costs
- Calculating remuneration
- Information you will receive
- Approving remuneration
- Who may approve remuneration
- Deciding if remuneration is reasonable
- What can you do if you decide the remuneration is unreasonable?
- Reimbursement of out of pocket costs
- Queries and complaints
- More information.

### About external administrations

If a company goes into liquidation, voluntary administration or enters into a deed of company arrangement, an independent person is appointed to oversee the administration. They are called an external administrator and include a liquidator, voluntary administrator and deed administrator, depending on the type of administration involved. In this information sheet they are simply referred to as an external administrator.

The duties of an external administrator are specified in legislation and they must adhere to certain standards while conducting the administration.

All external administrators are required by law to undertake certain tasks which may not benefit creditors directly (e.g. investigating whether any offences have been committed and reporting to the Australian Securities and Investments Commission (ASIC)).

### External administrator's remuneration and costs

External administrators are entitled to be paid for the necessary work they properly perform in the administration.

An external administrator is entitled:

- to be paid reasonable remuneration, for the work they perform, once this remuneration has been approved,
- to be paid for internal disbursements they incur in performing their role (these costs do need approval), and
- to be reimbursed for out-of-pocket costs incurred in performing their role (these costs do not need approval).

Common internal disbursements are stationery, photocopying and telephone costs.

Commonly reimbursed out-of-pocket costs include:

- legal fees
- a valuer's, real administration agent's and auctioneer's fees
- postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the amount of an external administrator's remuneration and costs, as these will generally be paid from the administration before any payments are made to creditors.

Remuneration and internal disbursements must be approved in accordance with the Corporations Act and Insolvency Practice Rules (Corporations) before it can be paid.

If there is a shortfall between the external administrator's remuneration and the assets available from the administration, in certain circumstances the external administrator may arrange for a third party to pay the shortfall. As a creditor, you will be provided details of any such arrangement.

If there are not enough assets to pay the external administrator's remuneration and costs, and there is no third party payment arrangement, the external administrator remains unpaid.

## Calculating remuneration

An external administrator may calculate their remuneration using one (or a combination) of a number of methods, such as:

- on the basis of time spent working on the administration, according to hourly rates
- a quoted fixed fee, based on an estimate of the costs
- a percentage (usually of asset realisations), or
- a contingent basis on a particular outcome being achieved.

Charging on the basis of time spent is the most common method used. External administrators have a set of hourly rates that they will seek to charge. These rates are set to reflect the seniority, skills and experience of staff and, where applicable, the complexity and risks of the bankruptcy. They cover staff costs and overheads.

If remuneration is being charged on a time basis, the external administrator must keep time sheets noting the number of hours spent on the tasks performed.

Creditors have a right to question the external administrator about the remuneration and the rates to be charged. They also have a right to question the external administrator about the fee calculation method used and how the calculation was made. The external administrator must justify why the chosen fee calculation method is appropriate for the administration.

## Information you will receive

There are different types of remuneration reports that you may receive during the course of an external administration. The following table details the reports and when you might receive them.

Document	Information it contains	When you will receive it
Initial Remuneration Notice (IRN)	<ul style="list-style-type: none"> <li>• A brief explanation of the types of methods that may be used to calculate fees.</li> <li>• The external administrator's chosen fee calculation method(s) and why it is appropriate.</li> <li>• Details of the external administrator's rates, including hourly rates if time spent basis is used.</li> <li>• An estimate of the external administrator's remuneration.</li> <li>• The method that will be used to calculate disbursements.</li> </ul>	<p>Voluntary Administration – with the notice of first meeting.</p> <p>Creditors' voluntary liquidation – within 10 business days of appointment.</p> <p>Court liquidation – within 20 business days of appointment.</p>
Remuneration Approval Report (RAR)	<ul style="list-style-type: none"> <li>• A summary description of the major tasks performed, or likely to be performed.</li> <li>• The costs associated with each of those major tasks and the method of calculation.</li> <li>• The periods at which the external administrator proposes to withdraw funds from the administration for remuneration.</li> <li>• An estimated total amount, or range of total amounts, of the external administrator's remuneration.</li> <li>• An explanation of the likely impact of that remuneration on the dividends (if any) to creditors.</li> <li>• Where internal disbursements are being claimed, the external administrator will report to creditors on the amount and method of calculation of these disbursements.</li> </ul>	<p>Sent at the same time as:</p> <ul style="list-style-type: none"> <li>• the notice to creditors of the meeting at which approval of remuneration will be sought; or</li> <li>• the notice to creditors of the proposal without a meeting by which approval of remuneration will be sought</li> </ul> <p>If approval of remuneration is not being sought, a RAR will not be provided.</p>

## Approving remuneration

The meeting of creditors (or committee of inspection) gives a chance for those participating to ask questions about the external administrator's remuneration. Fees are then approved by a vote of the creditors. Alternatively, the external administrator may seek approval of remuneration via a proposal without a meeting. Whichever method is used, the external administrator must provide the same report to creditors about their remuneration (Remuneration Approval Report).

Creditors may be asked to approve remuneration for work already performed and/or remuneration estimate for work not yet carried out. If the work is yet to be carried out, the external administrator must set a maximum limit (cap) on the future remuneration approval. For example, 'future remuneration is approved, calculated on hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X'.

If the remuneration for work done then exceeds this figure, the external administrator will have to ask the creditors to approve a further amount of remuneration, after accounting for the amount already incurred.

If an external administrator can't get the creditors' approval, an application can be made to the Court to determine their remuneration.

When there are limited funds available in the administration, or the external administrator's remuneration is below a statutory threshold, an external administrator is entitled to draw a one-off amount of up to that threshold plus GST, without creditor approval. This amount is currently \$5,000 (indexed).

## Who may approve remuneration?

### Committee of inspection approval

A committee of inspection will generally only be established where there are a large number of creditors and/or complex matters which make having a committee desirable. Committee members are chosen by a vote of all creditors and work with the external administrator to represent the creditors' interests.

If there is a committee, the external administrator will ask it to approve the remuneration. A committee makes its decision by a majority in number of its members present in person at a meeting, but it can only vote if a majority of its members attend.

In approving the remuneration, it is important that committee members understand that they represent all the creditors, not just their own individual interests.

### Creditors' approval

Creditors approve remuneration by passing a resolution at a creditors' meeting. Creditors may vote according to their individual interests.

To approve an external administrator's remuneration, a resolution is put to the meeting to be decided on the voices or by a 'poll' (if requested by the external administrator or a person participating and entitled to vote at the meeting). A poll requires a count of each vote and its value to be taken and recorded for each creditor present and voting.

A proxy is a document whereby a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a general proxy or a special proxy. A general proxy allows the person holding the proxy to vote how they want on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator is only able to vote on remuneration if they hold a special proxy.

There are provisions for a resolution to be passed by creditors without a meeting. This still requires a majority in value and number of creditors voting to vote in favour of the resolution. Creditors representing at least 25% in value of those responding to the external administrator's proposal can object to the proposal being resolved without a meeting of creditors.

## Deciding if remuneration is reasonable

If you are asked to approve an external administrator's remuneration, your task is to decide if the amount of remuneration is reasonable, given the work carried out in the administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the remuneration claimed is reasonable:

- the method used to calculate remuneration
- the major tasks that have been performed, or are likely to be performed, for the remuneration
- the remuneration/estimated remuneration (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the administration
- the amount of remuneration (if any) that has previously been approved
- if the remuneration is calculated, in whole or in part, on a time basis:
  - the period over which the work was, or is likely to be performed
  - if the remuneration is for work that has already been carried out, the time spent by each level of staff on each of the major tasks
  - if the remuneration is for work that is yet to be carried out, whether the remuneration is capped.

ARITA's Code of Professional Practice ('the Code') outlines the steps external administrators should take to make sure they fulfil their responsibilities to creditors when asking creditors to approve remuneration, including when those creditors are acting in their capacity as committee members. The Code is available on the ARITA website at [www.arita.com.au](http://www.arita.com.au).

If you need more information about remuneration than is provided in the external administrator's report, you should let them know before the meeting at which remuneration will be voted on.

## What can you do if you think the remuneration is unreasonable?

If you think the remuneration being claimed is unreasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve remuneration. You may also choose to not vote on the resolution (abstain).

You also have the power to put a resolution to the meeting. For example, you could put forward a resolution to change the way the external administrator charges for remuneration, or the periods at which the external administrator may withdraw funds. Any amending resolution must occur before the vote being taken on the resolution to approve remuneration. If the amended proposal is passed, the resolution is binding on the external administrator. However, such an amendment may result in the external administrator seeking to be replaced by another external administrator.

If the external administrator is seeking approval of remuneration via a resolution without a meeting and more than 25% in value of the creditors responding object using the form provided by the external administrator, the proposal will not pass. If the external administrator wants the proposal passed, a meeting will need to be convened and any creditor entitled to participate in the meeting has the right, before the vote is taken, to put a resolution to the meeting as mentioned above.

A creditor may apply to Court for a review of an external administrator's remuneration. Creditors also have the power to appoint, by resolution, a reviewing liquidator to review any remuneration approved within the six months and any disbursements incurred in the 12 months before the reviewing liquidator's appointment. The cost of a reviewing liquidator is paid from the assets of the external administration. An individual creditor may also appoint a reviewing liquidator with the external administrator's consent. An individual creditor seeking the appointment of a reviewing liquidator must pay the cost of the reviewing liquidator.

### Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the administration; as careful as if they were incurring the expenses on their own behalf. Their report on remuneration sent to creditors must also include information on the out-of-pocket costs of the administration (disbursements).

Where these out-of-pocket costs are internal disbursements paid to the external administrator's firm (for example photocopying and phone calls) the external administrator must request creditor approval of these amounts. The external administrator may also ask for approval of internal disbursements in advance. If they do so, they will set the rates for those disbursements and a cap on the maximum amount that can be drawn.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' or committee meeting. If you are still concerned, you have the right to seek the appointment of a reviewing liquidator (refer above).

### Queries and complaints

You should first raise any queries or complaints with the external administrator or their firm.

If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ARITA at [www.arita.com.au](http://www.arita.com.au) or with ASIC at [www.asic.gov.au](http://www.asic.gov.au). ARITA is only able to deal with complaints in respect of their members.

### More information

The [ARITA website](http://www.arita.com.au) contains the ARITA Code of Professional Practice which is applicable to all its members. ARITA also provides general information to assist creditors at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC includes information on its website which may assist creditors. Go to [www.asic.gov.au](http://www.asic.gov.au) and search for 'insolvency information sheets'.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.

## Notice of Meeting

**Forum Finance Pty Limited (In Liquidation) (Receivers Appointed)**  
**ACN 153 301 172 (Forum Finance)**  
**Forum Group Financial Services Pty Ltd (Provisional Liquidators Appointed)**  
**ACN 623 033 705 (FGFS)**  
**(collectively, the Companies)**

### NOTICE OF MEETING OF CREDITORS OF COMPANIES UNDER EXTERNAL ADMINISTRATION

1. Notice is now given that concurrent meetings of the creditors of the Companies will be held virtually on **22 October 2021 at 2:00 PM (AEDT)**.
2. The meetings will be held virtually using Zoom webcast/teleconference, in order to ensure compliance with any restrictions that may be in place as a result of COVID-19. The online conference can be joined from a computer (preferred) or telephone. Questions can be typed or asked verbally during the meeting. Voting will be conducted by taking a poll by an electronic survey accessible by computer or mobile device. There will not be an option to attend in person.
3. Should you wish to attend, or nominate someone to attend by proxy or attorney on your behalf, please register your intention to do so by sending an email to [forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com) or call (03) 9038 3148 before 4.00 PM on 21 October 2021 and you will be provided with detailed instructions on how to participate in the meeting during the evening of 21 October 2021.
4. The purpose of the meetings is to:
  - a. provide an update on the progress of the Liquidations;
  - b. consider and if thought fit, approve the retrospective remuneration of the Liquidators and Provisional Liquidators;
  - c. consider and if thought fit, approve the retrospective remuneration of the Former Voluntary Administrators of FGFS;
  - d. consider the appointment of a Committee of Inspection for each of the Companies;
  - e. authorise the Liquidators of Forum Finance to compromise debts greater than \$100,000 under section 477(2A) of the Act; and
  - f. authorise the Liquidators of Forum Finance to enter into agreements that may take longer than three months to complete under section 477(2B) of the Act; and
  - g. discuss any other relevant business which may arise.
5. The effect of Insolvency Practice Rules (Corporations) section 75-85 (entitlement to vote as creditor at meetings of creditors) is:
  - a. A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
  - b. Subject to subsections (c), (d) and (e), each creditor is entitled to vote and has one vote.
  - c. A person is not entitled to vote as a creditor at a meeting of creditors unless:
    - i. his or her debt or claim has been admitted wholly or in part by the external administrator;  
or



- ii. he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
    - those particulars; or
    - if required—a formal proof of the debt or claim.
  - d. A creditor must not vote in respect of:
    - i. an unliquidated debt; or
    - ii. a contingent debt; or
    - iii. an unliquidated or a contingent claim; or
    - iv. a debt the value of which is not established;  
unless a just estimate of its value has been made.
  - e. A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
    - i. treat the liability to him or her on the instrument or security of a person covered by subsection (f) as a security in his or her hands;
    - ii. estimate its value;
    - iii. for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
  - f. A person is covered by this subsection if:
    - i. the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor;
    - ii. the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
    - iii. the person is not an insolvent under administration or a person against whom a winding up order is in force.
6. Proofs of debt and proxies must be submitted by email to [forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com) before **4.00 PM (AEDT) on 21 October 2021**.

Dated: 8 October 2021



Jason Ireland  
*Liquidator and Provisional Liquidator*

McGrathNicol  
GPO Box 9986  
Sydney NSW 2001  
+61 2 9338 2600



**Proof of Debt  
Guidance Notes**

(Please read carefully before filling in Form 535 or Form 536)

It is a creditor's responsibility to prove their claim to our satisfaction.

When lodging claims, creditors must ensure:

- the proof of debt form is properly completed in every particular; and
- evidence, as set out under "Information to support your claim", is attached to the Form 535 or Form 536.

**Directions for completion of a Proof of Debt**

1. Insert the full name and address of the creditor.
2. Under "Consideration" state how the debt arose, for example "goods sold to the company on \_\_\_\_\_".
3. Under "Remarks" include details of any documents that substantiate the debt (refer to the section "Information to support your claim" below for further information).
4. Where the space provided for a particular purpose is insufficient to contain all the information required for a particular item, please attach additional information.

**Information to support your claim**

Please note that unless you provide evidence to support the existence of the debt, your debt is not likely to be accepted. Detailed below are some examples of debts creditors may claim and a suggested list of documents that should accompany a proof of debt to substantiate the debt.

**Trade Creditors**

- Invoice(s) and statement(s) showing the amount of the debt; and
- Advice(s) to pay outstanding invoice(s) (optional).

**Guarantees/Indemnities**

- Executed guarantee/indemnity;
- Notice of Demand served on the guarantor; and
- Calculation of the amount outstanding under the guarantee.

**Judgment Debt**

- Copy of the judgment; and
- Documents/details to support the underlying debt as per other categories.

**Deficiencies on Secured Debt**

- Security Documents (eg. mortgage);
- Independent valuation of the secured portion of the debt (if not yet realised) or the basis of the creditor's estimated value of the security;
- Calculation of the deficiency on the security; and
- Details of income earned and expenses incurred by the secured creditor in respect of the secured asset since the date of appointment.

**Loans (Bank and Personal)**

- Executed loan agreement; and

- Loan statements showing payments made, interest accruing and the amount outstanding as at the date of appointment.

**Tax Debts**

- Documentation that shows the assessment of debts, whether it is an actual debt or an estimate, and separate amounts for the primary debt and any penalties.

**Employee Debts**

- Basis of calculation of the debt;
- Type of Claim (eg. wages, holiday pay, etc);
- Correspondence relating to the debt being claimed; and
- Contract of Employment (if any).

**Leases**

- Copy of the lease; and
- Statement showing amounts outstanding under the lease, differentiating between amounts outstanding at the date of the appointment and any future monies.

PROXY FORM

Forum Group Financial Services Pty Ltd (Provisional Liquidators Appointed)

ACN: 623 033 705

APPOINTMENT OF PROXY

I/We (if a firm, strike out "I" and set out the full name of the firm) \_\_\_\_\_ of

\_\_\_\_\_ (insert address)

a creditor of **Forum Group Financial Services Pty Ltd (Provisional Liquidators Appointed)** appoint

\_\_\_\_\_ (insert name, address and description of the person appointed)

or in his or her absence

\_\_\_\_\_ (insert name, address and description of the person appointed)

as my/our (choose one):

general proxy

special proxy

to vote at the meeting of creditors to be held on Friday, 22 October 2021 at 2.00 PM (AEDT) or at any adjournment of that meeting.

Resolution (only complete where appointing a special proxy)	For	Against	Abstain
<b>Provisional Liquidators' remuneration</b>			
1 That the remuneration of the Provisional Liquidators for the period from 15 July 2021 to 19 September 2021, calculated at hourly rates as detailed in the Remuneration Approval Report dated 8 October 2021, is determined in the sum of \$2,848,126, exclusive of GST.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Former Voluntary Administrators' remuneration (Mackay Goodwin)</b>			
2 That the remuneration of the Administrators, their partners and staff from 8 July 2021 to 15 July 2021 be approved up to a maximum amount of \$12,345.49 plus GST, calculated in accordance with the Mackay Goodwin hourly rates as detailed in the Initial Report to Creditors dated 12 July 2021 and that the Administrators be authorised to draw the remuneration as required.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Appointment of Committee of Inspection**

3 That a Committee of Inspection be formed and the members of which are to be determined at the meeting.

---

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2021

Name \_\_\_\_\_

Signature \_\_\_\_\_

Select which of the below applies (choose one):

The creditor is a company and I am signing as a director of the company

The creditor is a partnership and I am signing as a partner of the partnership

The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company

I am signing in my personal capacity as a member or contributory of Forum Group Financial Services Pty Ltd

I am an individual and I am signing in my personal capacity (which includes employees)

Other: \_\_\_\_\_

The creditor is a sole trader and I am signing as the proprietor

**Proxy forms should be completed and returned by no later than 4.00PM (AEDT) on Thursday, 21 October 2021.**

RETURN TO: **Forum Group Financial Services Pty Ltd (Provisional Liquidators Appointed)**

of care of McGrathNicol

Email: [forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com)

Address: GPO Box 9986, Sydney NSW 2001

Phone: +61 2 9338 2600

Fax: +61 2 9338 2699

PROXY FORM

Forum Finance Pty Limited (In Liquidation) (Receivers Appointed)

ACN: 153 301 172

APPOINTMENT OF PROXY

I/We (if a firm, strike out "I" and set out the full name of the firm) \_\_\_\_\_ of

\_\_\_\_\_ (insert address)

a creditor of **Forum Finance Pty Limited (In Liquidation) (Receivers Appointed)** appoint

\_\_\_\_\_ (insert name, address and description of the person appointed)

or in his or her absence

\_\_\_\_\_ (insert name, address and description of the person appointed)

as my/our (choose one):

general proxy

special proxy

to vote at the meeting of creditors to be held on Friday, 22 October 2021 at 2.00 PM (AEDT) or at any adjournment of that meeting.

Resolution (only complete where appointing a special proxy)	For	Against	Abstain
<b>Liquidators' remuneration</b> That the remuneration of the Liquidators for the period from 9 July 2021 to 1 19 September 2021, calculated at hourly rates as detailed in the Initial Remuneration Notice dated 6 August 2021, is determined in the sum of \$511,930.00, exclusive of GST.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Appointment of Committee of Inspection</b> 2 That a Committee of Inspection be formed and the members of which are to be determined at the meeting.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Liquidators' ability to compromise debts</b> That so far as necessary for the beneficial winding up of Forum Finance Pty 3 Limited, the Liquidators are hereby authorised pursuant to subsections 506(1A), 477(2A) and 477(2B) of the Corporations Act 2001 to compromise any debts greater than the prescribed amount.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

---

**Liquidators' ability to enter into agreements**

That so far as necessary for the beneficial winding up of Forum Finance Pty

- 4 Limited, the Liquidators are hereby authorised to enter any agreements on behalf of Forum Finance Pty Limited involving a term or obligations extending for more than three months.

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DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2021

Name \_\_\_\_\_

Signature \_\_\_\_\_

Select which of the below applies (choose one):

The creditor is a company and I am signing as a director of the company

The creditor is a partnership and I am signing as a partner of the partnership

The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company

I am signing in my personal capacity as a member or contributory of Forum Finance Pty Limited

I am an individual and I am signing in my personal capacity (which includes employees)

Other: \_\_\_\_\_

The creditor is a sole trader and I am signing as the proprietor

**Proxy forms should be completed and returned by no later than 4.00PM (AEDT) on Thursday, 21 October 2021.**

RETURN TO: **Forum Finance Pty Limited (In Liquidation) (Receivers Appointed)**  
of care of McGrathNicol  
Email: [forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com)  
Address: GPO Box 9986, Sydney NSW 2001  
Phone: +61 2 9338 2600  
Fax: +61 2 9338 2699

**Proxy  
Guidance Notes**

- Insert full name and address of creditor, contributory or member on the top line.
- On the second line, insert the address of the creditor, contributory or member.
- On the next line insert the name of the person you appoint as your proxy. You may insert "the Chairperson of the meeting" if you wish.
- You may appoint an alternate proxy on the fourth line who may act if your first appointed proxy cannot attend the meeting. You may insert "the Chairperson of the meeting" if you wish.
- Make sure you select whether the proxy is a general or special proxy.
- A general proxy is where you leave it to the proxy to decide how to vote on each of the resolutions put before the meeting.
- A special proxy is where you specify how the proxy is to vote on each resolution and the proxy must vote in accordance with that instruction.
- If the proxy is a special proxy, the form must include details of each resolution and whether the proxy holder is to cast their vote in favour or against each resolution or abstain from voting.
- Date and sign the Proxy form, indicating in which capacity you are signing the form. The person signing must be authorised to do so.

**Forum Finance Pty Limited (In Liquidation) (Receivers Appointed)**  
**ACN 153 301 172**  
**Forum Group Financial Services Pty Ltd (Provisional Liquidators Appointed)**  
**ACN 623 033 705**  
**(collectively, the Companies)**

**General Information for Attending and Voting at Meetings of Creditors**

**Time and Place of Meeting**

Pursuant to *Insolvency Practice Rules (Corporations) (IPR) 75-30*, a meeting of creditors must be convened at the time and place the Chairperson believes are convenient for the majority of creditors entitled to receive notice of the meeting.

**Virtual Meeting**

The meeting will be held virtually using online video conferencing. There will be no in person meeting held for the companies.

**Quorum**

Pursuant to IPR 75-105, unless a quorum is present, a meeting must not act for any purpose other than:

- the election of a chairperson; and
- the proving of debts; and
- the adjournment of the meeting.

A quorum is present if two (2) or more persons are entitled to vote and at least two (2) persons are present at the meeting in person, by proxy or by power of attorney.

A quorum is present if only one (1) person is entitled to vote and that person is present at the meeting in person, by proxy or by power of attorney.

A person who participates in the meeting using electronic facilities is taken to be present in person at the meeting.

A meeting is sufficiently constituted if only one (1) person is present in person, if the person represents personally or by proxy or otherwise a number of persons sufficient to constitute a quorum.

**Chairperson**

Pursuant to IPR 75-50, the external administrator is appointed Chairperson of the meeting. Alternatively, pursuant to IPR 75-50 and IPR 75-152 the external administrator may appoint someone else to act as chairperson of the meeting and authorise that person to use any proxies held by the external administrator on the external administrator's behalf.

**Voting**

Pursuant to IPR 75-85, creditors will not be eligible to vote at the meeting unless they have lodged particulars of their debt or claim prior to or at the meeting.

Accordingly, creditors who intend to vote at the meeting should ensure that they lodge a formal proof of debt with the external administrator prior to or at the meeting.

For meetings held virtually, voting must be decided by way of a poll. In this regard, please note the meeting may be adjourned by the chairperson for a short time should time be required to consider votes for each of the proposed resolutions.



Pursuant to IPR 75-115:

- a resolution is passed if a majority in number and a majority in value vote in favour of the resolution; and
- a resolution is not passed if a majority in number and a majority in value vote against the proposed resolution.

In the event of a deadlock, the chairperson may exercise a casting vote. In such situations, the minutes of the meeting must specify the chairperson's reasons for exercising, or not exercising, their casting vote.

### **Proxies**

Pursuant to IPR 75-150, a person entitled to vote at a meeting may, in writing, appoint an individual as their proxy to attend and vote at the meeting on their behalf.

Accordingly, creditors who are unable to attend the meeting but who wish to be represented should ensure that a validly executed proxy form is lodged with the external administrator prior to the meeting.

### **Corporate Creditors**

Corporate creditors who wish to attend the meeting should note that an individual may only represent them if the corporation validly grants that person a proxy or power of attorney.

### **Committee of Inspection**

Pursuant to IPR 80-5, a person may only serve as a member of a Committee of Inspection if the person is:

- a creditor of the company personally; or
- the attorney of a creditor under a general power of attorney; or
- authorised in writing by a creditor; or
- a representative of the Commonwealth if a FEG claim has been, or the Commonwealth considers a claim is likely to be, made in relation to unpaid employee entitlements.

Corporate creditors who are members of a Committee of Inspection may be represented by an individual authorised in writing by the member to represent the member on the committee.

**Forum Finance Pty Limited (In Liquidation) (Receivers Appointed)**  
**ACN 153 301 172**  
**Forum Group Financial Services Pty Ltd (Provisional Liquidators Appointed)**  
**ACN 623 033 705**  
**(collectively, the Companies)**

**Tips for Attending Virtual Meetings**

1. **Arrive at least 30 minutes prior to the meeting.** To ensure the meeting can commence in accordance with the time specified on the agenda, please ensure you have logged into the virtual meeting at least 30 minutes prior to the meeting and familiarise yourself with the meeting software/functionality for voting.
2. **Please ensure you are on mute.** Background noise disrupts the meeting and might prevent creditors from hearing the information presented by the chairperson. Please choose a quiet location and use the mute button when you are not speaking.
3. **Questions for the chairperson.** Please, if possible, save your questions until the end of each segment. The chairperson will open the meeting for questions at the end of each segment.
4. **Identify yourself.** Before you start to speak, please state your name and company (if applicable).
5. **Speak slowly and clearly.** Please try not to talk over another speaker. Be considerate and try to speak one at a time so that the chairperson can follow your point in its entirety.

**Forum Group Financial Services Pty Ltd (Provisional Liquidators Appointed)  
Nomination Form for Membership of a Committee of Inspection**

**Requirements:** To be eligible for membership of a Committee of Inspection, a person must be: (i) a creditor of the company in liquidation; or (ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor; or (iii) a person authorised in writing by a creditor of the company to be a member; or (iv) a representative of the Commonwealth.

Company	Forum Group Financial Services Pty Ltd (Provisional Liquidators Appointed) <b>(FGFS)</b>
Name of Creditor	
Name of nominated representative (If creditor is a company)	
Position of nominated representative	
Organisation of nominated representative (if different to Creditor)	
Creditor / organisation address	
Estimated value of debt owed by FGFS (in AUD or AUD equivalent)	

Signature of Creditor (or authorised company rep)	
Position	
Date	

Signature of Nominee (if applicable)	
Position	
Date	

**Forum Finance Pty Limited (In Liquidation) (Receivers Appointed)  
Nomination Form for Membership of a Committee of Inspection**

**Requirements:** To be eligible for membership of a Committee of Inspection, a person must be: (i) a creditor of the company in liquidation; or (ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor; or (iii) a person authorised in writing by a creditor of the company to be a member; or (iv) a representative of the Commonwealth.

Company	Forum Finance Pty Limited (In Liquidation) (Receivers Appointed) ( <b>Forum Finance</b> )
Name of Creditor	
Name of nominated representative (If creditor is a company)	
Position of nominated representative	
Organisation of nominated representative (if different to Creditor)	
Creditor / organisation address	
Estimated value of debt owed by Forum Finance (in AUD or AUD equivalent)	

Signature of Creditor (or authorised company rep)	
Position	
Date	

Signature of Nominee (if applicable)	
Position	
Date	

# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

**A summary of offences under the Corporations Act that may be identified by the administrator:**

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
588G	Incurring liabilities while insolvent
588GAB	Officer's duty to prevent creditor-defeating disposition
588GAC	A person must not procure a company to make a creditor-defeating disposition
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.
596AB	Entering into an agreement or transaction to avoid employee entitlements.

### Recoverable Transactions

#### Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

#### Creditor-defeating disposition

Creditor-defeating dispositions are the transfer of company assets for less than market value (or the best price reasonably obtainable) that prevents, hinders or significantly delay creditors' access to the company's assets in liquidation. Creditor-defeating dispositions are voidable by a liquidator.

### **Uncommercial Transaction**

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to the benefit or detriment to the company; the respective benefits to other parties; and any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person or from members of a corporate group (Contribution Order).

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.

**Queries about the voluntary administration should be directed to the administrator's office.**



**NAB Business Everyday Account**

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



007/008878



FORUM ENVIRO (AUST) PTY LTD  
PO BOX 1344  
NORTH SYDNEY NSW 2059

**Account Balance Summary**

Opening balance	\$41,584.90	Cr
Total credits	\$13,703,437.00	
Total debits	\$13,270,372.00	
<b>Closing balance</b>	<b>\$474,649.90</b>	<b>Cr</b>

**Statement starts 1 October 2019**  
**Statement ends 31 December 2019**

**Outlet Details**

Pitt & Bathurst Streets  
292 Pitt St, Sydney NSW 2000

**Lending Investment & Insurance Enquiries**

Banker Saurabh Shukla  
Telephone number (02) 8267 2295

**Account Details**

FORUM ENVIRO (AUST) PTY LTD  
BUSINESS EVERYDAY AC  
BSB number 082-080  
Account number 82-508-1722

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
1 Oct 2019	Brought forward			41,584.90 Cr
1 Oct 2019	payment Forum Grp Fs		2,562,433.50	
	Internet Transfer Pymt-Id 146279583			
	loan to enviro	2,530,000.00		74,018.40 Cr
9 Oct 2019	Internet Transfer Pymt-Id 146756138			
	Loan To Fg	70,000.00		
	Internet Bpay PMT 000146785214			
	Asic	347.00		3,671.40 Cr
11 Oct 2019	Please Note From Today Your Dr Interest Rate Is 16.220%			3,671.40 Cr
28 Oct 2019	Fgfs Invoices Forum Grp Fs		663,586.00	
	Internet Transfer Pymt-Id 147907199			
	Loan to Fg	360,000.00		307,257.40 Cr
31 Oct 2019	Fgfs Invoices Forum Grp Fs		2,562,433.50	
	Internet Transfer Pymt-Id 148183295			
	Loan to Fg	400,000.00		
	Internet Transfer PMT 000148120264			
	Urm OPP0019953	33,275.00		
	Internet Transfer PMT 000148119726			
	CP15	620,400.00		1,816,015.90 Cr
1 Nov 2019	Internet Transfer Pymt-Id 148236770			
	loan to enviro	1,800,000.00		16,015.90 Cr
28 Nov 2019	Fgfs Invoices Forum Grp Fs		663,586.00	679,601.90 Cr
29 Nov 2019	Fgfs 610380 Forum Gr P Fs		133,980.00	
	Fgfs Invoices Forum Grp Fs		2,955,353.50	
	Internet Transfer Pymt-Id 150044214			
	Loan to Enviro	110,000.00		
	Internet Transfer PMT 000149986332			
	Urm OPP0019953	33,275.00		
	Internet Transfer PMT 000149985610			
	CP16	620,400.00		3,005,260.40 Cr
2 Dec 2019	Fgfs 610384 386 Foru M Grp Fs		155,210.00	
	Fgfs Invoices Forum Grp Fs		289,190.00	
	Internet Transfer Pymt-Id 150115042			
	Carried forward			3,449,660.40 Cr

365/72/02/M008878/S01.41.27/028253

**Transaction Details (continued)**

Date	Particulars	Debits	Credits	Balance
	Brought forward			3,449,660.40 Cr
	Loan to Group	1,000,000.00		
	Internet Transfer Pymt-Id 150156225			
	loan to enviro	2,440,000.00		9,660.40 Cr
11 Dec 2019	Forun Grp Fs 610385 610387			
	Na		98,725.00	108,385.40 Cr
13 Dec 2019	Internet Transfer Pymt-Id 150959080			
	Loan to Fg	49,000.00		
	Internet Transfer Pymt-Id 150958780			
	Loan to Enviro	50,000.00		9,385.40 Cr
20 Dec 2019	Fgfs Invoices Forum Grp Fs		3,618,939.50	3,628,324.90 Cr
23 Dec 2019	Internet Transfer Pymt-Id 151574843			
	Loan to Enviro	2,500,000.00		1,128,324.90 Cr
31 Dec 2019	Internet Transfer PMT 000151520437			
	Urm OPP0019953	33,275.00		
	Internet Transfer PMT 000151519800			
	CP17	620,400.00		474,649.90 Cr

**Summary of Government Charges**

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00
Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.		
For further information on any applicable rebates, fees or government charges, please refer to the NAB's "A Guide to Fees & Charges" booklet. Please retain this statement for taxation purposes		

**Explanatory Notes**

*Please check all entries and report any apparent error or possible unauthorised transaction immediately.*  
*We may subsequently adjust debits and credits, which may result in a change to your account balance to accurately reflect the obligations between us.*  
*For information on resolving problems or disputes, contact us on 1800 152 015, or ask at any NAB branch.*


365/72/02/M008878/501.4127/028254





**NAB Business Everyday Account**  
For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



007/004296  
  
FORUM ENVIRO (AUST) PTY LTD  
PO BOX 1344  
NORTH SYDNEY NSW 2059

**Account Balance Summary**

Opening balance	\$474,649.90	Cr
Total credits	\$0.00	
Total debits	\$330,000.00	
<b>Closing balance</b>	<b>\$144,649.90</b>	<b>Cr</b>

**Statement starts 1 January 2020**  
**Statement ends 20 January 2020**

**Outlet Details**

Pitt & Bathurst Streets  
292 Pitt St, Sydney NSW 2000

**Lending Investment & Insurance Enquiries**

Banker Saurabh Shukla  
Telephone number (02) 8267 2295

**Account Details**

FORUM ENVIRO (AUST) PTY LTD  
BUSINESS EVERYDAY AC  
BSB number 082-080  
Account number 82-508-1722

**For Your Information**

*Be on the lookout for invoice scams. Fraudsters can change bank account details on a legitimate supplier's invoice to an account they control, or make a request by phone/email to update bank account details for a supplier or employee. Always verbally confirm any changes to payment details using a publicly listed phone number before actioning. Learn how to recognise scams and protect your business by visiting [nab.com.au/security](http://nab.com.au/security)*

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
1 Jan 2020	Brought forward			474,649.90 Cr
17 Jan 2020	Internet Transfer Pymt-Id 152848859			
	Loan to Enviro.....	30,000.00		
	Internet Transfer Pymt-Id 152832046			
	Loan To Fg.....	300,000.00		144,649.90 Cr

**Summary of Government Charges**

Government	From 1 July to date	Last year to 30 June
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00

Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.

For further information on any applicable rebates, fees or government charges, please refer to the NAB's "A Guide to Fees & Charges" booklet. Please retain this statement for taxation purposes

**Explanatory Notes**

*Please check all entries and report any apparent error or possible unauthorised transaction immediately. We may subsequently adjust debits and credits, which may result in a change to your account balance to accurately reflect the obligations between us.*

*For information on resolving problems or disputes, contact us on 1800 152 015, or ask at any NAB branch.*

020/72/02/M004296/S00471-4/0009427



**NAB Business Everyday Account**

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



A 2-080  
FORUM ENVIRO PTY LIMITED  
PO BOX 1344  
NORTH SYDNEY NSW 2059

**Account Balance Summary**

Opening balance	\$8,875.26	Cr
Total credits	\$18,010,585.23	
Total debits	\$14,578,594.91	
<b>Closing balance</b>	<b>\$3,440,865.58</b>	<b>Cr</b>

**Statement starts 1 October 2019**  
**Statement ends 31 December 2019**

**Outlet Details**

Pitt & Bathurst Streets  
292 Pitt St, Sydney NSW 2000

**Lending Investment & Insurance Enquiries**

Banker Saurabh Shukla  
Telephone number (02) 8267 2295

**Account Details**

FORUM ENVIRO PTY LTD  
BUSINESS EVERYDAY AC  
BSB number 082-080  
Account number 84-548-0595

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
1 Oct 2019	Brought forward			8,875.26 Cr
1 Oct 2019	loan from enviroau F Orum Enviro.....		2,530,000.00	
	Internet Transfer Pymt-Id 146264086			
	Bho Orca.....	488,030.00		
	Internet Transfer Pymt-Id 146263950			
	Bho Orca.....	1,703,650.00		347,195.26 Cr
2 Oct 2019	Loan From Fg Forum N SW .....		140,000.00	
	Internet Transfer Pymt-Id 146391005			
	cp1217.....	700.00		
	Internet Transfer Pymt-Id 146344092			
	Uropa Proforma .....	21,867.80		
	Internet Transfer Pymt-Id 146391295			
	cp1217.....	34,870.00		
	Internet Transfer Pymt-Id 146343336			
	cp1217.....	37,166.66		
	Internet Transfer Pymt-Id 146338879			
	CP1217.....	45,691.14		
	TT30Y9433077 Payment-Id 146264239			
	NZ Bho Orca.....	317,663.23		29,236.43 Cr
3 Oct 2019	Loan From Fg Forum N SW .....		40,000.00	
	Internet Transfer Pymt-Id 146482102			
	cp1218.....	387.81		
	Internet Transfer Pymt-Id 146441671			
	cp1218.....	34,870.00		33,978.62 Cr
4 Oct 2019	Loan From Fg Forum N SW .....		90,000.00	
	Internet Transfer Pymt-Id 146564223			
	cp1219.....	5,580.00		
	Internet Bpay PMT 000146564633			
	Asic.....	347.00		
	Payroll 04.10.19 Pmt 000146569596			
	448996.....	83,376.69		34,674.93 Cr
8 Oct 2019	Internet Transfer Pymt-Id 146703841			
	Uropa Freight VIC.....	107.21		
	Carried forward			34,567.72 Cr

365/04/01/M063253/5085482/1170963

**Transaction Details (continued)**

Date	Particulars	Debits	Credits	Balance
	Brought forward			34,567.72 Cr
	Internet Transfer Pymt-Id 146703265			
	cp1220.....	4,797.01		
	13152427 Toyota Finance			
	009090.....	1,013.08		28,757.63 Cr
9 Oct 2019	Loan from Iugis Foru M Grp Fs.....		150,000.00	
	Veolia CII588 Forum NSW.....		910,000.00	
	Internet Transfer Pymt-Id 146756740			
	WI SEP19 Rental.....	10,921.90		
	Internet Transfer Pymt-Id 146782309			
	Pay for iugis.....	19,063.55		
	Internet Transfer Pymt-Id 146791249			
	cp1221.....	107,470.00		
	Internet Transfer Rb CC Top up			
	Forum Enviro.....	3,730.10		
	RTA2537449623 Rms Etoll PH:131			
	216825.....	320.00		
	Invoice 9091794A Australian Payro			
	516661.....	1,188.61		
	p.vu/cc/05518522 Clicksuper			
	450748.....	15,613.03		930,450.44 Cr
10 Oct 2019	Internet Transfer Pymt-Id 146871796			
	cp1222.....	213.08		
	Internet Transfer Pymt-Id 146880675			
	Loan to Fg.....	40,000.00		
	Internet Transfer Pymt-Id 146880884			
	Loan to Imagetec.....	120,000.00		770,237.36 Cr
11 Oct 2019	Please Note From Today Your Dr Interest Rate Is 16.220%			
	Internet Transfer Pymt-Id 146916835			
	Loan to Fgoc.....	5,000.00		
	Internet Transfer Pymt-Id 146941195			
	cp1223.....	33,290.43		
	Internet Transfer Pymt-Id 146965767			
	Loan to Imagetec.....	50,000.00		
	Internet Transfer Pymt-Id 146965595			
	Loan to Fg.....	500,000.00		
	4336879704378607 NAB Card Autopay			
	006701.....	2,468.44		179,478.49 Cr
14 Oct 2019	0602032715 14/10 Caltex Clearing			
	001518.....	4,365.40		175,113.09 Cr
15 Oct 2019	Loan From Fg Forum N SW.....		1,020,000.00	
	Payment Incognitus Pty L			
	532656.....		13,530.00	
	Internet Transfer Pymt-Id 147110705			
	CP1226.....	1,162.07		
	Internet Transfer Pymt-Id 147090609			
	Bho Rental No GST.....	309,294.00		
	Internet Transfer Pymt-Id 147090515			
	Bho Rental no gst.....	711,035.00		187,152.02 Cr
16 Oct 2019	Internet Transfer Pymt-Id 147179523			
	CP1227.....	372.64		
	Internet Transfer Pymt-Id 147225188			
	Transcal 61732.....	412.50		186,366.88 Cr
17 Oct 2019	Internet Transfer Pymt-Id 147292004			
	Brooke Exp Claimx2.....	193.20		
	RTA2544046938 Rms Etoll PH:131			
	216825.....	320.00		185,853.68 Cr
18 Oct 2019	Cabra Leagues Cabramatta Rugby			
	301500.....		715.00	
	Payroll 18.10.19 Pmt 000147394569			
	448996.....	79,205.81		107,362.87 Cr
21 Oct 2019	Lsctar- Ls Catering Pty			
	417470.....		1,155.00	
	Internet Transfer Pymt-Id 147442143			
	Carried forward			108,517.87 Cr

365/34/01/M063253/8085482/1170964

NAB Business Everyday Account

Account Details

FORUM ENVIRO PTY LTD BUSINESS EVERYDAY AC	BSB Number 082-080	Account Number 84-548-0595
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Transaction Details (continued)

Date	Particulars	Debits	Credits	Balance																								
	Brought forward			108,517.87 Cr																								
	CP1230.....	630.09																										
	13156353 Toyota Finance																											
	009090.....	957.46		106,930.32 Cr																								
22 Oct 2019	Internet Transfer Pymt-Id 147542353																											
	CP1232.....	570.49																										
	Internet Transfer Pymt-Id 147519982																											
	CP1231.....	47,922.78		58,437.05 Cr																								
23 Oct 2019	Internet Transfer Pymt-Id 147593259																											
	CP1233.....	4,696.20		53,740.85 Cr																								
24 Oct 2019	Internet Transfer Pymt-Id 147674133																											
	CP1234.....	38,778.43		14,962.42 Cr																								
28 Oct 2019	Loan From Fg Forum N SW .....		30,000.00																									
	Internet Transfer Pymt-Id 147903944																											
	cp1236.....	32,830.27																										
	RTA2551893113 Rms Etoll PH:131																											
	216825.....	320.00																										
	433000223141 Ha AEEH6HFC40010																											
	406224.....	4,506.38		7,305.77 Cr																								
29 Oct 2019	Loan From Fg Forum N SW .....		100,000.00																									
	Internet Transfer Pymt-Id 147965976																											
	cp1237.....	324.64																										
	Internet Bpay PMT 000147963661																											
	Tax Office Payments.....	89,085.00		17,896.13 Cr																								
30 Oct 2019	P0397 Remondis Austral																											
	429204.....		8,602.00																									
	13149032 Toyota Finance																											
	009090.....	958.20																										
	13149034 Toyota Finance																											
	009090.....	1,023.18																										
	13149039 Toyota Finance																											
	009090.....	1,058.26		23,458.49 Cr																								
31 Oct 2019	<table border="1"> <thead> <tr> <th>TRANSACTION SUMMARY</th> <th>QUANTITY</th> <th>U/COST</th> <th>FEE</th> </tr> </thead> <tbody> <tr> <td>Electronic Deposit</td> <td>13</td> <td>\$0.00</td> <td>\$0.00</td> </tr> <tr> <td>Electronic Withdrawal</td> <td>18</td> <td>\$0.00</td> <td>\$0.00</td> </tr> <tr> <td><b>Transaction Fees</b></td> <td></td> <td></td> <td><b>\$0.00</b></td> </tr> <tr> <td><b>Flat Monthly Fee</b></td> <td></td> <td></td> <td><b>\$10.00</b></td> </tr> <tr> <td><b>Total Fees Charged</b></td> <td></td> <td></td> <td><b>\$10.00</b></td> </tr> </tbody> </table>				TRANSACTION SUMMARY	QUANTITY	U/COST	FEE	Electronic Deposit	13	\$0.00	\$0.00	Electronic Withdrawal	18	\$0.00	\$0.00	<b>Transaction Fees</b>			<b>\$0.00</b>	<b>Flat Monthly Fee</b>			<b>\$10.00</b>	<b>Total Fees Charged</b>			<b>\$10.00</b>
TRANSACTION SUMMARY	QUANTITY	U/COST	FEE																									
Electronic Deposit	13	\$0.00	\$0.00																									
Electronic Withdrawal	18	\$0.00	\$0.00																									
<b>Transaction Fees</b>			<b>\$0.00</b>																									
<b>Flat Monthly Fee</b>			<b>\$10.00</b>																									
<b>Total Fees Charged</b>			<b>\$10.00</b>																									
	Account Fees .....	10.00		23,448.49 Cr																								
1 Nov 2019	Loan from Imagetec I Magetec.....		60,000.00																									
	Loan From Fg Forum N SW .....		1,000,000.00																									
	loan from enviro a F Orum Enviro.....		1,800,000.00																									
	Internet Transfer Pymt-Id 148259289																											
	CP1244.....	1,580.00																										
	Internet Transfer Pymt-Id 148246301																											
	cp1244.....	1,929.50																										
	Internet Transfer Pymt-Id 148237118																											
	Bho Rent No GST.....	728,874.00																										
	Internet Transfer Pymt-Id 148237031																											
	Bho Rental No GST.....	1,703,650.00																										
	TT30Y9593033 Payment-Id 148237244																											
	NZ Bho Rent.....	341,041.69																										
	Carried forward			106,373.30 Cr																								

36573401/0663253/5985483/1170965

**Transaction Details (continued)**

Date	Particulars	Debits	Credits	Balance
	Brought forward			106,373.30 Cr
	Payroll 01.11.19 Pmt 000148260001 448996.....	95,399.63		10,973.67 Cr
4 Nov 2019	Loan From Fg Forum N SW .....		70,000.00	
	Internet Transfer Pymt-Id 148380114 CP1245.....	15,166.66		65,807.01 Cr
5 Nov 2019	RTA2558305754 Rms Etoll PH:131 216825.....	320.00		65,487.01 Cr
7 Nov 2019	Internet Transfer Pymt-Id 148633055 CP1246.....	35,467.78		
	Internet Transfer Rb CC Top up Forum Enviro .....	3,000.00		
	Invoice 9101794A Australian Payro 516661 .....	713.25		
	p.vu/cc/05549962 Clicksuper 450748.....	19,764.77		6,541.21 Cr
8 Nov 2019	Loan From Fg Forum N SW .....		100,000.00	
	Internet Transfer Pymt-Id 148717484 Australian Pump.....	1,339.14		
	Internet Transfer Pymt-Id 148717034 cp1247 .....	63,120.23		
	13152427 Toyota Finance 009090.....	1,013.08		41,068.76 Cr
11 Nov 2019	4336879704378607 NAB Card Autopay 006701.....	2,614.99		38,453.77 Cr
12 Nov 2019	Internet Transfer Rb CC Top up Forum Enviro.....	2,000.00		36,453.77 Cr
14 Nov 2019	Internet Transfer Pymt-Id 149051833 CP1249.....	250.00		
	Internet Transfer Pymt-Id 149053112 CP1249.....	340.00		
	Internet Transfer Pymt-Id 149060917 cp1249.....	2,323.16		
	Internet Transfer Pymt-Id 149049290 cp1249.....	5,000.00		
	Internet Transfer Pymt-Id 149039492 Enviro Rental Oct .....	10,921.90		
	0602032715 14/11 Caltex Clearing 001518.....	5,040.84		12,577.87 Cr
15 Nov 2019	Iugis Loan Forum Grp Fs .....		400,000.00	
	loan from Fg Forum N SW .....		1,020,000.00	
	Park Hyatt Melbour Park Hyatt Melbo 470598.....		418.00	
	Internet Transfer Pymt-Id 149124639 CP1250.....	350.00		
	Internet Transfer Pymt-Id 149150560 cp1251.....	187,581.29		
	Internet Transfer Pymt-Id 149093815 Bho Rent No GST.....	309,294.00		
	Internet Transfer Pymt-Id 149093745 bho rent no gst.....	711,035.00		
	TT30Y9669718 Payment-Id 149152537 Tg Digesters CAN .....	47,619.95		
	RTA2566860694 Rms Etoll PH:131 216825.....	320.00		
	Payroll 15.11.19 Pmt 000149147058 448996.....	97,260.63		79,535.00 Cr
18 Nov 2019	Internet Transfer Pymt-Id 149244511 cp1252.....	20,001.83		59,533.17 Cr
19 Nov 2019	Authorised Transfer From 9555 .....		2,208.00	
	TT30Y9685312 Payment-Id 149324583 Tg Digesters .....	5,204.23		56,536.94 Cr
20 Nov 2019	Loan from Fg Forum N SW .....		20,000.00	
	Internet Transfer Pymt-Id 149358823 Carried forward			76,536.94 Cr

365/34/01/M063253/5085483/1170966

NAB Business Everyday Account

Account Details

FORUM ENVIRO PTY LTD BUSINESS EVERYDAY AC	BSB Number 082-080	Account Number 84-548-0595
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Transaction Details (continued)

Date	Particulars	Debits	Credits	Balance
	Brought forward			76,536.94 Cr
	CP1254.....	745.85		
	Internet Transfer Pymt-Id 149405506			
	CP1254.....	1,760.00		
	Internet Transfer Pymt-Id 149408987			
	CP1254.....	8,000.00		
	Internet Transfer Pymt-Id 149381114			
	cp1254.....	48,633.72		
	Internet Transfer Rb CC Top up			
	Forum Enviro.....	1,000.00		16,397.37 Cr
21 Nov 2019	Internet Transfer Pymt-Id 149489905			
	cp1255.....	449.28		
	RTA2571375916 Rms Etoll PH:131			
	216825.....	320.00		
	13156353 Toyota Finance			
	009090.....	957.46		14,670.63 Cr
22 Nov 2019	Loan from Fg Forum N SW.....		10,000.00	
	Internet Transfer Pymt-Id 149550229			
	CP1256.....	365.94		
	Internet Transfer Pymt-Id 149539111			
	cp1256.....	2,000.00		
	Internet Transfer Pymt-Id 149589340			
	CP1256.....	14,400.00		7,904.69 Cr
25 Nov 2019	Nisbets Refund Nisbets Australi			
	301500.....		738.85	
	Internet Transfer Rb CC Top Up			
	Forum Enviro.....	2,000.00		6,643.54 Cr
26 Nov 2019	Loan from Fg Forum N SW.....		50,000.00	
	Internet Transfer Pymt-Id 149758134			
	CP1257.....	49,415.59		7,227.95 Cr
27 Nov 2019	Internet Transfer Rb CC Top Up			
	Forum Enviro.....	1,000.00		
	Internet Transfer Rb CC Top Up			
	Forum Enviro.....	3,000.00		
	RTA2575723881 Rms Etoll PH:131			
	216825.....	320.00		2,907.95 Cr
28 Nov 2019	Loan from Fg Forum N SW.....		60,000.00	
	Internet Transfer Pymt-Id 149933228			
	cp1260.....	525.26		
	Internet Transfer Pymt-Id 149947508			
	cp1261.....	42,291.35		20,091.34 Cr
29 Nov 2019	TRANSACTION SUMMARY	QUANTITY	U/COST	FEE
	Banker Assisted Deposit	1	\$0.00	\$0.00
	Electronic Deposit	12	\$0.00	\$0.00
	Electronic Withdrawal	16	\$0.00	\$0.00
	<b>Transaction Fees</b>			<b>\$0.00</b>
	<b>Flat Monthly Fee</b>			<b>\$10.00</b>
	<b>Total Fees Charged</b>			<b>\$10.00</b>
	Loan from Enviro A F Orum Enviro.....			110,000.00
	TT30Y9741672 Payment-Id 149948861			
	Eu Automation.....	11,284.66		
	Account Fees.....	10.00		
	Carried forward			118,796.68 Cr

365/31/01/M063253/S085484/1170967

**Transaction Details (continued)**

Date	Particulars	Debits	Credits	Balance
	Brought forward			118,796.68 Cr
	Payroll 29.11.19 Pmt 000150051259 448996	104,250.26		14,546.42 Cr
2 Dec 2019	Loan From Fg Forum N SW		200,000.00	
	loan from enviro a F Orum Enviro		2,440,000.00	
	Internet Transfer Pymt-Id 150157060 Bho Orca No GST	921,624.00		
	Internet Transfer Pymt-Id 150156950 Bho Orca No GST	1,703,650.00		
	13149032 Toyota Finance 009090	958.20		
	13149034 Toyota Finance 009090	1,023.18		
	13149039 Toyota Finance 009090	1,058.26		26,232.78 Cr
3 Dec 2019	Loan from Fg Forum N SW		370,000.00	
	P0397 Remondis Austral 429204		8,602.00	
	TT30Y9757470 Payment-Id 150157287 DEC19	383,129.95		21,704.83 Cr
4 Dec 2019	Internet Transfer Pymt-Id 150297641 CP1265	15,166.66		
	RTA2581696030 Rms Etoll PH:131 216825	320.00		6,218.17 Cr
5 Dec 2019	Loan from Fg Forum N SW		20,000.00	
	Internet Transfer Pymt-Id 150399499 CP1266	10,715.74		
	TT30Y9773793 Payment-Id 150400238 Motiv	979.50		
	TT30Y9773797 Payment-Id 150399924 Culture AMP 8504	4,700.00		9,822.93 Cr
6 Dec 2019	Loan from Fg Forum N SW		50,000.00	
	Loan from Fg Forum N SW		95,000.00	
	See Payment Advice Veolia Enviro Se 158824		8,800.00	
	Internet Transfer Pymt-Id 150527066 McNaughtans 621536	2,670.29		
	Internet Transfer Pymt-Id 150507078 CP1269	34,678.45		
	Internet Transfer Pymt-Id 150504263 CP1268	61,070.18		65,204.01 Cr
9 Dec 2019	Loan from Fg Forum N SW		65,000.00	
	Internet Bpay PMT 000150637014 Tax Office Payments	64,683.13		
	13152427 Toyota Finance 009090	1,013.08		
	p.vu/cc/05579999 Clicksuper 450748	40,760.85		23,746.95 Cr
10 Dec 2019	Internet Transfer Rb CC Top Up Forum Enviro	1,000.00		
	Internet Transfer Rb CC Top Up Forum Enviro	2,487.00		
	RTA2586173076 Rms Etoll PH:131 216825	320.00		19,939.95 Cr
11 Dec 2019	Internet Transfer Pymt-Id 150798272 CP1272	7,315.39		
	Internet Transfer Pymt-Id 150801214 CP1273	10,921.90		1,702.66 Cr
12 Dec 2019	Loan from Fg Forum N SW		200,000.00	
	Internet Transfer Pymt-Id 150839125 CP1274	82,342.07		
	Internet Transfer Rb CC Top Up Forum Enviro	4,300.00		
	4336879704378607 NAB Card Autopay Carried forward			115,060.59 Cr

365/14/01/M06133/5085484/11/70968

## NAB Business Everyday Account

### Account Details

FORUM ENVIRO PTY LTD BUSINESS EVERYDAY AC	BSB Number 082-080	Account Number 84-548-0595
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### Transaction Details (continued)

Date	Particulars	Debits	Credits	Balance
	Brought forward			115,060.59 Cr
	006701 .....	21.63		
	Invoice 9111794A Australian Payro 516661 .....	844.09		114,194.87 Cr
13 Dec 2019	Loan from Enviro A F Orum Enviro.....		50,000.00	
	Internet Transfer Pymt-Id 150985237			
	Mgmt 14/11-14/12 .....	9,000.00		
	Payroll 13.12.19 Pmt 000150983842			
	448996 .....	122,040.99		33,153.88 Cr
16 Dec 2019	Lunmil Forum NSW.....		220.00	
	Loan From Fg Forum N SW .....		1,165,000.00	
	Internet Transfer Pymt-Id 151090800			
	Gadalla 130849.....	960.00		
	Internet Transfer Pymt-Id 151091057			
	Danstruct 281119.....	3,780.00		
	Internet Transfer Pymt-Id 151111758			
	Bho Rent.....	452,094.00		
	Internet Transfer Pymt-Id 151111689			
	Bho Rent.....	711,035.00		
	RTA2590888591 Rms Etoll PH:131			
	216825 .....	320.00		
	0602032715 16/12 Caltex Clearing			
	001518 .....	3,779.49		26,405.39 Cr
17 Dec 2019	Loan From Fg Forum N SW .....		27,000.00	
	Alh Group Alh Gp Ltd			
	250305 .....		11,880.00	
	Remysd Remondis Austral			
	429204 .....		16,214.00	
	TT30Y9836413 Payment-Id 151131314			
	Bho NZ.....	25,760.25		55,739.14 Cr
18 Dec 2019	Internet Transfer Pymt-Id 151239849			
	CPI280.....	4,045.08		51,694.06 Cr
19 Dec 2019	Internet Transfer Pymt-Id 151377287			
	Global Green 1117 .....	6,160.00		
	Internet Transfer Pymt-Id 151363748			
	CPI281.....	10,079.85		
	TT30Y9854127 Payment-Id 151362773			
	Motiv.....	466.79		34,987.42 Cr
20 Dec 2019	Loan from Fgfs Forum Grp Fs.....		300,000.00	
	A/C Id Illhur 6113 Illawarra Cathol			
	301500 .....		418.00	
	Internet Transfer Pymt-Id 151552619			
	CPI283.....	12,438.09		322,967.33 Cr
23 Dec 2019	Loan from Enviro A F Orum Enviro.....		2,500,000.00	
	RTA2596165882 Rms Etoll PH:131			
	216825 .....	320.00		
	13156353 Toyota Finance			
	009090 .....	957.46		2,821,689.87 Cr
24 Dec 2019	2039/867705 Orca ENV Ironmental Solutions			
	Dmcc /Ref/Payment.....		192,537.26	
	2039/867706 Orca ENV Ironmental Solutions			
	Dmcc /Ref/Payment.....		192,537.26	
	2039/867704 Orca ENV Ironmental Solutions			
	Carried forward			3,206,764.39 Cr



## Transaction Details (continued)

Date	Particulars	Debits	Credits	Balance
	Brought forward			3,206,764.39 Cr
	Dmcc /Ref/Payment.....		192,537.26	
	Alh Group Alh Gp Ltd			
	250305.....		8,250.00	
	Remsyd Remondis Austral			
	429204.....		29,414.00	3,436,965.65 Cr
27 Dec 2019	Payroll 27.12.19 Pmt 000151588065			
	448996.....	122,859.03		3,314,106.62 Cr
30 Dec 2019	2039/868248 Orca ENV Ironmental Solutions			
	Dmcc /Ref/Payment.....		127,828.60	
	13149032 Toyota Finance			
	009090.....	958.20		
	13149034 Toyota Finance			
	009090.....	1,023.18		
	13149039 Toyota Finance			
	009090.....	1,058.26		3,438,895.58 Cr
31 Dec 2019	<b>TRANSACTION SUMMARY</b>	<b>QUANTITY</b>	<b>U/COST</b>	<b>FEE</b>
	Electronic Deposit	26	\$0.00	\$0.00
	Electronic Withdrawal	19	\$0.00	\$0.00
	<b>Transaction Fees</b>			<b>\$0.00</b>
	<b>Flat Monthly Fee</b>			<b>\$10.00</b>
	<b>Total Fees Charged</b>			<b>\$10.00</b>
	Alh Group Alh Gp Ltd			
	250305.....			1,980.00
	Account Fees.....	10.00		3,440,865.58 Cr

## Summary of Government Charges

Government	From 1 July to date	Last year to 30 June
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00

Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.

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## Explanatory Notes

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### NAB Business Everyday Account

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



A 2-080  
FORUM ENVIRO PTY LIMITED  
PO BOX 1344  
NORTH SYDNEY NSW 2059

### Account Balance Summary

Opening balance	\$3,440,865.58	Cr
Total credits	\$1,194,425.51	
Total debits	\$4,610,162.27	
<b>Closing balance</b>	<b>\$25,128.82</b>	<b>Cr</b>

Statement starts 1 January 2020  
Statement ends 20 January 2020

### Outlet Details

Pitt & Bathurst Streets  
292 Pitt St, Sydney NSW 2000

### Lending Investment & Insurance Enquiries

Banker Saurabh Shukla  
Telephone number (02) 8267 2295

### Account Details

FORUM ENVIRO PTY LTD  
BUSINESS EVERYDAY AC  
BSB number 082-080  
Account number 84-548-0595

### For Your Information

*Be on the lookout for invoice scams. Fraudsters can change bank account details on a legitimate supplier's invoice to an account they control, or make a request by phone/email to update bank account details for a supplier or employee. Always verbally confirm any changes to payment details using a publicly listed phone number before actioning. Learn how to recognise scams and protect your business by visiting [nab.com.au/security](http://nab.com.au/security)*

### Transaction Details

Date	Particulars	Debits	Credits	Balance
1 Jan 2020	Brought forward			3,440,865.58 Cr
2 Jan 2020	Loan from Fgfs Forum Grp Fs.....		450,000.00	
	Internet Transfer Pymt-Id 151560263			
	Bho Rent.....	921,624.00		
	Internet Transfer Pymt-Id 151560058			
	Bho Rent.....	1,703,650.00		1,265,591.58 Cr
3 Jan 2020	TT3020005684 Payment-Id 151951728			
	Bho NZ.....	385,074.89		880,516.69 Cr
6 Jan 2020	Internet Transfer Pymt-Id 152118620			
	Loan to Iugis.....	2,000.00		
	Internet Transfer Pymt-Id 152084135			
	Kkp Bouch 1025.....	4,166.66		
	Internet Transfer Pymt-Id 152083997			
	Global Green 1118.....	11,000.00		
	RTA2604606839 Rms Etoll PH:131			
	216825.....	320.00		
	Invoice 9121794A Australian Payro			
	516661.....	1,160.75		861,869.28 Cr
7 Jan 2020	Internet Transfer Pymt-Id 152143538			
	Twocob.....	480.00		
	Internet Transfer Pymt-Id 152162126			
	CP1286.....	30,012.11		831,377.17 Cr
8 Jan 2020	Ref TT30Y9773797 Ref Culture AMP 8504			
	Oseas Fee AUD 18.00.....	18.00		
	13152427 Toyota Finance			
	Carried forward			831,359.17 Cr

020/3401/M013835/5019455/7038909

**Transaction Details (continued)**

Date	Particulars	Debits	Credits	Balance
	Brought forward			831,359.17 Cr
	009090.....	1,013.08		
	p.vu/cc/05607882 Clicksuper			
	450748.....	28,582.44		801,763.65 Cr
9 Jan 2020	ROYCRO-610630 Rmycph			
	131455.....		2,471.70	
	Internet Transfer Pymt-Id 152287642			
	Global Green 1119.....	22,000.00		782,235.35 Cr
10 Jan 2020	Internet Transfer Pymt-Id 152421762			
	CP1290.....	18,317.78		763,917.57 Cr
13 Jan 2020	Internet Transfer Pymt-Id 152496589			
	CP1291.....	23,916.53		
	RTA2608701705 Rms Etoll PH:131			
	216825.....	320.00		
	4336879704378607 NAB Card Autopay			
	006701.....	1,925.50		737,755.54 Cr
14 Jan 2020	Loan from Fgoc Fgoc.....		650,000.00	
	Alh Group Alh Gp Ltd			
	250305.....		2,970.00	
	Internet Transfer Pymt-Id 152554325			
	Payroll Taxvic Qld.....	4,145.17		
	Internet Transfer Pymt-Id 152538175			
	Salesforce15822172.....	30,597.93		
	TT3020056774 Payment-Id 152550173			
	Bho NZ JAN20.....	43,356.91		
	0602032715 14/01 Caltex Clearing			
	001518.....	4,232.05		1,308,393.48 Cr
15 Jan 2020	Internet Transfer Pymt-Id 152550439			
	Bho Rent.....	1,251,279.00		
	Internet Transfer Rb CC Top Up			
	Forum Enviro.....	1,500.00		55,614.48 Cr
16 Jan 2020	Loan from Fg Forum N SW.....		50,000.00	
	Internet Transfer Pymt-Id 152715658			
	CP1294.....	81,727.57		23,886.91 Cr
17 Jan 2020	Loan from Env Aust F Orum Enviro.....		30,000.00	
	Insurance House Insurance House			
	320439.....	678.81		
	Remsyd Remondis Austral			
	429204.....	8,305.00		
	Internet Transfer Pymt-Id 152807803			
	DEC19 Forum enviro.....	10,921.90		
	Internet Transfer Pymt-Id 152847543			
	Loan to Jugis.....	25,000.00		26,948.82 Cr
20 Jan 2020	Internet Transfer Rb CC Top Up			
	Forum Enviro.....	1,500.00		
	RTA2614324767 Rms Etoll PH:131			
	216825.....	320.00		25,128.82 Cr

**Summary of Government Charges**

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00
Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.		
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020/34/01/M013835/5019455/038910



### NAB Choice Package

#### Home Loan

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



007/001377  
5 BULKARA STREET UNIT TRUST  
5  
141 WALKER STREET  
NORTH SYDNEY NSW 2060

#### Account Balance Summary

Opening balance	\$0.00
Total credits	\$87,066.70
Total debits	\$3,736,514.78
<b>Closing balance</b>	<b>\$3,649,448.08 Dr</b>
<b>Statement starts 20 July 2020</b>	
<b>Statement ends 3 December 2020</b>	
<b>Available Redraw</b>	<b>\$0.00</b>

#### Outlet Details

Broker-Assets NSW  
Level 12, 105 Miller St  
North Sydney NSW 2060

#### Account Details

5 BULKARA STREET PTY LTD ATF 5 BULKARA STREET UNIT  
BSB number 082-062  
Account number 25-480-8114

#### Offset Account Details

BSB 082-062  
Account number 87-419-6374  
Interest saved this financial year \$15.03

#### Transaction Details

Date	Particulars	Debits	Credits	Balance
20 Jul 2020	Account Opened			0.00
21 Jul 2020	Loan Drawdown	3,679,511.01		
	Company Search Fee	40.00		
	Government Title Search Fee	9.79		
	Registration Fee-Mortgage	146.40		
	Discharge Of Mortgage Fee	146.40		
	Registration Fee-Removal Of Caveat	146.40		
22 Jul 2020	Please Note From 21 Jul 2020 Your Debit Int Rate Is 2.95% It's a condition of your loan that you maintain insurance on the mortgaged property at all times for at least the full replacement value of the property. Please confirm with your insurer that your policy adequately protects your property. For more information on property insurance go to <a href="http://www.moneysmart.gov.au">www.moneysmart.gov.au</a> As From 21 Jul 2020, Account Is In A 100% Offset Arrangement			3,680,000.00 Dr
31 Jul 2020	Debit Interest This Financial Year To Date \$2,974.25 Interest Charged	2,974.25		3,682,974.25 Dr
20 Aug 2020	Loan Repayment 5 Bulkara Street From A/C 87-419-6374		17,413.34	3,665,560.91 Dr
21 Aug 2020	Loan Repayment 5 Bulkara Street 082062Refer To Cust	17,413.34		3,682,974.25 Dr
26 Aug 2020	From Transaction Acc		17,413.34	3,665,560.91 Dr
31 Aug 2020	By Depositing Your Savings In A Linked 100% Offset Account You Have Reduced Your Monthly Interest By: \$7.03 Debit Interest This Financial Year To Date \$12,186.38 Interest Charged	9,212.13		3,674,773.04 Dr
21 Sep 2020	Loan Repayment 5 Bulkara Street From A/C 87-419-6374		17,413.34	3,657,359.70 Dr
30 Sep 2020	By Depositing Your Savings In A Linked 100% Offset Account You Have Reduced Your Monthly Interest By: \$4.30 Carried forward			3,657,359.70 Dr

338/02/01/M001377/5001552/003103

**Transaction Details (continued)**

Date	Particulars	Debits	Credits	Balance
	Brought forward			3,657,359.70 Dr
	Debit Interest This Financial Year To Date \$21,079.47			
	Interest Charged .....	8,893.09		3,666,252.79 Dr
20 Oct 2020	Loan Repayment 5 Bulkara Street			
	From A/C 87-419-6374 .....		17,413.34	3,648,839.45 Dr
30 Oct 2020	By Depositing Your Savings In A Linked 100% Offset Account			
	You Have Reduced Your Monthly Interest By: \$0.28			
	Debit Interest This Financial Year To Date \$29,954.52			
	Interest Charged .....	8,875.05		3,657,714.50 Dr
16 Nov 2020	As from 13/11/2020 your account name has changed from NAB 100% Offset Loan Choice Package to NAB Tailored Home Loan - Choice Package. Please note your account number, offset arrangement and the terms & conditions of your loan remain the same.			3,657,714.50 Dr
20 Nov 2020	Loan Repayment 5 Bulkara Street			
	From A/C 87-419-6374 .....		17,413.34	3,640,301.16 Dr
30 Nov 2020	By Depositing Your Savings In A Linked 100% Offset Account			
	You Have Reduced Your Monthly Interest By: \$3.32			
	Debit Interest This Financial Year To Date \$39,101.44			
	Interest Charged .....	9,146.92		3,649,448.08 Dr

**Summary of Government Charges**

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00

Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.

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**Explanatory Notes**

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Any "Available Redraw" amount is available provided that you satisfy the conditions for redraw in your agreement.

338/02/01/R/001377/S001552/P003104



**NAB Choice Package  
Home Loan**

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



007/000536



5 BULKARA STREET UNIT TRUST  
5  
141 WALKER STREET  
NORTH SYDNEY NSW 2060

**Account Balance Summary**

Opening balance	\$3,649,448.08	Dr
Total credits	\$0.00	
Total debits	\$0.00	
<b>Closing balance</b>	<b>\$3,649,448.08</b>	<b>Dr</b>

**Statement starts 4 December 2020**  
**Statement ends 10 December 2020**

**Available Redraw \$0.00**

**Outlet Details**

Broker-Assets NSW  
Level 12, 105 Miller St  
North Sydney NSW 2060

**Account Details**

5 BULKARA STREET PTY LTD ATF 5 BULKARA STREET UNIT  
BSB number 082-062  
Account number 25-480-8114

**Offset Account Details**

BSB 082-062  
Account number 87-419-6374  
Interest saved this financial year \$15.18

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
4 Dec 2020	Brought forward			3,649,448.08 Dr
4 Dec 2020	Please Note Your Current Debit Interest Rate Is 2.95%			3,649,448.08 Dr

**Summary of Government Charges**

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00

Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.

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**Explanatory Notes**

Please check all entries and report any apparent error or possible unauthorised transaction immediately.

We may subsequently adjust debits and credits, which may result in a change to your account balance to accurately reflect the obligations between us.

For information on resolving problems or disputes, contact us on 1800 152 015, or ask at any NAB branch.

Any "Available Redraw" amount is available provided that you satisfy the conditions for redraw in your agreement.

345/02/01/N/000536/S000720/1001439



**NAB Choice Package  
Home Loan**

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



007/009570



5 BULKARA STREET UNIT TRUST  
5  
141 WALKER STREET  
NORTH SYDNEY NSW 2060

**Account Balance Summary**

Opening balance	\$3,649,448.08	Dr
Total credits	\$17,413.34	
Total debits	\$9,128.85	
<b>Closing balance</b>	<b>\$3,641,163.59</b>	<b>Dr</b>

**Statement starts 11 December 2020**  
**Statement ends 31 December 2020**

**Available Redraw \$0.00**

**Outlet Details**

Broker-Assets NSW  
Level 12, 105 Miller St  
North Sydney NSW 2060

**Account Details**

5 BULKARA STREET PTY LTD ATF 5 BULKARA STREET UNIT  
BSB number 082-062  
Account number 25-480-8114

**Offset Account Details**

BSB 082-062  
Account number 87-419-6374  
Interest saved this financial year \$15.75

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
11 Dec 2020	Brought forward			3,649,448.08 Dr
11 Dec 2020	Please Note Your Current Debit Interest Rate Is 2.95%			3,649,448.08 Dr
21 Dec 2020	Loan Repayment 5 Bulkara Street From A/C 87-419-6374		17,413.34	3,632,034.74 Dr
31 Dec 2020	By Depositing Your Savings In A Linked 100% Offset Account You Have Reduced Your Monthly Interest By: \$0.69 Debit Interest This Financial Year To Date \$48,230.29 Interest Charged	9,128.85		3,641,163.59 Dr

**Summary of Government Charges**

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00

Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.

For further information on any applicable rebates, fees or government charges, please refer to the NAB's "A Guide to Fees & Charges" booklet. Please retain this statement for taxation purposes

**Explanatory Notes**

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Any "Available Redraw" amount is available provided that you satisfy the conditions for redraw in your agreement.

366/02/01/M009570/S011.202/022403



### NAB Choice Package

#### Home Loan

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



007/004844



5 BULKARA STREET UNIT TRUST

5

141 WALKER STREET

NORTH SYDNEY NSW 2060

### Account Balance Summary

Opening balance	\$3,641,163.59	Dr
Total credits	\$69,653.61	
Total debits	\$43,785.14	
<b>Closing balance</b>	<b>\$3,615,295.12</b>	<b>Dr</b>

Statement starts 1 January 2021

Statement ends 31 March 2021

Available Redraw \$0.00

### Outlet Details

Broker-Assets NSW  
Level 12, 105 Miller St  
North Sydney NSW 2060

### Account Details

5 BULKARA STREET PTY LTD ATF 5 BULKARA STREET UNIT  
BSB number 082-062  
Account number 25-480-8114

### Offset Account Details

BSB 082-062  
Account number 87-419-6374  
Interest saved this financial year \$38.69

### Transaction Details

Date	Particulars	Debits	Credits	Balance
1 Jan 2021	Brought forward			3,641,163.59 Dr
4 Jan 2021	Please Note Your Current Debit Interest Rate Is 2.95%			3,641,163.59 Dr
20 Jan 2021	Loan Repayment 5 Bulkara Street			
	From A/C 87-419-6374		17,413.34	3,623,750.25 Dr
21 Jan 2021	Loan Repayment 5 Bulkara Street			
	082062Refer To Cust	17,413.34		3,641,163.59 Dr
27 Jan 2021	From 874196374		17,413.59	3,623,750.00 Dr
29 Jan 2021	By Depositing Your Savings In A Linked 100% Offset Account You Have Reduced Your Monthly Interest By: \$9.26 Debit Interest This Financial Year To Date \$56,751.09			
	Interest Charged	8,520.80		3,632,270.80 Dr
22 Feb 2021	Loan Repayment 5 Bulkara Street			
	From A/C 87-419-6374		17,413.34	3,614,857.46 Dr
26 Feb 2021	By Depositing Your Savings In A Linked 100% Offset Account You Have Reduced Your Monthly Interest By: \$8.06 Debit Interest This Financial Year To Date \$64,957.27			
	Interest Charged	8,206.18		3,623,063.64 Dr
22 Mar 2021	Loan Repayment 5 Bulkara Street			
	From A/C 87-419-6374		17,413.34	3,605,650.30 Dr
31 Mar 2021	By Depositing Your Savings In A Linked 100% Offset Account You Have Reduced Your Monthly Interest By: \$5.67 Debit Interest This Financial Year To Date \$74,602.09			
	Interest Charged	9,644.82		3,615,295.12 Dr

090/02/01/06/004844/50057927011583



### Summary of Government Charges

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00
Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.		
For further information on any applicable rebates, fees or government charges, please refer to the NAB's "A Guide to Fees & Charges" booklet. Please retain this statement for taxation purposes		

### Explanatory Notes

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*Any "Available Redraw" amount is available provided that you satisfy the conditions for redraw in your agreement.*



**NAB Choice Package  
Home Loan**

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



007/000925



5 BULKARA STREET UNIT TRUST  
5  
141 WALKER STREET  
NORTH SYDNEY NSW 2060

**Account Balance Summary**

Opening balance	\$3,615,295.12	Dr
Total credits	\$17,413.34	
Total debits	\$0.00	
<b>Closing balance</b>	<b>\$3,597,881.78</b>	<b>Dr</b>

**Statement starts 1 April 2021  
Statement ends 20 April 2021**

**Available Redraw \$0.00**

**Outlet Details**

Broker-Assets NSW  
Level 12, 105 Miller St  
North Sydney NSW 2060

**Account Details**

5 BULKARA STREET PTY LTD ATF 5 BULKARA STREET UNIT  
BSB number 082-062  
Account number 25-480-8114

**Offset Account Details**

BSB 082-062  
Account number 87-419-6374  
Interest saved this financial year \$41.08

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
1 Apr 2021	Brought forward			3,615,295.12 Dr
1 Apr 2021	Please Note Your Current Debit Interest Rate Is 2.95%			3,615,295.12 Dr
20 Apr 2021	Loan Repayment 5 Bulkara Street From A/C 87-419-6374		17,413.34	3,597,881.78 Dr

**Summary of Government Charges**

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00

Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.

For further information on any applicable rebates, fees or government charges, please refer to the NAB's "A Guide to Fees & Charges" booklet. Please retain this statement for taxation purposes

**Explanatory Notes**

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For information on resolving problems or disputes, contact us on 1800 152 015, or ask at any NAB branch.  
Any "Available Redraw" amount is available provided that you satisfy the conditions for redraw in your agreement.

11/0/02/01/M000925/FS01.21.4/002427



**NAB Choice Package  
Home Loan**

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



007/005760



5 BULKARA STREET UNIT TRUST  
5  
141 WALKER STREET  
NORTH SYDNEY NSW 2060

**Account Balance Summary**

Opening balance	\$3,597,881.78	Dr
Total credits	\$0.00	
Total debits	\$8,748.84	
<b>Closing balance</b>	<b>\$3,606,630.62</b>	<b>Dr</b>

**Statement starts 21 April 2021  
Statement ends 30 April 2021**

**Available Redraw \$0.00**

**Outlet Details**

Broker-Assets NSW  
Level 12, 105 Miller St  
North Sydney NSW 2060

**Account Details**

5 BULKARA STREET PTY LTD ATF 5 BULKARA STREET UNIT  
BSB number 082-062  
Account number 25-480-8114

**Offset Account Details**

BSB 082-062  
Account number 87-419-6374  
Interest saved this financial year \$41.75

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
21 Apr 2021	Brought forward			3,597,881.78 Dr
21 Apr 2021	Please Note Your Current Debit Interest Rate Is 2.95%			3,597,881.78 Dr
30 Apr 2021	By Depositing Your Savings In A Linked 100% Offset Account You Have Reduced Your Monthly Interest By: \$2.93 Debit Interest This Financial Year To Date \$83,350.93 Interest Charged .....	8,748.84		3,606,630.62 Dr

**Summary of Government Charges**

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00
Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.		
For further information on any applicable rebates, fees or government charges, please refer to the NAB's "A Guide to Fees & Charges" booklet. Please retain this statement for taxation purposes		

**Explanatory Notes**

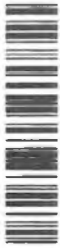
Please check all entries and report any apparent error or possible unauthorised transaction immediately.  
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For information on resolving problems or disputes, contact us on 1800 152 015, or ask at any NAB branch.  
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L20/02/01/M005760/5006660/0113719



**NAB Choice Package  
Home Loan**

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



007/004155  
5 BULKARA STREET UNIT TRUST  
5  
141 WALKER STREET  
NORTH SYDNEY NSW 2060

**Account Balance Summary**

Opening balance	\$3,606,630.62	Dr
Total credits	\$17,413.34	
Total debits	\$8,435.32	
<b>Closing balance</b>	<b>\$3,597,652.60</b>	<b>Dr</b>

**Statement starts 1 May 2021  
Statement ends 31 May 2021**

**Available Redraw \$0.00**

**Outlet Details**

Broker-Assets NSW  
Level 12, 105 Miller St  
North Sydney NSW 2060

**Account Details**

5 BULKARA STREET PTY LTD ATF 5 BULKARA STREET UNIT  
BSB number 082-062  
Account number 25-480-8114

**Offset Account Details**

BSB 082-062  
Account number 87-419-6374  
Interest saved this financial year \$47.26

**For Your Information**

*We're changing how often we send statements for this account. Effective 40 days from this statement date, you'll generally start to receive statements at least every six months. If you'd prefer to stay on your current statement cycle, please complete the form at [nab.com.au/statementcycles](http://nab.com.au/statementcycles) or call us on 13 22 65*

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
1 May 2021	Brought forward			3,606,630.62 Dr
3 May 2021	Please Note Your Current Debit Interest Rate Is 2.95%			3,606,630.62 Dr
4 May 2021	Please Note From 03 May 2021 Your Debit Int Rate Is 2.74%			3,606,630.62 Dr
20 May 2021	Loan Repayment 5 Bulkara Street			
	From A/C 87-419-6374		17,413.34	3,589,217.28 Dr
31 May 2021	By Depositing Your Savings In A Linked 100% Offset Account			
	You Have Reduced Your Monthly Interest By: \$5.61			
	Debit Interest This Financial Year To Date \$91,786.25			
	Interest Charged	8,435.32		3,597,652.60 Dr

**Summary of Government Charges**

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00
Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.		
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**Explanatory Notes**

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Any "Available Redraw" amount is available provided that you satisfy the conditions for redraw in your agreement.*

131/02/01/AM004155/5004865/009729



**NAB Choice Package  
Home Loan**

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



007/007098



5 BULKARA STREET UNIT TRUST  
5  
141 WALKER STREET  
NORTH SYDNEY NSW 2060

**Account Balance Summary**

Opening balance	\$3,597,652.60	Dr
Total credits	\$17,413.34	
Total debits	\$8,088.55	
<b>Closing balance</b>	<b>\$3,588,327.81</b>	<b>Dr</b>

**Statement starts 1 June 2021  
Statement ends 30 June 2021**

**Available Redraw \$0.00**

**Outlet Details**

Broker-Assets NSW  
Level 12, 105 Miller St  
North Sydney NSW 2060

**Account Details**

5 BULKARA STREET PTY LTD ATF 5 BULKARA STREET UNIT  
BSB number 082-062  
Account number 25-480-8114

**Offset Account Details**

BSB 082-062  
Account number 87-419-6374  
Interest saved this financial year \$49.06

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
1 Jun 2021	Brought forward			3,597,652.60 Dr
1 Jun 2021	Please Note Your Current Debit Interest Rate Is 2.74%			3,597,652.60 Dr
21 Jun 2021	Loan Repayment 5 Bulkara Street From A/C 87-419-6374		17,413.34	3,580,239.26 Dr
30 Jun 2021	By Depositing Your Savings In A Linked 100% Offset Account You Have Reduced Your Monthly Interest By: \$1.79 Debit Interest This Financial Year To Date \$99,874.80 Interest Charged	8,088.55		3,588,327.81 Dr

**Summary of Government Charges**

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00

Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.  
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Any "Available Redraw" amount is available provided that you satisfy the conditions for redraw in your agreement.

181/02/01/007098/S010690/021379



## NAB Choice Package Home Loan

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



007/001714



5 BULKARA STREET UNIT TRUST  
5  
141 WALKER STREET  
NORTH SYDNEY NSW 2060

### Account Balance Summary

Opening balance	\$3,588,327.81	Dr
Total credits	\$0.00	
Total debits	\$0.00	
<b>Closing balance</b>	<b>\$3,588,327.81</b>	<b>Dr</b>

**Statement starts 1 July 2021**  
**Statement ends 12 July 2021**

**Available Redraw \$0.00**

### Outlet Details

Broker-Assets NSW  
Level 12, 105 Miller St  
North Sydney NSW 2060

### Account Details

5 BULKARA STREET PTY LTD ATF 5 BULKARA STREET UNIT  
BSB number 082-062  
Account number 25-480-8114

### Offset Account Details

BSB 082-062  
Account number 87-419-6374  
Interest saved this financial year \$0.77

### Transaction Details

Date	Particulars	Debits	Credits	Balance
1 Jul 2021	Brought forward			3,588,327.81 Dr
1 Jul 2021	Please Note Your Current Debit Interest Rate Is 2.74%			3,588,327.81 Dr

### Summary of Government Charges

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00

Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.

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193/02/01/M001714/5002627/T005253



**NAB Choice Package  
Home Loan**

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



015/002927

5 BULKARA STREET UNIT TRUST  
ROYAL EXCHANGE  
PO BOX R1812  
SYDNEY NSW 2000

**Account Balance Summary**

Opening balance	\$3,588,327.81	Dr
Total credits	\$0.00	
Total debits	\$0.00	
<b>Closing balance</b>	<b>\$3,588,327.81</b>	<b>Dr</b>

**Statement starts 13 July 2021  
Statement ends 15 July 2021**

**Available Redraw \$0.00**

**Outlet Details**

Broker-Assets NSW  
Level 12, 105 Miller St  
North Sydney NSW 2060

**Account Details**

5 BULKARA STREET PTY LTD ATF 5 BULKARA STREET UNIT  
BSB number 082-062  
Account number 25-480-8114

**Offset Account Details**

BSB 082-062  
Account number 87-419-6374  
Interest saved this financial year \$0.96

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
13 Jul 2021	Brought forward			3,588,327.81 Dr
13 Jul 2021	Please Note Your Current Debit Interest Rate Is 2.74%			3,588,327.81 Dr

**Summary of Government Charges**

	From 1 July to date	Last year to 30 June
<b>Government</b>		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00

Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.  
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19672/01/M002927/5006390/012779

**Transaction Listing**

Last Statement Date: 15 July 2021

5 BULKARA STREET UNIT TRUST  
ROYAL EXCHANGE  
PO BOX R1812  
SYDNEY NSW 2000

**Account Balance Summary**

Opening Balance	\$3,580,239.26	DR
Total Credits	\$0.00	
Total Debits	\$8,088.55	
<b>Closing Balance</b>	<b>\$3,588,327.81</b>	<b>DR</b>

Transaction Listing starts **30 June 2021**  
Transaction Listing ends **30 June 2021**

**Outlet Details**

TRANSACTION SUPPORT GROUP  
2802 UB, 800 BOURKE ST  
DOCKLANDS VIC 3008

**Account Details**

5 BULKARA STREET UNIT TRUST  
NAB TAILORED HOME LOAN  
CHOICE PACKAGE  
BSB Number 082-062  
Account Number 25-480-8114

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
30 June 2021	INTEREST	\$8,088.55		\$3,588,327.81 DR

**Important**

- This provisional list is NOT A STATEMENT of account.
- It may include transactions which appear on previous statements.
- It may NOT include all transactions processed since last statement was issued.
- With the exception of cheque serial numbers, the details shown in the particulars column may be an abbreviation.
- Inclusion of a debit does not always indicate payment by the Bank.





### NAB Classic Banking

For further information call 13 22 65 for Personal Accounts or 13 10 12 for Business Accounts.



015/002928

6 BULKARA STREET PTY LTD ATF 6 BULKARA S  
ROYAL EXCHANGE  
PO BOX R1812  
SYDNEY NSW 2000

### Account Balance Summary

Opening balance	\$0.00
Total credits	\$28,395.00
Total debits	\$28,271.33
<b>Closing balance</b>	<b>\$123.67 Cr</b>

Statement starts 23 March 2021

Statement ends 15 July 2021

### Outlet Details

Pitt & Bathurst Streets  
292 Pitt St, Sydney NSW 2000

### Lending Investment & Insurance Enquiries

Banker City South 1 Comm Broker 2696 V  
Telephone number (02) 8267 2295

### Account Details

6 BULKARA STREET PTY LTD ATF 6 BULKARA STREET UNIT  
BSB number 082-080  
Account number 93-093-7975

### Home Loan Details

BSB 082-080  
Account number 29-059-2402

### Transaction Details

Date	Particulars	Debits	Credits	Balance
23 Mar 2021	Account Opened			0.00
21 May 2021	Transfer To Allow For Fees and Charges.....		395.00	
	Annual Package Fee.....	395.00		0.00
24 May 2021	As From 21 May 2021, Account Is In A 100% Offset Arrangement			0.00
21 Jun 2021	Loan from 6 Bulkar 6 Bulkara Stre.....		28,000.00	
	Homeloan Repayment To A/C 290592402 244344.....	27,876.33		123.67 Cr

### Summary of Government Charges

Government	From 1 July to date	Last year to 30 June
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$0.00

Bank Accounts Debits (BAD) Tax or State Debits Duty has been abolished for all states & territories effective 1/7/2005. Any amount shown on this statement applies to debits processed on or before 30/06/2005.

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### Explanatory Notes

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196172/01/M002928/S006396/7012791

## IMPORTANT UPDATE

### CHANGES TO TERMS & CONDITIONS FOR PERSONAL TRANSACTION & SAVINGS PRODUCTS

We're making important changes to the Personal Transaction and Savings Products Terms and Conditions.

To make it easier to understand, we've summarised the key changes, effective 40 days from this statement date:

- The default statement frequency is changing for customers with NAB Visa Debit cards linked to their account and customers with a NAB Reward Saver account.
  - For customers with NAB Visa Debit cards linked to their account, the default statement frequency is changing from every second month to six months.
  - For customers with NAB Reward Saver accounts, the default statement frequency is changing from three months to six months.
- Changes reflect increased use of digital banking and highlight the importance of checking your account transactions via the NAB App, NAB Internet Banking or telephone banking, to promptly identify any unauthorised transactions or errors.

#### **What do you need to do?**

If you're currently on NAB's default statement frequency (every 2 months for a NAB Visa Debit card or 3 months for a NAB Reward Saver account), we'll send you statements every 6 months, effective 40 days from this statement date.

If you'd prefer to stay on your current statement frequency or would like to request another statement frequency, please go to [nab.com.au/statementcycles](http://nab.com.au/statementcycles) or give us a call on 13 22 65. We strongly encourage you to regularly check your account transactions via the NAB App, NAB Internet Banking or telephone banking, in order to identify any unauthorised transactions or errors. Let us know if you identify any unauthorised transaction or error as soon as possible. Please visit [nab.com.au/internetbanking](http://nab.com.au/internetbanking) for help with online banking.

#### **PART A: ACCOUNT TERMS AND CONDITIONS**

**Clause 1.11 of the terms & conditions (Transaction accounts) has been replaced with the following:**

NAB will generally send you statements of account at least six monthly, unless you request otherwise. However, NAB FlexiPlus Mortgage and NAB Portfolio Facility/NAB Private Portfolio Facility accountholders will be sent statements of account for each account monthly unless you request otherwise.

**The first sentence of clause 2.20 of the terms & conditions (NAB Reward Saver and NAB iSaver accounts) has been replaced with the following:**

NAB will send you statements of account for the NAB Reward Saver account and NAB iSaver account at least six monthly, unless you request otherwise.

**The first sentence of clause 7.2.3(a) of the terms & conditions (Direct Debits) has been replaced with the following:**

You may cancel your direct debit arrangements with a \*Debit User by calling NAB on 13 22 65, completing the direct debit cancellation request online via [nab.com.au](http://nab.com.au) or visiting your branch and completing a cancellation request.

**Clause 7.3 of the terms & conditions has been replaced with the following:**

7.3 You must check your statements and current transaction history.

Without limiting any part of these terms and conditions, you must promptly review your statement of account to check for and tell NAB of any transaction recorded on your statement that you suspect for any reason you did not authorise or for which the information recorded is incorrect. In the period between your statements, if applicable, frequently check your current transaction history via NAB Internet Banking or NAB Telephone Banking. You can arrange to access your account through NAB Internet Banking if you are not already a user and NAB will register you, subject to NAB's standard terms and conditions for the service. Failure to promptly report unauthorised transactions may increase your liability.

#### **PART C: NAB VISA DEBIT CARD TERMS AND CONDITIONS**

**The second paragraph of clause 25.2 of the terms & conditions (Notification procedure for disputed transactions) has been replaced with the following:**

NAB recommends that you promptly read each statement carefully as soon as you receive it, and if applicable, frequently check your current transaction history via NAB Internet Banking or NAB Telephone Banking. You can arrange to access your account through NAB Internet Banking if you are not already a user and NAB will register you, subject to NAB's standard terms and conditions for the service.

#### **PART D: NAB ELECTRONIC BANKING (DEBIT CARDS) TERMS AND CONDITIONS**

**Clause 32.3 of the terms & conditions has been replaced with the following:**

32.3 Review statements of account and check NAB Internet Banking or NAB Telephone Banking. You should always review your statement, and if applicable, frequently check NAB Internet Banking or NAB Telephone Banking, and bring to NAB's attention any discrepancies, errors or unauthorised transactions as soon as possible.

If you wish to dispute an EFT transaction, you must report this to NAB. Please refer to the Customer Service details in Summary of Important Information at the front of this booklet. You can arrange to access your account through NAB Internet Banking if you are not already a user and NAB will register you, subject to NAB's standard terms and conditions for the service.

\*A Debit User is a third party you make regular payments to by authorising them to debit your account.



**Transaction Listing**

**Last Statement Date:** 15 July 2021

6 BULKARA STREET PTY LTD ATF 6  
ROYAL EXCHANGE  
PO BOX R1812  
SYDNEY NSW 2000

**Account Balance Summary**

Opening Balance	\$123.67	CR
Total Credits	\$0.00	
Total Debits	\$0.00	
<b>Closing Balance</b>	<b>\$123.67</b>	<b>CR</b>

**Transaction Listing starts**  
**Transaction Listing ends**

**Outlet Details**

TRANSACTION SUPPORT GROUP  
2802 UB, 800 BOURKE ST  
DOCKLANDS VIC 3008

**Account Details**

6 BULKARA STREET PTY LTD ATF 6  
NAB Classic Banking  
BSB Number 082-080  
Account Number 93-093-7975

**Transaction Details**

Date	Particulars	Debits	Credits	Balance
------	-------------	--------	---------	---------

**Important**

- This provisional list is NOT A STATEMENT of account.
- It may include transactions which appear on previous statements.
- It may NOT include all transactions processed since last statement was issued.
- With the exception of cheque serial numbers, the details shown in the particulars column may be an abbreviation.
- Inclusion of a debit does not always indicate payment by the Bank.

## Mackenzie Preston

---

**From:** Candy Nelson  
**Sent:** Friday, 29 October 2021 5:01 PM  
**To:** anthony.sommer@minterellison.com  
**Cc:** caitlin.murray@minterellison.com; Melissa Passarelli; Sazz Nasimi; Alexandra Lawrence  
**Subject:** Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors Federal Court of Australia proceeding number NSD616/2021 [MADG-CURRENT\_MATTERS.18091.047678]  
**Attachments:** 211029 Letter from Madgwicks to Minter Ellison(4589717.3).pdf

Dear Mr Sommer,

Please refer to the **attached** correspondence.

Kind regards,

**Candy Nelson**  
Personal Assistant

MADGWICKS  
LAWYERS

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T: +61 3 9242 4748 E: [Candy.Nelson@madgwicks.com.au](mailto:Candy.Nelson@madgwicks.com.au)

Level 6, 140 William Street, Melbourne VIC 3000  
[www.madgwicks.com.au](http://www.madgwicks.com.au)



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Minter Ellison  
Anthony Sommer  
Level 40 Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Date: 29 October 2021  
File No: 047678  
Author: Melissa Passarelli  
Partner: Sazz Nasimi  
Your Ref: 1353397

**By email: [anthony.sommer@minterellison.com](mailto:anthony.sommer@minterellison.com);  
[cailtin.murray@minterellison.com](mailto:cailtin.murray@minterellison.com)**

Dear Mr Sommer

**Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors  
Federal Court of Australia proceeding number NSD616/2021 (Proceedings)**

We are responding to the consistent flow of letters originating from your office.

We find it somewhat disingenuous that your client expects responses from our office in circumstances where you have knowledge that we are not yet funded.

Furthermore, your client's actions to date in obstructing the release of the NAB funds is the primary reason as to why our client has not been able to fund his defence to your client's claim. In particular, we refer to:

- (a) your client's freezing order, which we believe encroaches well beyond any legitimate protection your client is entitled to; and
- (b) your correspondence to the NAB which, despite the carveouts allowed for under the freezing order, objected to our client being paid any sum of money for his living and legal expenses.

The manner in which your client has elected to run the present proceeding and deprive our client of the necessary funding he required, means that we are not yet in a position to respond to some of your correspondence.



**MADGWICKS**  
ABN 82 199 611 971

Level 6  
140 William Street  
Melbourne VIC 3000  
Australia  
DX 485

T: +61 3 9242 4744  
F: +61 3 9242 4777  
E: [madgwicks@madgwicks.com.au](mailto:madgwicks@madgwicks.com.au)  
W: [madgwicks.com.au](http://madgwicks.com.au)



We anticipate being in a position to advance our client's defence shortly and shall respond to you further in the coming days.

Yours faithfully  
**MADGWICKS**



Sazz Nasimi  
**Partner**

**T:** 03 9242 4741

**E:** Sazz.Nasimi@madgwicks.com.au

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## Mackenzie Preston

---

**From:** Anthony Sommer <Anthony.Sommer@minterellison.com>  
**Sent:** Tuesday, 2 November 2021 1:08 PM  
**To:** Sazz Nasimi; Melissa Passarelli; Alexandra Lawrence; Candy Nelson  
**Cc:** Caitlin Murray  
**Subject:** RE: Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors Federal Court of Australia proceeding number NSD616/2021 [MADG-CURRENT\_MATTERS.18091.047678] [ME-ME.FID6264995]  
**Attachments:** 02.11.2021 - Letter to Madgwicks.PDF

Dear Colleagues

Please see the attached correspondence.

Regards

---

**Anthony Sommer**

Senior Associate

T +61 2 9921 4182 M +61 431 058 780

anthony.sommer@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com [Follow us on LinkedIn and Twitter](#)



---

**From:** Candy Nelson <Candy.Nelson@madgwicks.com.au>  
**Sent:** Friday 29 October 2021 05:01 PM  
**To:** Anthony Sommer <Anthony.Sommer@minterellison.com>  
**Cc:** caitlin.murray@minterellison.com; Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>; Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>; Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>  
**Subject:** Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors Federal Court of Australia proceeding number NSD616/2021 [MADG-CURRENT\_MATTERS.18091.047678]

Dear Mr Sommer,

Please refer to the **attached** correspondence.

Kind regards,

**Candy Nelson**

Personal Assistant

**MADGWICKS**  
**LAWYERS**

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**IMPORTANT INFORMATION, PLEASE READ**

**RETURN TO OFFICE**

Public health orders influence our Return to Office Policy in each office jurisdiction. The Policy promotes a vaccinated workplace, and takes effect when professional services employees are permitted to return to the office following lockdown or when borders open to interstate travel without the need to quarantine. When the Policy takes effect in each jurisdiction, only fully vaccinated partners, employees, clients and visitors will have access to our office. [Read more for access procedures.](#)

**OTHER MATTERS**

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Sensitive: Legal

2 November 2021

**BY EMAIL:** [Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)

Sazz Nasimi  
Partner  
Madgwicks Lawyers  
Level 6, 140 William Street  
Melbourne VIC 3000

Dear Mr Nasimi

**Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors  
Federal Court of Australia proceeding number NSD616/2021 (Proceedings)**

Dear Mr Nasimi

We refer to:

1. our email of 28 September 2021 at 8.26am (**28 September Email**);
2. our letter of 28 October 2021 (**28 October Letter**). Unless otherwise defined, capitalised terms in this letter have the same meaning given in our 28 October Letter; and
3. your letter of 29 October 2021 (**Your Letter**).

For at least the following the reasons below, our clients consider that the position stated in Your Letter is misplaced.

*First*, neither you nor your client can take a position that you are on the record in the Proceedings but will not respond to our correspondence related to the proceedings nor otherwise communicate with us in a meaningful way. On 22 September 2021, you filed a notice of acting for the third respondent, Vincenzo Frank Tesoriero (**Mr Tesoriero**) in the Proceedings, and accordingly have duties including those under s 37M and s 37N of the *Federal Court of Australia Act 1976 (Cth)* (**Act**). Alternatively, if your client will not or cannot secure funding for your services, then you can cease to act. What is impermissible is to take a position of refusing to engage while solicitor on the record.

*Second*, none of the issues raised in our 28 October Letter are new to your client. For example, we have been corresponding with Mr Christopher Nehme of Fortis Law, your client's former solicitor, about your client's intended sale of the Property since 11 August 2021. We have corresponded with you regarding the Property since 24 September 2021. As set out in our 28 October Letter, our clients are concerned that your client and the Company are in default of their obligations to our client under the Deed.

*Third*, the position stated in Your Letter is inconsistent with both our 28 September Email (which attached a copy of our letter dated 20 September 2021 to Dentons on behalf of National Australia Bank Limited) and the statements made to the Court by Senior Counsel for our clients during the hearing on 20 October 2021 regarding the freezing orders against Mr Tesoriero: see Transcript 20.10.21, 3-7. As you know, our client has consistently acknowledged the exception in the freezing orders regarding your client's reasonable legal expenses.

*Fourth*, the position taken in Your Letter is inconsistent with your client incurring costs in taking an active position in opposing the winding up application in relation to the PL Entities (as defined in the Orders dated 20 October 2021), as indicated in your letter of 27 October 2021 to us and Allens, the solicitors for the provisional liquidators of the PL Entities. It is therefore apparent that your client is currently securing your legal services, and on an ongoing basis, with respect to issues that he is currently prioritising.

In short, our clients consider that the position contended for in Your Letter is wrong and, whether intended or not, impermissibly delaying, specifically, the sale of the Property, and in contravention of your client's and the Company's obligations under the Deed, and more generally, the efficient conduct of the Proceedings.

Separately we are instructed that yesterday your client executed an agency agreement in relation to sale of the Property but has not taken other necessary steps including paying or securing the pre-marketing funding. Given that step and the matters above, our clients require your substantive response to our 28 October Letter by no later than **5.00pm (AEDT) Thursday 4 November 2021**, failing which (as notified to you in our 28 October Letter) our clients may apply to the Court for appropriate orders at the hearing on 12 November 2021 including to enforce the Deed as against your client and the Company under s 22 or s 23 of the Act or that receivers be appointed to take possession of and sell the Property. Our clients intend to rely on this correspondence, together with our previous correspondence regarding this issue, on the question of whether your client and the Company should pay our clients' costs of such application on an indemnity basis.

All of our clients' rights are expressly reserved.

Yours faithfully  
**MinterEllison**



Contact: Anthony Sommer T: +61 2 9921 4182  
anthony.sommer@minterellison.com  
Partner: Caitlin Murray T: +61 2 9921 4279  
OUR REF: 1353397



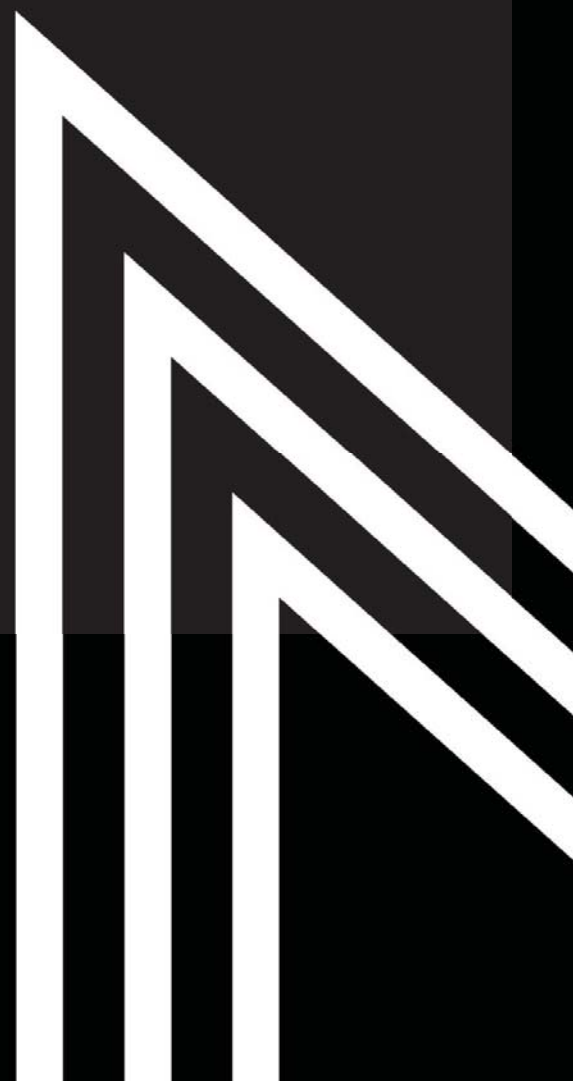
**Forum Group Pty Ltd (Receivers Appointed) (In Liquidation)**  
**ACN 153 336 997**

**Report to creditors**

28 October 2021



McGrathNicol



# Contents

- 1 Introduction ..... 3
- 2 Update on the progress of the Liquidations ..... 3
- 3 Assets and liabilities ..... 8
- 5 Receipts and payment ..... 18
- 6 Likelihood of a dividend ..... 18
- 7 Cost of the liquidation ..... 19
- 8 Meetings of creditors ..... 19
- 9 Participating and voting in the meeting ..... 20
- 10 Appointment of a Committee of Inspection ..... 20
- 11 Other resolutions ..... 20
- 12 What happens next? ..... 21
- 13 What you should do next? ..... 21
- 14 Where can you get more information? ..... 21



# 1 Introduction

I refer to:

- the appointment of Jason Preston, Kathy Sozou and I as voluntary administrators (**Voluntary Administrators**) of Forum Group Pty Limited (in Liquidation) (Receivers Appointed) (**FG** or **Company**) on 22 July 2021 replacing Domenico Alessandro Calabretta, Grahame Robert Ward and Thyge Trafford-Jones of Mackay Goodwin as administrators (**Former Voluntary Administrators**) of the Company;
- the subsequent appointment of Jason Preston and I as liquidators (**Liquidators**) of the Company on 28 July 2021 by order of the Federal Court of Australia (**Court**) that the Company be wound up; and
- our initial information for creditors dated 24 August 2021 in which we advised you of our appointment as Liquidators and your rights as a creditor in the liquidation, copies of which can be found on our website (<https://www.mcgrathnicol.com/creditors/forum-group-and-associated-entities/>).

The purpose of this report is to:

- provide creditors with an update on the progress of the liquidation; and
- advise creditors of the likelihood of a dividend being paid in the liquidation.

This report has been prepared to comply with the Liquidators' statutory obligation under section 70-40 of the Insolvency Practice Rules (Corporations) 2016 (**IPR**) to report to creditors within three months of their appointment as Liquidators.

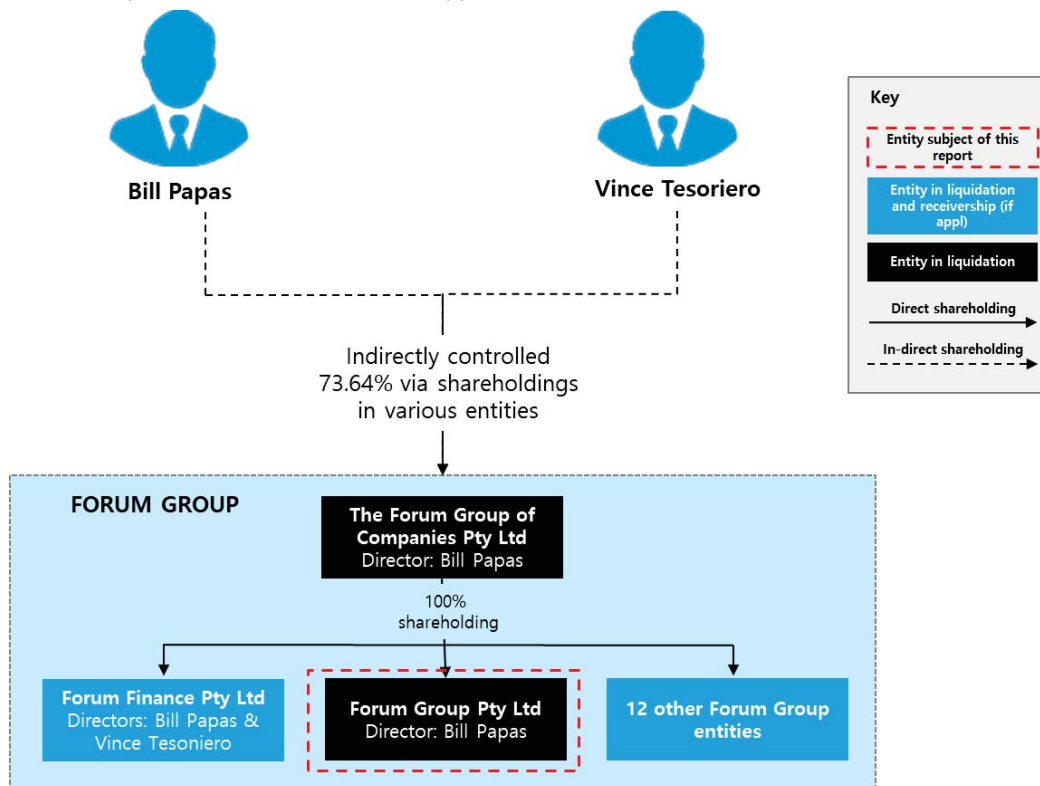
We will also be requesting that you consider our and the Former Voluntary Administrators' detailed remuneration approval reports.

# 2 Update on the progress of the Liquidations

## 2.1 Background

### 2.1.1 Corporate structure

An overview of the corporate structure of FG at our appointment dates is set out below:



Further details on the Company are set out below. The Liquidators note the following in relation to the corporate structure:

- the Company along with thirteen other wholly-owned Australian subsidiaries of The Forum Group of Companies Pty Ltd (In Liquidation) (**FGOC**) were known as the "**Forum Group**".
- Basile Papadimitriou (**Bill Papas/Mr Papas**) and his associate, Vincenzo Francesco Tesoriero (**Vince Tesoriero/Mr Tesoriero**), indirectly control 73.64% of the Company through their interests in various shareholders of FGOC.
- In addition to the "Forum Group" entities, the Liquidators are also the appointed Liquidators/Provisional Liquidators of Forum Group Financial Services Pty Ltd (**FGFS**) and twelve other entities associated with Mr Papas and/or Mr Tesoriero outside the Forum Group (which are not shown in the structure chart above). The wider group of companies to which the Liquidators are appointed, as set out in Enclosure 1 of this report, are collectively referred as the "Appointment Group" (**Appointment Group**).
- Mr Papas, Mr Tesoriero and a number of the Appointment Group entities (including the Forum Group) are currently involved in a range of legal proceedings as a result of allegations of fraudulent behaviour undertaken by (or at the direction of) Mr Papas within the Forum Group

### 2.1.2 Background of the Company

FG was established in September 2011 and was formerly known as Forum Group (NSW) Pty Ltd. Mr Papas was the sole director of FG (**Director**) at the date of the appointment of the Former Voluntary Administrators.

On 8 July 2021, the Former Voluntary Administrators were appointed as voluntary administrators of the Company by Mr Papas. On 22 July 2021 at a creditors' meeting of the Company, the Former Voluntary Administrators were replaced by the Voluntary Administrators. Our appointment as Voluntary Administrators of the Company ended on 28 July 2021 when Jason Preston and I were appointed Liquidators by order of the Court

On 12 July 2021, Antony Resnick and Mark Robinson of dVT Group were appointed Receivers (**Receivers**) over FG's assets pursuant to a registered general security interest granted to Octet Finance Pty Ltd (**Secured Lender/Octet**) by FG as borrower under a funding facility entered into between the Secured Lender and certain entities within the Forum Group.

FG was the primary trading and employing entity within the Forum Group. FG employed approximately 120 staff at the time of the appointment of the Former Voluntary Administrators, with those staff also providing services to other entities within the Forum Group.

FG's operations primarily consisted of providing IT/print managed services to third party customers under contracts where it acted as principal or where it was formally or informally appointed as outsourced service provider. In this capacity, it undertook supply, maintenance and administrative components of contracts entered into by related parties, primarily Forum Finance Pty Limited (**Forum Finance/FF**) (another Forum Group entity), including invoicing and collections from end customers.

FF would typically enter into contracts with end-customers as principal (and in some cases agent) with the economic interest in and security associated with the contracts usually passed to a range of third party financiers. FF would typically earn commissions as part of those arrangements. As noted, FG usually administered the contracts and associated servicing. Once FG collected regular payments from end-customers it either remitted those funds to FF (after keeping a service fee) who paid the third party financiers, or FG paid those financiers directly. A significant number of the end-customer contracts (although not all) appear to have been fraudulent, with no end-customer and no associated equipment.

On 22 July 2021, prior to our appointment as Voluntary Administrators, Former Voluntary Administrators sold the goodwill of the business to Our Kloud Print Pty Ltd (**Our Kloud**), following which the Company ceased to trade.

At (or around the time of) the sale to Our Kloud, employees either consented to the transfer of their employment to Our Kloud as part of the sale agreement, or were terminated by the Former Voluntary Administrators

Based on the Liquidators' investigations to date, FG received a material amount of funds (accounted for as intercompany loans) from FF and/or FGFS. The majority of the funds within FF and FGFS (and therefore the funds paid to the Company) appear to have been obtained directly or indirectly from fraudulent activities allegedly committed by (or at the direction of) Mr Papas in entities within the Appointment Group

## 2.2 Reasons for the failure of the Company

The Liquidators have not received a completed Report on Company Activities and Property (**ROCAP**) from the Director that provides an explanation on the failure of the Company. Please refer to section 3.1 for further detail on the ROCAP.



In conversations with Mr Papas, he suggested the failure of FG as part of the broader Forum Group, was as a result of the impact of COVID and the resulting disruption and inability for various companies in the Forum Group to operate effectively. This is inconsistent with our findings.

We consider the following reasons contributed to the Company's failure:

- a number of the purported contracts purportedly related to FG providing IT/print managed and/or administrative services however, it appears that there were no underlying customer and therefore no amounts billed in respect of those contracts;
- the Company did not generate sufficient income from "real" (or non-fraudulent) contracts to meet its liabilities;
- the Company was dependent on funding from FGFS which, based on our investigations FGFS obtained via FF and other Appointment Group entities via the alleged fraud referred to above. We note that FGFS, along with the Company became subject to freezing orders issued by the Court against the assets of Mr Papas and Mr Tesoriero in late June and early July; and
- the abovementioned events resulted in the Company being unable to access further funding to meet its various obligations and liabilities.

Mr Papas departed Australia for Greece in mid-June 2021 shortly after the allegedly fraudulent behaviour was identified and ahead of the various insolvency appointments. Mr Papas appointed the former Voluntary Administrators to the Company (along with other Appointment Group entities) shortly after departing Australia and after the freezing orders. Mr Papas has not returned to Australia despite stating his intention to do so. On 20 October 2021, the Court issued a warrant for Mr Papas' arrest for being in contempt of its orders.

While Mr Papas initially engaged with the Liquidators to a limited extent, he has not provided any meaningful assistance to the Liquidators in respect of our investigations into the wider Appointment Group of companies' affairs and causes of failure. Mr Papas has since shut down the email address that we were using to contact him. Further, Mr Papas is no longer represented in the various proceedings commenced against him in respect of the fraudulent activities.

## 2.3 Timeline of key events

Below is a timeline of key events leading to the appointment of the Liquidators of the Company and the Appointment Group.



Date	Event
May to June 2021	Westpac Banking Corporation ( <b>WBC</b> ) identified the alleged fraudulent behaviour of Mr Papas in Forum Finance.
16 June 2021	Mr Papas departed Australia for Greece.
28 June 2021	WBC obtained: <ul style="list-style-type: none"> <li>▪ freezing orders against Forum Finance and Mr Papas prohibiting them from disposing, dealing with or diminishing the value (i.e. freezing) of all their Australian and New Zealand assets (including the Company) up to the unencumbered value of approximately \$254 million; and</li> <li>▪ search orders against Forum Finance and Bill Papas.</li> </ul>
2 July 2021 to 27 August 2021	WBC obtained a freezing order against Mr Tesoriero freezing all of his Australian assets up to the unencumbered value of approximately \$254 million.  The Court amended the freezing orders outlined above on multiple occasions. The current freezing orders against Mr Papas and Mr Tesoriero are as follows: <ul style="list-style-type: none"> <li>▪ Mr Papas was made on 15 July 2021. It freezes his global assets (including the Company) up to the unencumbered value of approximately \$361 million.</li> <li>▪ Mr Tesoriero was made on 27 August 2021. It freezes his global assets (including the Company) up to the unencumbered value of approximately \$254 million plus NZ\$44 million.</li> </ul>
8 July 2021	The Former Voluntary Administrators were appointed to the Company (along with other associated entities) by resolution of Mr Papas, its sole director.
12 July 2021	The Receivers were appointed over FG's assets pursuant to a registered general security interest granted to Octet.
22 July 2021	The Former Voluntary Administrators sold the goodwill of the Company to Our Kloud and the Company ceased to employ and trade.
22 July 2021	Jason Preston, Kathy Sozou and I were appointed Voluntary Administrators of the Company, replacing the Former Voluntary Administrators.
28 July 2021	The Court made orders appointing the Liquidators to the Company and the other Appointment Entities.

## 2.4 Liquidators' actions to date

To date, we have undertaken the following:

- Liaised with Mr Papas and his legal advisors at the time, in his capacity as Director of the Company and Mr Bouchahine, in his capacity as CFO of the Forum Group in respect of causes of failure.
- Liaised with personnel of the various Forum Group entities including Mr Craig Rollinson, General Manager of Operations of the Forum Group, to gain an understanding of the business and financial position of the Company.
- Liaised with the Receivers in respect of their asset realisations and appointment generally.
- Liaised with the Former Voluntary Administrators in respect of the administration of their sale process and the eventual sale to Our Kloud and undertook post-completion matters.
- Liaised with the Former Voluntary Administrators in respect of their administration process generally and costs.
- Liaised with the Receivers in respect of their receivership process generally, asset realisations and costs.
- Liaised with customers, financiers and suppliers in respect of the sale and cessation of trading.
- Liaised with and issued requests for information to financiers and other financial institutions in relation to the Company.

- Disclaimed various contracts and leases.
- Reviewed books and records and liaised with the Department of the Attorney General in respect of employee entitlements and FEG claims.
- Gained access to books and records of the Company including electronic accounting and financial records/systems.
- Undertook detailed sources and applications analysis for funds received and utilised by the Company and the Appointment Group entities to understand the flow of funds and relationships as they relate to the Company.
- As part of our investigations within the Appointment Group entities, investigated the circumstances surrounding funds advanced by financiers to FF and/or other Appointment Group entities as a result of allegedly fraudulent food digester and other equipment contracts. Those financiers included WBC, Westpac New Zealand, SMBC Leasing and Finance Inc (**SMBC**) and Societe Generale Group (**SocGen**) (collectively, **the Financiers**) and the investigation showed, in many cases, there was no underlying customer contracts nor equipment. Further details regarding the alleged fraud committed and ongoing investigations undertaken to date by the Liquidators are set out in section **Error! Reference source not found.**4 of this report.
- As part of our investigations within the Appointment Group entities, undertook public examinations of key staff associated with the Forum Group to progress investigations into how and by whom the alleged fraud was perpetrated, how funds had been utilised and to identify any further assets that may be available to creditors.
- As part of our investigations within other Forum and Appointment Group entities, sought legal advice on the public examinations and investigations into the alleged fraud, realisation of assets and approach to deal with the potential competing claims by the financiers and other secured lenders.
- Sought and secured the Company's assets and sought indicative valuations (where applicable) to determine their realisation value. Further details on the assets of the Company are set out in Section 3 of this report.
- Located, secured and sought to deal with leased vehicles registered to the Company.
- Liaised with parties who have registered PPSR security interest over the assets of the Company.
- Carried out preliminary investigations in order to prepare a confidential report which will be lodged with the Australian Securities & Investments Commission (**ASIC**) pursuant to section 533 of the Corporations Act (**Act**) in due course.
- Reported to and filed lodgements with ASIC and creditors.

## 2.5 Funding agreement

Upon our appointment, noting the freezing orders in place, a variety of financier claims and allegations of fraudulent behaviour, there were insufficient funds/assets available to us to undertake our role beyond our basic statutory obligations.

In order for us to undertake a comprehensive investigation and understand the claims or assets that may be available for the benefit of creditors, we engaged with the Financiers in respect of providing funding to allow us to undertake this work.

An in-principle agreement was ultimately reached with Westpac to provide the Liquidators a loan for the purposes of funding the Liquidators' remuneration and expenses incurred in July, August and September 2021 (or other such longer period as agreed in writing) up to a value of \$4.5 million (excluding GST) (**Funding Facility**). The funding was put in place to allow the Liquidators to undertake investigations of the Appointment Group (including the Company) and associated entities, and the identification of possible future sources of asset recoveries. On 7 September 2021, the Liquidators entered into the Funding Facility agreement (following Court approval) on the following terms and conditions:

- interest charged at an interest rate of BBSY Bid plus 3% with any unpaid interest to be capitalised monthly.
- the drawn down amounts together with any interest accrued are to be reduced and repaid once and to the extent that there are sufficient funds in the liquidations of the Forum Group and the Liquidators reasonably form the view that those funds are not required for the purposes of that liquidation.
- the Liquidators' liability to repay the drawdown amounts together with any interest accrued is on a limited recourse basis, with Westpac's recourse being limited to the assets available in the liquidations.
- other financiers who have legal proceedings on foot against various Forum Group entities may accede as a funder to the Funding Agreement, with the written consent of the Liquidators and Westpac, for the purpose of furthering investigations and/or proceedings commenced in respect of entities.

- to ensure that priority employee creditors of the Forum Group are not disadvantaged, the agreement provides that to the extent there are any outstanding employee entitlements (which are afforded priority under sections 556 and 560 of the Corporations Act) in any entity, any recoveries made by that entity must first be used to pay those priority employee entitlements.
- the agreement provides that, regardless of whether the funding was used in the liquidation or provisional liquidation of a particular entity, the Liquidators of each entity are jointly and severally liable for the repayment of all amounts drawn down and any interest accrued under the Funding Facility.

We consider that entering into the Funding Agreement on those terms was in the best interests of Forum Group and its creditors on the basis that:

- there were matters requiring detailed investigation in order to identify assets that may be able to be recovered for the benefit of creditors;
- no other funding has been offered to the Liquidators;
- the agreement retains certain protections discussed above;
- given the security that has been granted and the proprietary claims made (discussed further at Section 3.4.2 below), Forum Finance and FGFS do not have available assets to fund investigations and recovery actions;
- we have not identified any potential prejudice or oppression to the creditors of Forum Finance and FGFS that would arise by reason of entering into the Funding Agreement;
- we consider that the entry into the agreement presents little risk to Forum Finance and FGFS and their creditors; and
- given the absence of any security that can be offered, or the certainty of any recoveries, we consider it very unlikely that funding would be available from any other source. We consider the terms of the Funding Agreement are likely to be more favourable than those that would, in our experience, likely be available from a commercial litigation funder.

Apart from priority employee claims, the effect of the Funding Facility is that all realisations across any of the entities within the Appointment Group will first be applied in repayment of the Funding Facility, and amounts will only become available to unsecured creditors to the extent there is a surplus once the Funding Facility has been repaid in full.

The Funding Facility will only be drawn down based on costs actually incurred and properly approved (and to the extent there are insufficient recoveries in the respective liquidations). Liquidators' remuneration will still require approval by creditors.

## 3 Assets and liabilities

### 3.1 Report on Company Activities and Property (ROCAP)

Under section 475 of the Act, Directors, and company officers, can be required to complete a ROCAP, setting out an assessment of a company's asset and liability position and causes of failure.

The Liquidators requested Mr Papas, in his capacity as sole Director of the Company, to submit a ROCAP for FG.

To date, Mr Papas has not supplied a ROCAP as at the date of our appointment which provides an explanation on the causes of failure of the Company. The Act provides for serious consequences for a failure to submit a ROCAP. The Liquidators have reported to ASIC on Mr Papas' non-compliance.

In the absence of a ROCAP that provides an explanation on the Company's causes of failure and the ability to comment on the failure, we have relied on the following information to prepare this Report and comment on Company's asset and liability position:

- books and records of the Company;
- materials relating to the Company produced by third parties in response to subpoenas;
- discussions with former staff of other Appointment Group entities and parties with knowledge of the Company;
- our detailed investigations; and
- company searches and verifiable public information, such as ASIC registers.

## 3.2 Assets

We have based our analysis below on FG's balance sheet as at 30 June 2021 as extracted from the electronic accounting records. We note that there are a number of manual adjustments that appear to have been made to the accounts in the period between 30 June 2021 and our appointment, however these are without adequate explanation and we have been unable to reconcile the basis of the adjustments.

The table below summarises FG's asset position based on the balance sheet at 30 June 2021 and our investigations.

FGPL - asset summary				
\$'000	Reference	30/06/2021	Liquidators' Est. Amt.	
		Book value	EOS - Low	EOS - High
Cash	3.2.1	2,799	-	Unknown
Accounts receivable	3.2.2	5,535	-	Unknown
Stock	3.2.3	1,247	-	Unknown
Loans to appointment group entities	3.2.4	24,176	-	Unknown
Other circulating assets	3.2.5	636	-	Unknown
Fixed assets	3.2.6	2,331	-	Unknown
Vehicles	3.2.7	20	-	Unknown
Intellectual Property (IP) and goodwill	3.2.8	158	-	Unknown
Shares	3.2.9	1,821	-	Unknown
Clearing accounts - assets	3.2.10	1,424	-	Unknown
<b>Total</b>		<b>40,146</b>	-	<b>Unknown</b>

Please note, all assets are subject to the appointment of the Receivers to FG. The Receivers are in control of the assets and the associated realisation strategy. Any realisable value in the high case is currently unknown as it will be subject to the Octet being repaid either directly from FG or from other Forum Group entities over which Octet holds security. The low case assumes all proceeds are applied to reduce the Octet's debt after meeting priority, proprietary and set off claims in respect of bank guarantees by the account bank.

### 3.2.1 Cash

FG maintained three bank accounts with National Australia Bank (**NAB**), which held combined balances totalling \$3.2 million on appointment of the Liquidators. FG's balance sheet recorded balances of \$2.8 million at 30 June 2021 across two bank accounts. We understand the current balance of the NAB accounts is c. \$3.4 million.

The balances remain with the account bank and are subject to competing claims so have yet been released to either the Receivers or the Liquidators.

### 3.2.2 Accounts receivable

FG's accounting records detail a net accounts receivable balance of \$5.5 million comprising mostly outstanding lease receivables in relation to leases in which FG maintained the economic interest (i.e. hadn't been transferred to an external financier).

The Receivers are in control of this asset. We are not in a position to form a view as to the realisable value of this asset. We understand c. \$1.2 million has been collected to date.

### 3.2.3 Stock

Stock comprised equipment, parts and consumables stored with a third party logistics provider and in the field i.e. with service technicians or on customer sites.

The stock held with the third party logistics provider was sold to Our Kloud under a stock sale agreement negotiated and signed by the Receivers in July and August 2021 recovering a net cash amount of \$0.6m including GST. These funds remain held in trust subject to claims from a related entity within the Appointment Group in respect of any claims it is able to assert in respect of the stock sold. The stock sale agreement also included a contribution amount of \$320k released

directly to the Former Voluntary Administrators to meet outstanding employee liabilities for their trading period. Our Kloud assumed the liability owing to the logistics provider as part of the contract deal.

We are unsure of the current status of realisations of any stock in the field, and are not in a position to form a view as to the realisable value of those assets.

### 3.2.4 Loans to appointment group entities

FG's accounting records include \$24.2 million of intercompany loans receivable relating to funds advanced by FG to other entities within the Appointment Group that appear to have been used for a wide variety of purposes, including;

- funding repayments to financiers of other Appointment Group entities in relation to financing contracts that are alleged to have been fraudulent, where there was no underlying customer; and
- funding other Appointment Group entities working capital and operating requirements.

Each of these related entities is subject to various insolvency appointments. We expect Proofs of Debt (**POD**) will ultimately be submitted in those insolvency processes in due course. It is unlikely there will be any recoveries in respect of these claims.

### 3.2.5 Other circulating assets

FG's accounting records detail the following other circulating assets:

- prepayments relating to insurance premiums and IT costs;
- a rental bond; and
- a small amount in respect of payments made to an entity Mr Papas was a director of.

It is unlikely the above have any recoverable value.

### 3.2.6 Fixed assets

FG's accounting records included fixed assets with a book value of \$2.3 million as at 30 June 2021. This balance is comprised of the following:

- **Internal IT software** totalling \$1.3 million, which the Liquidators understand does not have use for third parties or a realisable value;
- **Office equipment** totalling \$217k net of depreciation; and
- **Leased property improvements/furniture & fittings** totalling \$840k which relate to premises formerly leased by FG (disclaimed following our appointment as Liquidators).

We understand the Receivers are dealing with Our Kloud and a landlord in respect of realising certain fixed assets, but this is unlikely to generate material recoveries.

### 3.2.7 Vehicles

One leased vehicle was realised at auction. Following payment to the financier the remaining proceeds (circa \$2k) will be used to cover costs incurred securing and realising this asset.

### 3.2.8 Intellectual Property (IP) and goodwill

FG's accounting records include \$158k in relation to IP, comprised of goodwill and FG's website.

Prior to the Liquidators' appointment, the Former Voluntary Administrators sold FG's goodwill to Our Kloud for \$0.4 million plus the assumption of entitlements of transferring employees. This amount is currently held on trust and is subject to competing claims.

### 3.2.9 Shares

The accounting records detail equity investments valued at \$1.8 million, as follows:

- \$0.5 million relating to shares in Nationwide Solutions, the former name of Forum Group (VIC) Pty Ltd (an Appointment Group entity). The Liquidators understand this entity has been inactive since early 2019 and do not anticipate any recoverable value in relation to those shares.

- \$1.3 million relating to shares in Crown Business Solutions, which was purchased by another Appointment Group entity in 2014 and subsequently transferred to FG in or around June 2020. From our preliminary investigations, the original purchase did not include the acquisition of any share interest and accordingly we believe the accounting of this purchase should have been recorded as goodwill or fixed assets. Noting the 2014 purchase date we do not anticipate any recoverable value in relation to this acquisition.

### 3.2.10 Clearing accounts – assets

The balance sheet included clearing accounts with a net asset balance totalling \$1.4 million.

Some of the amounts within these clearing accounts may have been amounts collected from “real” customers regarding equipment rental collections, however we note that based on our investigations, we are aware the wider Appointment Group often used clearing accounts to account for the alleged fraudulent scheme by recording payments to and receipts from financiers in connection with those suspected fraudulent contracts.

We anticipate these represent intercompany/related party balances and do not consider these to be assets with any realisable value.

## 3.3 Liabilities

The below table summarises FG’s liability position based on the information obtained from the balance sheet from the company’s accounting system as at 30 June 2021 and our investigations.

FGPL - liability summary				
\$'000	Reference	30/06/2021	Liquidators' Est. Amt.	
		Book value	EOS - Low	EOS - High
Trade creditors	3.2.1	8,117	8,117	<i>Unknown</i>
Secured creditors	3.2.2	206	206	<i>Unknown</i>
Employee liabilities	3.2.3	1,995	1,995	1,995
Loans from appointment group entities	3.2.4	17,042	17,042	17,042
<b>Total</b>		<b>27,361</b>	<b>27,361</b>	<b><i>Unknown</i></b>

### 3.3.1 Trade creditors

FG’s accounting records include trade creditors of \$8.1 million which appear to relate to third party trade payables of a wide variety, including ordinary trade creditors, taxes, lease liabilities etc.

The Liquidators have received PODs totalling \$3.2 million from 38 unsecured creditors as at the date of this report.

The Liquidators have not yet called for formal PODs from creditors and accordingly, this amount may change.

### 3.3.2 Secured creditors

The Company’s accounts detail \$206k owing to secured creditors. This amount appears to relate to hire purchase equipment leases. As we have not yet called for formal PODs, this amount may change, and we anticipate that it is likely the actual claim amount is materially higher than book value.

As detailed in section 2.1.2, the Company provided a guarantee to Octet for a funding facility it entered into with various Forum Group companies.

As discussed earlier in this report, Octet has enforced its general security interest by appointing the Receivers to recover the outstanding facility which is understood to be c. \$2.5 million, comprising approximately c.\$1.9 million as at the Liquidators’ appointment, plus c.\$700k in costs accrued by the Receivers.

Including the ALLPAP to Octet, there are 46 interests registered against the Company on the PPSR, summarised in the table following.

The ALLPAP registration from NAB is in relation to various liabilities including contingent bank guarantee liabilities of approximately \$900k. NAB is the account bank and is seeking to set that exposure off against the cash at bank.

16 other registrations relate to motor vehicles previously financed by FG and subsequently returned or realised.

The remaining secured parties are suppliers of goods. The Receivers have dealt with any retention of title claims and we

Forum Group Pty Ltd - PPSR registrations				
	Motor Vehicle	Other Goods	All PAP	Totals
Altech Computers Corporation Pty Ltd	-	1	-	1
The Trustee For D & H Trust & The Trustee For J & T Family Trust	-	2	-	2
Smartech Systems Oceania Pty Ltd	-	1	-	1
Pepper Asset Finance Pty Ltd	1	-	-	1
Fleet Partners Pty Limited	2	-	-	2
Summit Auto Lease Australia Pty Limited	15	-	-	15
Sektor Pty Limited	-	1	-	1
Octet Finance Pty Limited	-	-	1	1
Alloys International Printer & Hardware Division Pty Ltd; Integrex Systems Pty. Ltd.	-	1	-	1
The Trustee For Zone Q Champion Investments Trust	-	1	-	1
HP Financial Services (Australia) Pty Limited	-	2	-	2
BHD Leasing Pty Limited	-	1	-	1
Purebean Pty Ltd	-	1	-	1
EMPR Australia Pty Ltd	-	1	-	1
De Lage Landen Pty Limited	4	4	-	8
Konica Minolta Business Solutions Australia Pty Ltd	-	1	-	1
Canon Australia Pty. Ltd.	-	1	-	1
Dynamic Supplies Pty. Ltd.	-	1	-	1
Synnex Australia Pty. Ltd.	-	1	-	1
National Australia Bank Limited	-	-	1	1
JB Hi-Fi Group Pty Ltd; Clive Anthonys Pty Ltd	-	1	-	1
Ricoh Australia Pty Ltd	-	1	-	1
<b>Totals</b>	<b>22</b>	<b>22</b>	<b>2</b>	<b>46</b>

have not been made aware of the final outcome of any negotiations in relation to same.

### 3.3.3 Employee liabilities

FG's accounting records detail \$2 million in outstanding/accrued employee entitlements, including annual leave, long service leave, superannuation (but excluding PILN and redundancy). The Liquidators calculation of current outstanding employee entitlements is \$1.9 million covering outstanding annual leave, long service leave, superannuation, redundancy and payment in lieu of notice, noting additional employee entitlements were transferred to Our Kloud as part of the goodwill sale undertaken by the Former Voluntary Administrators.

### 3.3.4 Loans from appointment group entities

FG's accounting records include \$17 million in loans from Appointment Group entities, namely FGFS (\$1.1m), Forum Finance (\$14.7m), and Smartprint Fleet Management (\$1.3m).

## 3.4 Competing claims

We note there are a range of competing claims being asserted over the assets of the Company by various parties, including customers with trust claims (refer to section 3.4.1 below) and lenders that may have proprietary claims to the assets (refer to section 3.4.2 below).

If successful, these claims will reduce the pool of assets available and/or otherwise impact the statutory priorities, and impact the prospect of any dividend to unsecured creditors.

Given the uncertainty and complexities around the validity, extent and impact of these claims, we have not sought to reflect the impact of these claims in the above analysis.

### 3.4.1 Trust claims

These claims relate to assertions by certain financiers that they are entitled to amounts received from customers pursuant to the terms of their agreements with FG and/or Forum Finance. Specifically, that funds received from customers are held on trust until such time that they were remitted/passed through to the financier (**Trust Claims**).

### 3.4.2 Proprietary interest claims

We have been put on notice that a number of financiers of the Appointment Group are pursuing proprietary interest claims (**Proprietary Claims**) against assets in the name of the Company. There are currently legal proceedings before the Court in this regard.

These claims have been made on the basis that funding was provided to the Company from FGFS who in turn obtained those funds from Forum Finance, which obtained the funds through the alleged fraudulent behaviour of Mr Papas. The claim asserts that, any funds in bank accounts, or assets acquired or in part funded using funds advanced by the financiers remains the property of the financiers as a result of the Proprietary Claims and is not available to be retained by the Company or its creditors.

We have received PODs totalling \$353 million in relation to the Proprietary Claims to date.

## 4 Investigations

Creditors will find a summary of offences under the Act, including details of voidable transactions and insolvent trading considerations in the Creditor Information Sheet – Offences, Recoverable Transactions and Insolvent Trading (Enclosure 11).

### 4.1 Fraudulent scheme

#### 4.1.1 Overview

Following our various appointments to Appointment Entities, we have undertaken a detailed investigation and funds tracing exercise to understand the extent of the alleged fraud and the related actives of individuals to:

- investigate the circumstances surrounding the collapse of the Forum Group (and by extension the Appointment Group);
- determine the extent of the alleged fraud;
- identify how the alleged fraud scheme was committed and who may have been involved;
- trace the application of funds; and
- consider assets that may be available to recover.

Our investigations have been undertaken at a "Group" level for all entities that we have been appointed to (and go beyond FG), given the extent of the alleged fraudulent scheme and the way in which funds were transferred and recycled within the Appointment Group.

An overview of our preliminary findings is set out below.

#### 4.1.2 Investigations undertaken

Our investigations to date have included, amongst other activities:

- analysis of sources and applications of funds, including tracing of funds through associated entities in Australia and overseas, and identification and review of recipient accounts;
- an analysis of over 110,000 transactions across approximately 150 bank accounts held by FG and other Appointment Group entities, associated entities/persons and beneficiaries obtained from financial institutions and in response to subpoenas (focused on the period from July 2018 to June 2021);
- upload and process over 4.9 million documents to an online review platform;
- conduct of targeted searches of key terms and of key individuals and review of relevant materials;
- review of clearing accounts and other accounting records that appear to pertain to or record the alleged fraud;
- compilation and analysis of equipment listings contained in the alleged fraudulent contracts;
- identification of contractual documentation to determine the veracity of same;
- identification of relevant correspondence relating to those contracts to identify the people involved in the production of the alleged fraudulent contracts;



- analysis of the accounting records, data extracted from available systems and bank statements provided by financial institutions for accounts of various Appointment Group entities and accounts of parties subject to subpoena in the proceedings brought by WBC; and
- conducting public examination of:
  - Tony Bouchahine (CFO of the Forum Group) – who had responsibility for the accounts of FG and other Appointment Group entities including FGFS;
  - Craig Rollinson (General Manager of Operations of the Forum Group) – who had responsibility for or knowledge of certain associated entities in Australia and overseas; and
  - Brandon Chin (employee of an associated entity and formerly of FGFS) – who was responsible for accounting entries in FGFS.

#### 4.1.3 Key findings

Set out below are key findings based on our investigations to date:

- material funds are alleged to have been fraudulently obtained by Forum Finance, FG and other entities within the Forum Group from financiers through the provision of false documentation;
- primarily the scheme involved contracts being presented to Financiers for financing by Forum Finance where the underlying contracts were never entered into by the named customer (with customer signatures forged or copied and applied without their knowledge) and where there was in fact no underlying customer and/or equipment supplied;
- the alleged fraudulent behaviours appear to have been undertaken over an extended period of time. While we have focused on the period from 1 July 2018 to 30 June 2021 for the purpose of our analysis to date, we have identified materials suggesting similar behaviour was evident in FG as far back as at least 2013;
- while a significant quantum of funds are alleged to have been fraudulently obtained by Forum Finance, the behaviour was also undertaken in FG and other Forum Group entities associated with Mr Papas in Australia and New Zealand with similar schemes operating through those entities;
- the extent of the alleged fraudulent activity and scheme escalated throughout the period of focus between 2018 to 2021, with new financiers being introduced to meet ongoing operational and financial obligations;
- it appears that FGFS was set up in 2017 as the scheme was escalating, predominantly to disguise the source and applications of the funds that had been obtained under the scheme within the Group;
- there were deliberate attempts by Mr Papas and others involved in the scheme to avoid the scheme being uncovered, including:
  - intentionally omitting making entries in the financial accounts of Forum Finance to conceal the funds obtained as part of the scheme;
  - manipulating financial accounts including those of FG, in particular those presented to external parties to conceal the scheme;
  - establishing FGFS outside the Forum Group to account for the alleged fraud and disguise the source of funds, whilst also acting as the Group “treasurer” and ensuring that all financial commitments were met on a monthly basis (despite the lack of underlying customer receipts);
  - leveraging assets acquired using funds obtained through the scheme as a way to conceal the true source of the funds;
  - establishing other overseas entities and implementing contrived structures to disguise the source of funds from financiers and authorities;
  - selecting financing structures that minimise the visibility the financiers have to the underlying customers; and
  - historically refinancing financiers seeking to undertake any level of due diligence regarding the underlying customers and arrangements.
- the scale of the funds obtained in respect of alleged fraudulent contracts across the Forum Group and entities associated with Mr Papas was in excess of \$500 million;

- a significant proportion of the funding obtained was ultimately applied to meeting obligations to financiers arising out of that funding or to repay historical financiers;
- the balance of funds appear to have been utilised for a range of purposes including to:
  - provide unsecured loans to related and associated entities to:
    - > support (loss making) operations;
    - > to establish new businesses or invest in new activities;
    - > fund the acquisition of businesses;
    - > to act as a financier to associated entities;
    - > fund the acquisition of properties; and
    - > fund the acquisition of interests in a soccer club, a range of high end vehicles and race cars, vessels, interests in race horses;
  - provide loans to associates both in Australia and overseas for no commercial reason and on uncommercial terms; and
  - fund a lifestyle and personal expenses for Mr Papas and Mr Tesoriero.

The Liquidators are considering whether these circumstances may amount to breaches of s596 of the Act (Fraud by Officer) and s590 (offences by officers/employees).

## 4.2 Possible contraventions of the Act

### 4.2.1 Overview

In addition to the investigations carried out in respect of the alleged fraudulent scheme set out above, the Liquidators have also conducted investigations into the possible statutory offences and/or misconduct by the Directors, officers and employees of the Company and potential Liquidator recoveries.

Based on the Liquidators investigations to date, we have identified a number of possible contraventions of the Act and potential recovery actions available.

### 4.2.2 Investigations undertaken

The investigations have included:

- review of the pre-appointment Court proceedings, including relevant materials such as affidavits and supporting annexures;
- review of the books and records of the Company which includes accounting records and data extracted from available accounting systems of the Company;
- enquiries with former officers and employees of the Appointment Group in relation to the Company's affairs and transactions;
- review of public register information;
- analysis of bank statements provided by the financial institutions for accounts of the Company and accounts of other Appointment Group entities; and
- public examination of certain officers and employees of the Appointment Group.

Whilst these investigations are at the preliminary stages and are subject to legal advice, the Liquidators provide the following update on the possible contraventions of the Act by the Director, officers and/or employees of the Company.

### 4.2.3 Books and records

Based on a review of the books and records obtained from the Company, the Liquidators are of the opinion that the financial records maintained by the Company do not correctly record and explain the true financial position and performance of the Company, and the presumption of insolvency can be relied upon.

We have identified a number of instances where income and assets are recorded as being associated with customer contracts, where we have discovered there is in fact no legitimate underlying customer in connection with the contracts. We have separately identified the use of 'clearing accounts' to record the fraudulent scheme, noting there were manual entries reflecting intercompany transactions to conceal this position.

In light of the above, in our opinion the Director of FG has breached sections 286 and 364 of the Act which requires a company to maintain proper financial records that correctly record and explain its transactions and financial position and performance.

#### 4.2.4 Determining date of insolvency

In considering the matters identified to date from the Liquidator's investigations as outlined above, the Liquidators consider that FG was likely insolvent from at least July 2018, and likely earlier, on the following grounds:

- FG generated insufficient revenue and cash flow from its legitimate lease contracts/business to meet its obligations;
- FG obtained funding directly or indirectly through fraudulent leasing agreements and had obligations under those arrangements where there was no underlying income;
- FG was reliant on funds from FF (via FGFS) and escalating fraudulent activities to meet its liabilities; and
- there was no realistic prospect that it could repay the advances from the Financiers and/or FF (directly or indirectly through related party loans) through legitimate means.

#### 4.2.5 Insolvent trading

Pursuant to section 588G of the Act, a director of a company has a duty to ensure that the company does not incur debts that it is unable to pay, i.e. that it does not trade whilst insolvent.

Before a court will order that a person pay compensation in respect of insolvent trading, a liquidator must establish that:

- the person was a director of the company at the time the company incurred the debt which is the subject of the claim;
- the company was insolvent at that time or became insolvent by incurring the debt;
- at that time, there were reasonable grounds for suspecting that the company was insolvent or would become insolvent by incurring the debt; and
- the debt, which is the subject of the claim, was wholly or partly unsecured and the creditors with outstanding amounts suffered loss and damage.

Prior to commencing any recovery action, due consideration needs to be given (in the context of available defences) to:

- the significant costs that may be incurred in prosecuting a potential insolvent trading claim;
- further detail regarding the financial position of the directors and in particular, the value of any assets that could be realised to satisfy any successful judgement; and
- challenges with obtaining funding, and potential exposure to litigation costs.

Any return to creditors from an insolvent trading claim would be delayed until the claim is resolved (either by negotiation or a judgement from a court). If a claim is ultimately commenced and prosecuted to a trial, the Liquidators expect it could be several years from the time of issuing proceedings before assets are recovered.

If proceedings are pursued, there is the risk that the claim will not be established or that a defence will be sustained. Further, even if a judgement is obtained, there is a risk that it cannot be satisfied, or that the amount recovered will be insufficient to meet the costs of investigation and prosecuting the claim.

#### *Directors' defences*

There are various statutory defences available to directors in defending an insolvent trading claim, as set out in section 588H of the Act. In summary, these are that the director:

- had reasonable grounds to expect that the company was solvent at the time the debt was incurred;
- had reasonable grounds to believe, and did believe, that a competent, reliable person was responsible for providing adequate information on the company's solvency and that person fulfilled that responsibility and on the basis of such

information, the director believed that at the time the debt was incurred, and considering the other debts existing at the time, the company was solvent and remained solvent;

- was ill (and therefore did not take part in the management of the company) at the time the debt was incurred; or
- took reasonable steps to prevent the debts being incurred.

#### *Possible insolvent trading*

Solvency is a question of fact to be ascertained from a consideration of a company's financial position as a whole. However, Australian Court have determined that the primary test of solvency is a cash flow test.

Noting the fraud being a significant source of funds, the Director of the Company has likely breached section 588F of the Act in respect of their duties' to prevent insolvent trading by the Company.

We are currently unable to comment on the likelihood of an insolvent trading claim that could be brought against the Director, however note that the quantum of such claim would likely be substantial, albeit at this stage unquantified and the availability of assets to meet any successful claim highly uncertain.

#### 4.2.6 General Directors' duties

Sections 180 to 184 of the Act set out the duties, obligations and responsibilities imposed on directors, which are designed to promote good governance and ensure that directors act in the interests of a company. These duties include:

- duty of care and diligence;
- duty of good faith;
- duty not to make improper use of position; and
- duty not to make improper use of information.

The Liquidators have undertaken preliminary investigations into whether the Director of the Company has breached their duties set out in the above sections of the Act.

Based on the Liquidators' preliminary investigations, it appears that Mr Papas has likely breached his directors' duties, obligations and responsibilities imposed on him pursuant to section 180 to 184 of the Act on the following grounds:

- Mr Papas engaged in dishonest and deceptive conduct in setting up and perpetrating the fraudulent scheme.
- Mr Papas did not exercise his power and discharge his duties in relation to FG in good faith or for a proper purpose.
- Mr Papas improperly used or concealed information in respect of the Company's position and the fraudulent activities.
- Mr Papas used his powers for his own benefit and for the benefit of his associated entities, by funding substantial personal expenditure and/or investments for related entities on uncommercial terms.

The list of possible contraventions above is not exhaustive as the Liquidators are still carrying out their investigations.

### 4.3 Recovery actions

Under Part 5.7B of the Act, certain transactions that occurred prior to the Liquidation, including if property was disposed of or dealt with, are potentially recoverable by the Liquidators. This may result in, amongst other things, a requirement for a third party to return property and/or money and thereby increase the assets available to the Liquidation and creditors. These transactions are known as voidable transactions.

It is important to note that a number of voidable transactions can only be recovered if the company in question is proven to be insolvent at the time of the transaction.

The main voidable transactions that require insolvency to be established are:

- **unfair preferences:** transactions between the insolvent entity and a creditor resulting in the creditor receiving from the insolvent entity, in relation to an unsecured debt owed to the creditor, a greater amount than the creditor would have received in relation to the debt in a winding up of the company; and

- **uncommercial transactions:** transactions which a reasonable person in the place of an insolvent entity would not have entered into, taking into account the benefits and the detriment to the insolvent entity, the respective benefits to the other parties involved and any other related matters.

Other voidable transactions which may be claimed regardless of solvency are:

- **unfair loans:** a loan agreement where the interest or charges are considered to be extortionate. Unfair loans made to the entity at any time prior to the appointment of the liquidators may potentially be overturned by a liquidator, whether or not the entity was insolvent at the time the loan was entered into;
- **unreasonable director related transactions:** transactions with a director or a related entity of the director which a reasonable person in the place of the entity would not have entered into, taking into account the benefits and the detriment to the entity, the respective benefits to the other parties involved and any other related matters;
- **creditor defeating dispositions:** transfers of company assets for less than market value (or the best price reasonably obtainable) that prevents, hinders or significantly delay creditors' access to the company's assets; and
- **security interests created within six months of the appointment of the liquidators:** these may be unenforceable under certain circumstances.

Based on the Liquidators' preliminary investigations, we note that the Company has entered into following transactions which may be considered voidable:

- unreasonable director related transactions were entered into as follows:
  - payment of substantial personal expenditures and funding a lifestyle including over \$3m paid in respect of an AMEX in his name;
  - the Company advanced funds to other related entities and to the Director, Director controlled entities and to associates both in Australia and overseas; and
  - arranging for or authorising transactions to associated entities and parties where it does not appear there was a valid underlying benefit to FG.

The Liquidators investigations are ongoing and we may determine other causes of action however, it is unclear whether any of these actions are commercial to pursue given the range of claims against Mr Papas and the other parties involved, and their capacity to meet any judgement.

#### 4.4 Reporting to ASIC

Based on the investigations to date, it is clear that certain Directors, officers and employees of the Company have breached various offence provisions under the Act and possibly other legislations.

The Liquidators intend to complete their statutory investigations and lodge a preliminary investigation report with ASIC pursuant to section 533 of the Act in the coming weeks.

## 5 Receipts and payment

There have been no receipts or payments in the Liquidations to date.

## 6 Likelihood of a dividend

A number of factors will impact the likelihood of a dividend being paid to creditors, including:

- the amount of assets realisable and the costs of realising those assets;
- the statutory priority of certain claims and costs;
- the Funding Facility; and
- the value of various classes of claims including secured, priority, trust and unsecured creditor claims.

It is difficult for us to comment on the likely dividend payable however, we consider it will be unlikely that there will be a return to unsecured creditors of the Company on the following grounds:

- the appointment of Receivers over the assets of FG;

- the material employee claims received
- the quantum of the trust and proprietary interest claims being pursued and the extent to which if they are successful, they dissipate some or all of the assets available for unsecured creditors (as set out in section 3.4 of this report);
- that a number of the assets identified may require legal actions to pursue/realise, including in offshore jurisdictions;
- the funding required to conduct investigations and pursue assets; and
- the capacity of the Director and/or other parties to meet any claims/judgment remains unclear.

If a dividend is going to be paid, you will be contacted prior to us processing any payment, and if you have not already done so, you will be asked to lodge a POD. This formalises the record of your claim in the liquidation and is used to determine all claims against the Company and appropriate dividends (if any).

## 7 Cost of the liquidation

At the Meetings of Creditors, creditors will be asked to consider, and if thought fit, approve remuneration for the periods (as appropriate):

McGrathNicol - Retrospective remuneration approvals sought			
Capacity	Remuneration for	Period	Amount \$ (ex GST)
Voluntary Administrators	Work done	22 July 2021 to 27 July 2021	21,056
Liquidators	Work done	28 July 2021 to 19 September 2021	203,449
<b>Total - McGrathNicol</b>			<b>224,505</b>

Mackay Goodwin - Retrospective remuneration approvals sought			
Capacity	Remuneration for	Period	Amount \$ (ex GST)
Former Voluntary Administrators	Work done - Others	8 July 2021 to 22 July 2021	156,452
Former Voluntary Administrators	Work done - Preservation of assets	8 July 2021 to 22 July 2021	281,118
<b>Total - Mackay Goodwin</b>			<b>437,569</b>

Details of the Liquidators' remuneration is set out in the Remuneration Approval Report (Annexure 1).

## 8 Meetings of creditors

A meeting of FG's creditors has been convened to be held on **Friday, 12 November 2021 at 11:00am AEDT**. The meeting will be held virtually via webcast/teleconference on Zoom, in order to ensure compliance with any restrictions that may be in place as a result of COVID-19. There will not be an option to attend in person.

The purpose of the meeting is to:

- provide you with an update on the progress of the Liquidation;
- consider and if thought fit, to approve the retrospective fees of the Voluntary Administrators and Liquidators of the Company;
- consider and if thought fit, to approve the retrospective fees of the Former Voluntary Administrators of FG;
- consider the appointment a Committee of Inspection (**COI**) for the Company;
- authorise the Liquidators of FG to compromise debts greater than \$100,000 under section 477(2A) of the Act;
- authorise the Liquidators of FG to enter into agreements that may take longer than three months to complete under section 477(2B) of the Act; and
- discuss any other relevant business which may arise.

Please note that creditors intending to attend the meetings by Zoom webcast/teleconference, should register their intention to do so by sending an email to [forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com) or telephone (03) 9038 3148 before 4:00pm AEDT on

Thursday, 11 November 2021. You will be provided with a link on the evening before the meetings which will allow you to join the meetings.

For the purposes of the meeting, please find attached:

- a statutory notice convening the meeting (Enclosure 4);
- proof of debt form and guidance notes (Enclosure 5 and 6);
- proxy form and guidance notes (Enclosure 7 and 8); and
- general information for attending and voting at meeting of creditors (Enclosure 9).

## 9 Participating and voting in the meeting

To participate in the meeting, you must submit a proof of debt and information to substantiate your claim.

If the creditor is a person and will attend the virtual Zoom meeting, this is all that is required. However, if the creditor is another type of entity (such as a company), they must also appoint a person – a “proxy” or person authorised under a power of attorney – to vote on behalf of the creditor at the virtual Zoom meeting. A proxy should also be appointed if the creditor is a person, but is not available to attend the virtual Zoom meeting.

You can appoint the chairperson of the meeting as your proxy and direct the chairperson how you wish your vote to be cast. If you choose to do this, the chairperson must cast your vote as directed.

Creditors wishing to attend and participate at the meeting must submit a POD and a Proxy (if applicable) before 4:00pm (AEDT) on Thursday, 11 November 2021, and can attend either themselves or by appointing a Proxy to attend on their behalf (both virtually via Zoom).

An information sheet on approving remuneration of an external administrator is provided for your information.

## 10 Appointment of a Committee of Inspection

Creditors in a liquidation may decide to appoint a Committee of Inspection (**COI**) to act as a representative body of the creditors to monitor the liquidations and give assistance/directions to the Liquidators.

The role of a COI is to amongst others, assist the Liquidators, monitor the conduction of the liquidations and to the extent the Liquidators need to canvas views of creditors, the COI can act as a representative body to consider the matter. A COI can also approve the Liquidators’ remunerations.

It is our opinion that a COI would be helpful for the Liquidation. The main benefits of appointing a COI is that a COI meeting can be called at short notice, and the Liquidators can obtain the COI’s view on urgent matters in respect to the liquidation. In addition, the appointment of a COI will also reduce the costs associated with convening a creditors’ meeting.

In accordance with IPR 80-5, to be eligible to be appointed as a member of the COI, the person must be:

- a creditor of the company; or
- the attorney, or power of attorney of a creditor; or
- a person authorised in writing by a creditor of the company to be a member of the COI; or
- a representative of the Commonwealth if a claim for financial assistance has been made or likely to be made, from the Commonwealth.

Should you wish to be nominated as a member of the COI of the Company, please complete the nomination form in Annexure 10 and return it to the Liquidators by sending an email to [forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com) before 4:00pm AEDT on Thursday, 11 November 2021.

The eligible nominees will be tabled at the upcoming meeting on 12 November 2021, and all creditors will have the opportunity to comment on the COI prior to approving the resolution for its appointment.

## 11 Other resolutions

At the upcoming meeting of creditors, the Liquidators of FG intend to seek creditors approval of the following:

- authorising the Liquidators to compromise debts of the company greater than \$100,000 pursuant to section 477(2A) of the Act; and
- authorising the Liquidators to enter into agreements that may take longer than three months to complete pursuant to section 477(2B) of the Act.

## 12 What happens next?

We will proceed with the liquidation, which will include:

- recovering any further available property;
- realising the remaining assets;
- completing our investigations into the Company's affairs;
- if identified, pursuing any viable claims for statutory recovery actions subject to the availability of funding; and
- completing our reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (ASIC).

We will report to creditors or the COI (if appointed at the upcoming meeting of creditors) on progress of the liquidation.

Due to the complex nature of the investigations and potential recovery actions, including uncertainty regarding the duration of legal actions if commenced, we are currently unable to determine when the Liquidation will be completed but anticipate they will remain ongoing for at least 12 months. We will be in a better position to determine the timeframe once we have completed the investigations and determined the approach to realise the assets of the Company.

## 13 What you should do next?

You should:

- decide whether you are going to participate in the meeting; and if so
- confirm your intention to participate by contacting Walter Jones by email ([forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com)) or telephone (03) 9038 3148 before **4:00 PM (AEDT) on Thursday, 11 November 2021**; and
- complete and return your proof of debt and proxy form (if required) by **4:00 PM (AEDT) on Thursday, 11 November 2021**.

## 14 Where can you get more information?

You can access information which may assist you on the following websites:

ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets").

If you have any queries, please contact Walter Jones on (03) 9038 3148. For further information about this engagement, please refer to the website <https://www.mcgrathnicol.com/creditors/forum-group-and-associated-entities/>.

Dated: 28 October 2021



Jason Ireland  
*Liquidator*



Enclosures:

- 1 Appointment Group – External Appointments
- 2 Remuneration Approval Report
- 3 ARITA Information Sheet – Approving remuneration of an external administrator
- 4 Notice of Meeting
- 5 Proof of Debt (Form 535)
- 6 Proof of debt guidance notes
- 7 Proxy Form
- 8 Proxy form guidance notes
- 9 General information for attending and voting at meetings of creditors
- 10 COI nomination form
- 11 ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading

Forum Group External Administrator Appointments

No.	Entity	ACN	Appointment Type	Appointment Date	Appointees
1	Forum Finance Pty Limited (Receivers Appointed) (In Liquidation)	153 301 172	Court Appointed Liquidation	9/07/2021	Jason Ireland and Jason Preston
2	Forum Group Financial Services Pty Ltd (Provisional Liquidators Appointed)	623 033 705	Court Appointed Provisional Liquidation	15/07/2021	Jason Ireland and Jason Preston
3	Forum Enviro Pty Ltd (Provisional Liquidators Appointed)	607 484 364	Court Appointed Provisional Liquidation	15/07/2021	Jason Ireland and Jason Preston
4	Forum Enviro Pty Ltd (Provisional Liquidators Appointed)	168 709 840	Court Appointed Provisional Liquidation	15/07/2021	Jason Ireland and Jason Preston
5	Forum Group Pty Ltd (Receivers Appointed) (In Liquidation)	153 336 997	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
6	The Forum Group of Companies Pty Ltd (In Liquidation)	151 964 626	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
7	Forum Group (QLD) Pty Ltd (In Liquidation)	103 609 678	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
8	Forum Group (VIC) Pty Ltd (In Liquidation)	153 062 018	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
9	Forum Fleet Pty Limited (In Liquidation)	155 440 994	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
10	Forum Direct Pty Ltd (In Liquidation)	054 890 710	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
11	lugis Pty Ltd (In Liquidation)	632 882 243	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
12	lugis Investments Pty Ltd (In Liquidation)	647 627 745	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
13	lugis Waste Solutions Pty Ltd (In Liquidation)	647 212 299	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
14	Imagetec Financial Services Pty Ltd (In Liquidation)	111 978 182	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
15	Imagetec Solutions Australia Pty Ltd (In Liquidation)	074 715 718	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
16	Onesource Australia Holdings Pty Limited (In Liquidation)	120 463 541	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
17	Smartprint Fleet Management Pty Ltd (Receivers Appointed) (In Liquidation)	132 807 080	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
18	Orca Enviro Solutions Pty Ltd (In Liquidation)	626 552 645	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
19	Orca Enviro Systems Pty Ltd (In Liquidation)	627 597 782	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
20	Aramia Holdings Pty Ltd (In Liquidation)	114 958 717	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
21	Eros Management Pty Ltd (In Liquidation)	622 298 346	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
22	Intrashield Investment Group Pty Ltd (In Liquidation)	645 578 829	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
23	Intrashield Pty Ltd (In Liquidation)	133 426 534	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
24	Spartan Consulting Group Pty Ltd (In Liquidation)	168 989 544	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
25	5 Bulgara Street Pty. Ltd. (Receivers and Managers Appointed) (In Liquidation)	630 982 160	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
26	6 Bulgara Street Pty Ltd (Receivers and Managers Appointed) (In Liquidation)	639 734 473	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
27	14 James Street Pty Ltd (Receivers and Managers Appointed) (In Liquidation)	638 449 206	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston
28	26 Edmonstone Road Pty. Ltd. (Receivers and Managers Appointed) (In Liquidation)	622 944 129	Court Appointed Liquidation	28/07/2021	Jason Ireland and Jason Preston

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# Remuneration Approval Report

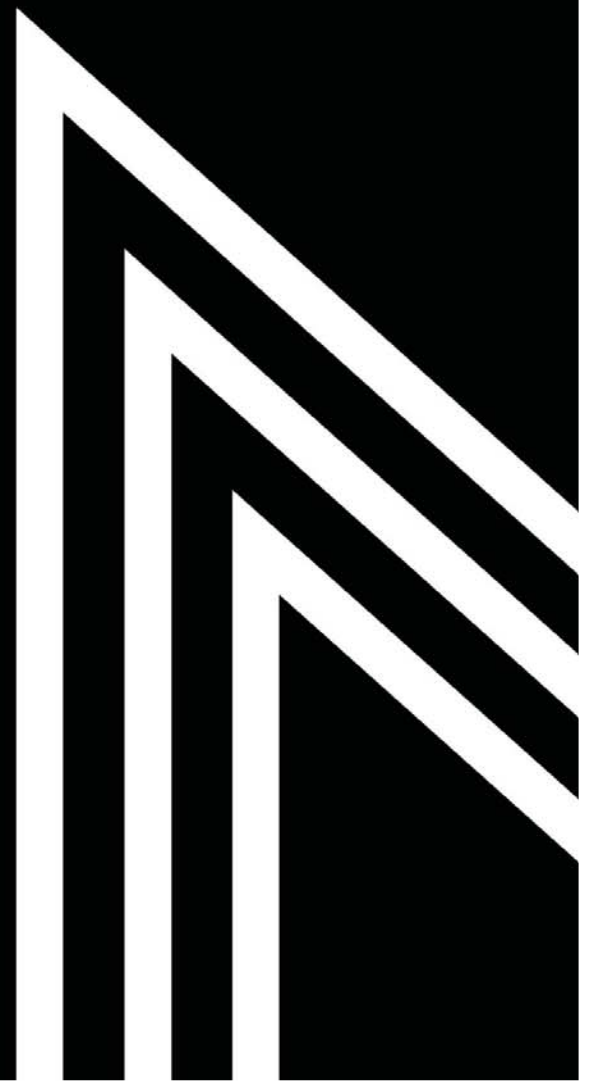
Forum Group Pty Ltd (Receivers Appointed) (In  
Liquidation)

ACN 153 336 997

28 October 2021



McGrathNicol



This remuneration approval report provides you with information to assist you to make an informed decision regarding the approval of our proposed remuneration for undertaking the Voluntary Administration and Liquidation of Forum Group Pty Limited (Receivers and Managers Appointed) (In Liquidation).

The report has the following information:

- 1 Executive Summary .....2
- 2 Declaration .....2
- 3 Remuneration sought .....3
- 4 Disbursements sought.....3
- 5 Likely impact on dividends .....3
- 6 Funding received for remuneration and disbursements .....4
- 7 Summary of receipts and payments.....4
- 8 Queries.....4
- Schedule A – Details of work .....5
- Schedule B1 – Time spent by staff on each major task (Retrospective: Voluntary Administration).....8
- Schedule B2 – Time spent by staff on each major task (Retrospective: Liquidation) .....9
- Schedule C – Disbursements .....10
- Schedule D – Schedule of Hourly Rates .....12



## 1 Executive Summary

We are asking creditors to approve the following remuneration and disbursements in relation to Forum Group Pty Ltd (Receivers Appointed) (In Liquidation) (**FGPL or Company**):

### Remuneration Sought

Remuneration	Amount \$ (ex GST)	Disbursements \$ (ex GST)
Retrospective Voluntary Administration	21,056	-
Retrospective Liquidation	203,449	2,037
<b>Total</b>	<b>224,505</b>	<b>2,037</b>

Details of remuneration and disbursements can be found in sections 3 and 4 of this report.

Creditors will be asked to approve our remuneration at the meeting on 12 November 2021.

We estimate that the total cost of the voluntary administration and liquidation (**the Appointment**) will be \$344,000. This has increased from our previous estimate as the level of work required to conduct our Appointment, complete our investigations, and attend to our statutory duties is higher than originally expected.

We expect that there will be further remuneration approval requests made in relation to the Company within the next 12 months once we have completed our investigations and have realised the assets of the Company.

For the avoidance of doubt this report covers the period when we were appointed Voluntary Administrators of the Company on 22 July 2021 and our subsequent appointment as Liquidators on 28 July 2021. Remuneration for the Former Voluntary Administrators' of the Company, Domenico Alessandro Calabretta, Grahame Robert Ward and Thyge Trafford-Jones of Mackay Goodwin is detailed in the remuneration approval reports attached separately to the report to creditors dated 28 October 2021.

Please note that any defined terms in this report have the same meaning as those contained in the main body of the report to creditors dated 28 October 2021.

## 2 Declaration

We, Jason Preston and Jason Ireland of McGrathNicol have undertaken a proper assessment of this remuneration and disbursements claim in accordance with the law and applicable professional standards. We are satisfied that the remuneration and disbursements claimed is in respect of work properly performed in the conduct of these matters.

Noting that the Company is part of the Forum Group of entities (as set out in the Statutory Report dated 28 October 2021) we have reviewed the work in progress (WIP) report for the Appointment Group to ensure that remuneration is only being claimed for necessary and proper work performed and have made the following adjustments as detailed below:

- Written off a total of \$44,600 from the recorded work in progress (WIP) (being 10.1% of the unreviewed time cost recorded, pre reallocations required as set out below) including:
  - general administrative matters including training, remuneration preparation and other non-chargeable time;
  - time incurred by McGrathNicol employees who have undertaken less than 10 hours work across the liquidations to remove intermittent time and any perceived inefficiencies incurred; and
  - time incurred by McGrathNicol undergraduate employees to remove any perceived inefficiencies incurred by junior members of the team.
- Reallocated time for tasks relating to the other entities within the broader Appointment Group on an appropriate pro rata basis as set out below:
  - tasks relating to creditor reporting and PPSR related correspondence across all entities subject to our appointment; and
  - tasks relating to dealing with employee related issues where it is not directly referable to a specific entity, has been charged in proportion to the number of employees per employing entity.

### 3 Remuneration sought

The remuneration we are asking creditors to approve is as follows:

Remuneration Sought				
Remuneration	Period	Amount \$ (ex GST)	Rates to apply	When it will be drawn
Work we have already done - <b>Voluntary Administration</b>	22 July to 27 July 2021	21,056	Provided in my initial Remuneration Notice sent to creditors on 24 August.	Immediately, when funds are available.
Work we have already done - <b>Liquidation</b>	28 July to 19 September 2021	203,449	Provided in my initial Remuneration Notice sent to creditors on 24 August.	Immediately, when funds are available.
<b>Total</b>		<b>224,505</b>		

Details of the work already done and future work that we intend to do are included at Schedule A.

Schedule B includes a breakdown of time spent by the appointees and staff members on each major task for work we have already done.

Actual resolutions to be put to the meeting are detailed below for your information. These resolutions also appear in the proxy form provided to you as an attachment to the report to creditors dated 28 October 2021.

#### **Resolution 1: Retrospective remuneration during the voluntary administration of Forum Group Pty Ltd for the period 22 July 2021 to 27 July 2021:**

*"That the remuneration of the voluntary administrators for the period 22 July 2021 to 27 July 2021, calculated at hourly rates as detailed in the Initial Remuneration Notice dated 24 August 2021, is determined in the sum of \$21,056, exclusive of GST."*

#### **Resolution 2: Retrospective remuneration during the liquidation of Forum Group Pty Ltd for the period 28 July 2021 to 19 September 2021:**

*"That the remuneration of the liquidators for the period 28 July 2021 to 19 September 2021, calculated at hourly rates as detailed in the Initial Remuneration Notice dated 24 August 2021, is determined in the sum of \$203,449, exclusive of GST."*

### 4 Disbursements sought

Pursuant to section 7.7.1 of the ARITA Practice Statement 7, we are not required to seek creditor approval for costs paid to third parties, or where we are recovering a cost incurred on behalf of the administration, but we must provide details to creditors. Details of the categories and these amounts are included in Schedule C.

### 5 Likely impact on dividends

It is both reasonable and appropriate for a professional service provider to be remunerated for their services. An external administrator is entitled to be remunerated for necessary work that is properly performed. That work generates the funds that may be recovered for the benefit of creditors and other stakeholders.

The impact of the approval of the Appointment remuneration is that the remuneration will then be paid in accordance with the terms of the Funding Facility referred to in Section 6 below. The remuneration and/or repayment of the Funding Facility will be paid from those funds that are generated prior to the payment of most creditors in the Liquidation.

It is noted that funds would only be available to any stakeholder as a consequence of the work necessarily undertaken by the Voluntary Administrators and Liquidators.

If a dividend or distribution is to be paid to stakeholders, there is also necessary work that must be undertaken by the Liquidators to properly adjudicate on claims and distribute any available funds.

## 6 Funding received for remuneration and disbursements

### 6.1 Funding Agreement

On 7 September 2021 the Liquidators entered into a Funding Agreement with Westpac following receipt of the Court's approval. The Funding Agreement is to provide the Liquidators a loan for the purposes of funding the Voluntary Administrators and Liquidators' remuneration and expenses incurred in July, August and September 2021 (or other such longer period as agreed in writing) up to a value of \$4.5 million (ex GST) (**Funding Facility**).

The funding was put in place to allow us to undertake our investigations of the Forum Group and associated entities and the identification of possible future sources of asset recoveries. Apart from priority employee claims, the effect of this Funding Agreement is that all realisations across any of the entities subject to our appointment will first be applied in repayment of the Facility, and amounts will only become available for unsecured creditors to the extent there is a surplus once the Facility has been repaid in full.

The Funding Facility terms and conditions are detailed in section 2.5 of the report to creditors dated 28 October 2021.

### 6.2 FEG

The Liquidators have an agreement with the Department of the Attorney General (**Department**) to perform employee entitlement verification services for the Department in respect of employee entitlements and Fair Entitlement Guarantee (FEG) claims.

The Liquidators have agreed remuneration payments directly from FEG in the amount of \$12,740 (ex GST) under the Fair Entitlements Guarantee Act to perform these services. The total time incurred to perform these verification services to 19 September 2021 was \$21,529. The amounts for which we are seeking creditor approval only includes a shortfall of \$8,789.

## 7 Summary of receipts and payments

There have been no receipts or payments in the Appointment to date.

## 8 Queries

If you have any queries regarding the information in this report, please contact Richard Fernando Bahamondez on (02) 9338 2676.

You can also access information that may assist you on the following websites:

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "INFO 85").

Further supporting documentation for our remuneration claim can be provided to creditors on request.

Dated: 28 October 2021



Jason Ireland  
*Liquidator*

Attachments:

Schedule A – Details of work

Schedule B – Time spent by staff on each major task

Schedule C – Disbursements

Schedule D – Schedule of hourly rates

## Schedule A – Details of work

			<b>Resolution 1: Retrospective remuneration for the voluntary administration</b>
<b>Period</b>		22 July 2021 to 27 July 2021	
<b>Amount (ex GST)</b>		\$21,056	
<b>Task Area</b>	<b>General Description</b>	<b>Tasks</b>	
Assets 5.6 hours \$4,191	Circulating and non-circulating	<ul style="list-style-type: none"> <li>Review asset listings and balance sheets to determine if any assets can be realised</li> </ul>	
	Sale of Business as a Going Concern	<ul style="list-style-type: none"> <li>Liaise with the Former Administrators in relation to the sale of business</li> </ul>	
Creditors 4.2 hours \$2,983	Creditor Enquiries, Requests & Directions	<ul style="list-style-type: none"> <li>Receive and respond to creditor enquiries</li> <li>Establishing and monitoring functional mailbox, attending to inbound creditor queries</li> </ul>	
	Creditor Reports	<ul style="list-style-type: none"> <li>Preparing initial creditor circular and notice</li> <li>Consider requirements of Statutory Report by Administrators</li> </ul>	
	Secured creditor reporting	<ul style="list-style-type: none"> <li>Notify PPSR registered creditors of appointment</li> <li>Prepare PPSR master register</li> </ul>	
Employees 12.4 hours \$7,612	Employee queries	<ul style="list-style-type: none"> <li>Initial correspondence with employees</li> <li>Prepare letters to employees advising of their options</li> <li>Prepare correspondence in response to employee's queries</li> </ul>	
Trade on 1.1 hours \$726	Trade On Management	<ul style="list-style-type: none"> <li>Dealings with counterparties to understand the business model</li> <li>Dealings with the Former Administrators in relation to the sale process of Forum Group</li> </ul>	
Investigation Nil	n/a	n/a	
Dividend Nil	n/a	n/a	
Administration 10.0 hours \$5,544	Correspondence	<ul style="list-style-type: none"> <li>Attending to statutory obligations in connection with appointment including notifying various stakeholders of appointment</li> </ul>	
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>Updating checklists</li> </ul>	
	Insurance	<ul style="list-style-type: none"> <li>Identify potential issues requiring attention of insurance specialists</li> </ul>	
	Bank account administration	<ul style="list-style-type: none"> <li>Prepare correspondence in relation to accounts</li> </ul>	
	ASIC forms	<ul style="list-style-type: none"> <li>Prepare and lodge ASIC forms</li> </ul>	
	ATO and other statutory reporting	<ul style="list-style-type: none"> <li>Notify of appointment</li> </ul>	
	Planning/Review	<ul style="list-style-type: none"> <li>Discuss status of external administration</li> </ul>	
	Books and records/storage	<ul style="list-style-type: none"> <li>Obtain access to the books and records</li> </ul>	
Dealing with Directors	<ul style="list-style-type: none"> <li>Send initial request to directors and officer for Report on Company Activities &amp; Property (ROCAP)</li> </ul>		



<b>Resolution 2: Retrospective remuneration for the liquidation</b>		
<b>Period</b>	28 July 2021 to 19 September 2021	
<b>Amount (ex GST)</b>	\$203,449	
<b>Task Area</b>	<b>General Description</b>	<b>Tasks</b>
Assets 12.7 hours \$8,257	Circulating and non-circulating	<ul style="list-style-type: none"> <li>▪ Review asset listings and balance sheets to determine if any assets can be realised</li> <li>▪ Developing and maintaining master asset schedule</li> <li>▪ Investigations into assets based on financial and other information available</li> </ul>
	Assets subject to specific charges and security interests	<ul style="list-style-type: none"> <li>▪ Prepare and issue correspondence to security interest holders</li> <li>▪ Liaise with suppliers regarding PPSR</li> <li>▪ Dealings with the Former Administrators in relation to the sale process of Forum Group</li> <li>▪ Dealings with DVT Group in relation to any assets subject to their appointment</li> </ul>
	Stock	<ul style="list-style-type: none"> <li>▪ Consider stock sale contract</li> </ul>
	Leasing	<ul style="list-style-type: none"> <li>▪ Review leasing documents</li> <li>▪ Liaise with owners/lessors</li> <li>▪ Disclaim leases</li> </ul>
Creditors 33.7 hours \$18,375	Creditor Enquiries, Requests & Directions	<ul style="list-style-type: none"> <li>▪ Receive and respond to creditor enquiries</li> <li>▪ Manage and monitor functional mailbox, attending to inbound creditor queries</li> <li>▪ Consider reasonableness of creditor information requests</li> <li>▪ Compile information requested by creditors</li> <li>▪ Prepare initial correspondence to creditors and their representatives</li> </ul>
	Secured creditor reporting	<ul style="list-style-type: none"> <li>▪ Notify PPSR registered creditors of appointment</li> <li>▪ Respond to PPSR registered creditor's queries</li> </ul>
	Creditor reports	<ul style="list-style-type: none"> <li>▪ Prepare Statutory Report by Liquidator</li> <li>▪ Maintain and review creditor position/lists</li> </ul>
	Deal with proofs of debt (POD)	<ul style="list-style-type: none"> <li>▪ Receive PODs from claimants and maintain POD register</li> <li>▪ Correspond with claimants regarding PODs</li> </ul>
Employees 170.3 hours \$90,363	Employee queries	<ul style="list-style-type: none"> <li>▪ Receive and follow up employee enquiries in relation to the appointment and employee entitlements following the sale undertaken by the Former Administrators</li> <li>▪ Prepare letters to employees advising of their entitlements and options available</li> <li>▪ Reconcile superannuation accounts and calculate amounts owed</li> <li>▪ Manage and monitor functional mailbox, attending to inbound employee queries</li> </ul>
	Fair Entitlements Guarantee (FEG)	<ul style="list-style-type: none"> <li>▪ Correspond with FEG</li> <li>▪ Prepare strategy and approach with FEG</li> <li>▪ Prepare verification spreadsheet</li> <li>▪ Prepare FEG quotations</li> <li>▪ Complete FEG questionnaires</li> <li>▪ Dealings with DVT Group in relation to employees</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>▪ Review employee files and company's books and records</li> <li>▪ Calculate employee entitlements</li> <li>▪ Review awards</li> </ul>
Trade on 26.8 hours \$15,429	Trade On Management	<ul style="list-style-type: none"> <li>▪ Attend site</li> <li>▪ Prepare lease disclaimer</li> <li>▪ Liaise with customers</li> <li>▪ Liaise with ex management and staff</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Dealings with counterparties to understand the business model</li> <li>▪ Dealings with the Former Administrators in relation to the sale process of Forum Group</li> </ul>
Investigation 24.1 hours \$13,555	Conduct investigations	<ul style="list-style-type: none"> <li>▪ Review company's books and records</li> <li>▪ Review specific transactions</li> <li>▪ Prepare investigation analysis</li> <li>▪ Conduct sources and application analysis</li> </ul>
	Technology and data investigations	<ul style="list-style-type: none"> <li>▪ Identifying securing, processing and retrieval of data (across numerous live systems and backups) for use across all other workstreams</li> </ul>
Dividend Nil	n/a	n/a
Administration 103.6 hours \$57,471	Correspondence	<ul style="list-style-type: none"> <li>▪ Attending to statutory obligations in connection with appointment including notifying various stakeholders of appointment</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ Maintaining project task lists</li> <li>▪ Updating checklists</li> <li>▪ Review of checklists to determine outstanding tasks and timelines</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Identify potential issues requiring attention of insurance specialists</li> <li>▪ Correspond with insurance broker regarding initial and ongoing insurance requirements</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>▪ Prepare correspondence to open accounts</li> <li>▪ Request bank statements</li> <li>▪ Perform bank account reconciliations</li> </ul>
	ASIC forms	<ul style="list-style-type: none"> <li>▪ Prepare and lodge ASIC forms</li> <li>▪ Correspond with ASIC regarding statutory forms</li> </ul>
	ATO and other statutory reporting	<ul style="list-style-type: none"> <li>▪ Notify of appointment</li> <li>▪ Monitoring ATO portal in relation to correspondence</li> </ul>
	Legal actions	<ul style="list-style-type: none"> <li>▪ Preparing and swearing various affidavits</li> <li>▪ Supporting applications including provision liquidation appointments</li> </ul>
	Planning/Review	<ul style="list-style-type: none"> <li>▪ Discuss status of external administration</li> <li>▪ Discuss strategy</li> </ul>
	Dealing with Directors	<ul style="list-style-type: none"> <li>▪ Send initial request to directors and officer for Report on Company Activities &amp; Property (ROCAP)</li> </ul>
	Books and records/storage	<ul style="list-style-type: none"> <li>▪ Obtain access to the Company books and records</li> <li>▪ Maintaining backups of key information</li> </ul>

## Schedule B1 – Time spent by staff on each major task (Retrospective: Voluntary Administration)

### Resolution 1: from 21 July 2021 to 27 July 2021

Forum Group Pty Ltd (Administrators Appointed) - Remuneration for the period 22 July 2021 to 27 July 2021																		
Staff	Position	Rate	Total		Assets		Creditors		Employees		Trade on		Investigations		Dividend		Administration	
			Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)
Jason Ireland	Appointee	770	5.5	4,251	4.5	3,465	0.0	16	-	-	-	-	-	-	-	-	1.0	770
Jason Preston	Appointee	770	2.6	2,002	-	-	2.6	2,002	-	-	-	-	-	-	-	-	-	-
	Partner	770	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Director	660	9.8	6,453	1.1	726	0.7	485	4.9	3,262	1.1	726	-	-	-	-	1.9	1,254
	Senior Manager	620	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Manager	580	10.0	5,807	-	-	0.3	181	7.5	4,350	-	-	-	-	-	-	2.2	1,276
	Assistant Manager	530	0.5	283	-	-	0.5	283	-	-	-	-	-	-	-	-	-	-
	Senior Accountant	480	3.7	1,792	-	-	0.0	16	-	-	-	-	-	-	-	-	3.7	1,776
	Accountant	390	1.2	468	-	-	-	-	-	-	-	-	-	-	-	-	1.2	468
	Senior Client Admin	370	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total (ex GST and disbursements)</b>			<b>33.4</b>	<b>21,056</b>	<b>5.6</b>	<b>4,191</b>	<b>4.2</b>	<b>2,983</b>	<b>12.4</b>	<b>7,612</b>	<b>1.1</b>	<b>726</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>10.0</b>	<b>5,544</b>

#### Notes

- 1 On the basis that work undertaken was not solely applicable to a particular corporate entity and had application to each of, or a subset of the other Forum Group companies and the other entities associated with Mr Papas outside the Forum Group subject to our appointment as Liquidators, WIP was apportioned on an appropriate pro rata basis as set out below section 2 of the Remuneration Approval Report
- 2 Number of hours multiplied by hourly rates will not exactly equal the recorded amount claimed for remuneration due to the pro rata application.



## Schedule B2 – Time spent by staff on each major task (Retrospective: Liquidation)

### Resolution 2: from 28 July 2021 to 19 September 2021

Forum Group Pty Ltd (In Liquidation) - Remuneration for the period 28 July 2021 to 19 September 2021																		
Staff	Position	Rate	Total		Assets		Creditors		Employees		Trade on		Investigations		Dividend		Administration	
			Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)	Hours	\$ (AUD)
Jason Ireland	Appointee	770	99	7,638	3.8	2,926	0.7	503	2.7	2,052	0.5	385	-	-	-	-	2.3	1,771
Jason Preston	Appointee	770	10.1	7,802	-	-	0.0	25	-	-	-	-	-	-	-	-	7.3	5,621
	Partner	770	1.7	1,334	-	-	1.7	1,334	-	-	-	-	-	-	-	-	-	-
	Director	660	69.9	46,162	4.3	2,845	4.6	3,065	11.0	7,252	8.5	5,610	-	-	-	-	41.0	27,060
	Senior Manager	620	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Manager	580	116.2	67,368	1.1	621	7.2	4,150	102.3	59,359	-	-	-	-	-	-	4.5	2,610
	Assistant Manager	530	66.8	35,412	3.5	1,864	12.0	6,336	3.8	2,036	17.8	9,434	-	-	-	-	10.0	5,300
	Senior Accountant	480	1.9	916	-	-	0.1	52	-	-	-	-	-	-	-	-	1.8	864
	Accountant	390	91.2	35,559	-	-	7.5	2,910	50.4	19,663	-	-	-	-	-	-	33.3	12,987
	Senior Client Admin	370	3.4	1,258	-	-	-	-	-	-	-	-	-	-	-	-	3.4	1,258
<b>Total (ex GST and disbursements)</b>			<b>371.2</b>	<b>203,449</b>	<b>12.7</b>	<b>8,257</b>	<b>33.7</b>	<b>18,375</b>	<b>170.3</b>	<b>90,363</b>	<b>26.8</b>	<b>15,429</b>	<b>24.1</b>	<b>13,555</b>	<b>-</b>	<b>-</b>	<b>103.6</b>	<b>57,471</b>

#### Notes

1 On the basis that work undertaken was not solely applicable to a particular corporate entity and had application to each of, or a subset of the other Forum Group companies and the other entities associated with Mr Pappas outside the Forum Group subject to our appointment as Liquidators, WIP was apportioned on an appropriate pro rata basis as set out below section 2 of the Remuneration Approval Report

2 Number of hours multiplied by hourly rates will not exactly equal the recorded amount claimed for remuneration due to the pro rata application.



## Schedule C – Disbursements

### Costs paid to third parties

Costs paid to third parties are recovered at cost. Creditors are not required to approve these types of costs, but details are provided to account to creditors, including the basis of charging for these types of costs. Creditors are entitled to question the incurring of the costs and can challenge the costs in Court.

The following costs have been paid by McGrathNicol to third parties and relate to the Appointment. These amounts will be reimbursed to McGrathNicol at cost from the Liquidators bank account:

Costs paid to third parties for the period 28 July to 19 September 2021	
	Amount (\$) (GST exclusive)
Other incidental disbursements	\$41
Searches	\$1,996
<b>Total</b>	<b>\$2,037</b>

Future costs provided by McGrathNicol will be charged to the external administration on the following basis:

Cost type	Rate (GST exclusive)
Postage	At cost
Stationery and other incidental disbursements	At cost
Conference call phone charges	At cost
Searches	At cost
Advertising	At cost
Courier	At cost
Staff per diem travel allowance*	\$89.00 per day**
Staff vehicle use	\$0.72 per km**
ASIC user pays levy***	At cost

\* Payable when partners or staff are required for business purposes to stay away from their usual place of residence overnight.



\*\* These rates are deemed reasonable by the Australian Taxation Office.

\*\*\* This levy is charged by ASIC and is based on the number of notifiable events in a financial year directly related to this Appointment. Notifiable events include notices published on ASIC's published notices website and some documents lodged with ASIC.

#### **Further explanation of data hosting costs**

In the conduct of the Appointment we may use McGrathNicol's Forensic Technology team to extract, aggregate, electronically process and/or host electronic data, which could be used for the:

- trade or sale of the business or assets; and/or
- investigations regarding transactions or potential recoveries available to creditors.

If data hosting is required and we choose not to use the services of McGrathNicol's Forensic Technology team, we will otherwise have to purchase those services from an alternative provider and/or use another method to achieve the same end, which will not be as efficient as using these available internal services.

We note that the data hosting rates above are no more than our standard commercial pricing available for the same services when they are provided to external parties.

## Schedule D – Schedule of Hourly Rates

The rates for our remuneration calculation are set out in the following table, together with a general guide showing the qualifications and experience of staff engaged in the Appointment and the role they take in the Appointment. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

Title	Description	Hourly rate (excl GST)
Appointee/Partner	Registered liquidator, Chartered Accountant or equivalent and generally degree qualified with more than twelve years of experience. Leads assignments with full accountability for strategy and execution.	\$770
Director 1	Generally Chartered Accountant or comparable qualification and degree qualified with more than ten years of experience, including four years of Director or equivalent experience. Autonomously leads complex insolvency appointments reporting to Appointee/Partner.	\$710
Director	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than nine years of experience. Autonomously leads insolvency appointments reporting to Appointee/Partner.	\$660
Senior Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than seven years of experience. Self-sufficiently conducts small to medium insolvency appointments and leads major workstreams in larger matters.	\$620
Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than five years of experience. Self-sufficiently conducts small insolvency appointments and takes a supervisory role on workstreams in larger matters.	\$580
Assistant Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than three years of experience. Autonomously manages workstream activity within appointments.	\$530
Senior Accountant	Generally degree qualified and undertaking Chartered Accountant's qualification or comparable relevant qualification with more than 16 months of experience. Completes tasks within workstreams and appointments under supervision.	\$480
Accountant	Generally degree qualified and undertaking or about to undertake Chartered Accountant's qualification or comparable relevant qualification with less than one year of experience. Assists with tasks within workstreams and appointments under supervision.	\$390
Undergraduate/Cadet	Undertaking relevant degree. Assists with tasks within workstreams and appointments under supervision.	\$230

Title	Description	Hourly rate (excl GST)
Practice Services Director	National Practice Service leaders, generally degree qualified with more than ten years of experience and reporting directly to partners. Technical experts in their specific areas and have team management responsibilities.	\$710
Senior Treasury staff	Appropriately experienced and undertakes senior Treasury activities such as oversight of the processing of payment of receipts and banking administration. May be responsible for day to day management of projects or operations and may have supervisory responsibility for junior staff.	\$470
Senior Client Administration and Treasury	Appropriately experienced and undertakes senior level administrative support activities or Treasury activities. May be responsible for day to day management of projects or operations and may have supervisory responsibility for junior staff.	\$370
Administration	Appropriately experienced and undertakes support activities such as meeting coordination and preparation of materials where it is efficient and appropriate to do so.	\$210

McGrathNicol reviews its hourly rates on either 31 December or 30 June. Creditors will be advised of any change to the hourly rates for this external administration.



**Insolvency Practice Rules (Corporations) 2016**  
**Rules 70-35 and 75-130**  
REMUNERATION APPROVAL REQUEST REPORT

**FORUM GROUP PTY LTD (IN LIQUIDATION)**  
**ACN 153 336 997**  
**(“the Company”)**

This remuneration report provides you with the information you need to be able to make an informed decision regarding the approval of our remuneration for undertaking the Administration of the Company.

This report has the following information included:

Part 1: Declaration .....	2
Part 2: Executive Summary .....	2
Part 3: Remuneration.....	3
3.1 Remuneration claim resolutions .....	3
3.2 Details of remuneration .....	3
3.3 Likely impact on dividends.....	7
3.4 Remuneration recovered from external sources .....	7
Part 4: Disbursements.....	7
4.1 Internal disbursement claim.....	7
Part 5: Report on Progress of the Administration .....	8
Part 6: Summary of Receipts and Payments.....	8
Part 7: Queries .....	8
Part 8: Approval of remuneration and internal disbursements .....	8

Creditors’ requirements for meeting of creditors

You should read this report and the other documentation that have been sent to you and attend the meeting of creditors in order to voice your opinion by casting your vote on the resolutions put to the meeting. The meeting will also give you an opportunity to ask any questions that you may have.

Alternatively, should you be unable to attend the meeting, you may also appoint a representative to attend on your behalf by lodging a proxy form (i.e the Chairperson). Lodging a specific proxy form allows you to specify how your proxy must vote. Lodging a general proxy form allows your representative to choose how your vote is exercised. Creditors should direct all forms and queries in respect to the meeting to McGrathNicol’s office.

## Part 1: Declaration

We, Domenic Calabretta and Grahame Ward, of Mackay Goodwin, have undertaken a proper assessment of this remuneration claim for our appointment as Administrators of the Company in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the Administration.

## Part 2: Executive Summary

At the initial meeting of creditors held on 22 July 2021, creditors resolved that Kathy Sozou, Jason Ireland and Jason Preston of McGrathNicol replace us as Administrators. This report has been prepared as a part of McGrathNicol's Statutory Report to Creditors.

Creditors are advised that Domenic Calabretta, Thyge Trafford-Jones and Grahame Ward of Mackay Goodwin are herein commonly referred to as 'the Administrators' throughout this remuneration report which is in respect to our time costs incurred during the Administration period.

In our other remuneration report, we claimed a lien on the funds to the extent of the remuneration time costs incurred in relation to collecting and preserving the assets of the Company, predominantly being the goodwill and business of the Company. This is in line with the Universal Distributing Principle in *Universal Distributing Company Limited (In Liquidation) (1933)* 48 CLR 171. This includes time costs incurred in the categories of Trade-On, Sale of Business, Assets, Insurance and Employees (as they were required in trading on and the preservation of the business operations).

There are other costs incurred incidental to the Administration which are not subjected to the Universal Distributing Principle. These costs are outlined in this report.

**Creditors should note that any queries in respect to the Meeting of Creditors or the Statutory Report to Creditors are to be directed to McGrathNicol. Any queries in respect to this remuneration report prepared by us is to be directed to Thanatorn Phadermchit of Mackay Goodwin at [tphadermchit@mackaygoodwin.com.au](mailto:tphadermchit@mackaygoodwin.com.au).**

Remuneration currently claimed is summarised below:

Period	Report Reference	Amount (\$) (excluding GST)
Voluntary Administration		
Resolution 1 – 8 July 2021 to 22 July 2021	3.1.1	156,451.99
Total - Voluntary Administration		156,451.99

Please refer to report section references detailed in the above table for full details of the calculation and composition of the remuneration approval sought.

## Part 3. Remuneration

### 3.1 Remuneration claim resolutions

#### 3.1.1 Resolution 1 – 8 July 2021 to 22 July 2021

*That the remuneration of the Administrators, their partners and staff from 8 July 2021 to 22 July 2021 be approved up to a maximum amount of \$156,451.99 plus GST, calculated in accordance with the Mackay Goodwin hourly rates as attached and that the Administrators be authorised to draw the remuneration as required.”*

#### 3.2 Details of remuneration

The basis of calculating the remuneration claims, the details of the major tasks performed and the costs associated with each of those major tasks are contained below.

##### 3.2.1 Resolution

The below table sets out time charged to each major task area by staff members working on the Administration for the periods 8 July 2021 to 22 July 2021 which is the basis of the Resolution 1 claim. More detailed descriptions of the tasks performed within each task area, matching the amounts below, are detailed below.

Task Area	General Description	Includes
Creditors Hours: 212.36 Cost: \$90,420.59	Creditor Enquiries	Receiving and following up creditor enquiries via telephone and email. Reviewing and prepare correspondence to creditors and their representatives via facsimile, email and post.
	Creditor reports	Preparing initial report to creditors, including annexures. Discussions with the company staff regarding the relevant information required for the reports to creditors.
	Secured Creditors	Liaising with secured creditors regarding status of appointment and ongoing correspondence.
	Dealing with claims, lodgements and proofs of debts	Receipting and filing Proof of Debt (“POD”) when not related to a dividend. Reviewing the PODs and the supporting documents. Corresponding with creditors regarding POD when not related to a dividend.

Task Area	General Description	Includes
		Review of related entity claims including shareholder claims and the nature of same.
	Meeting of Creditors	<p>Preparation meeting notices, proxies and advertisements.</p> <p>Forwarding notice of meeting to all known creditors.</p> <p>Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting.</p> <p>Attendance at initial meeting of creditors and subsequent adjournments of the initial meeting of creditors.</p> <p>Attending to roll call of creditors during the initial meeting of creditors and subsequent adjournments of the initial meeting of creditors.</p> <p>Dealing with creditor queries following meeting.</p> <p>Preparation and lodgement of minutes of meeting with ASIC.</p> <p>Provided copy of minutes of the initial meeting to creditors as requested.</p>
Investigation  Hours: 97.20 Cost: \$48,472.50	Conducting investigations	<p>Discussions with Company staff with respect to the Company's financial affairs.</p> <p>Reviewing the Company's books and records.</p> <p>Review and preparation of Company nature and history.</p> <p>Conducting and summarising statutory searches.</p> <p>Reviewing bank statements for possible voidable transactions available in a Administration scenario.</p> <p>Review of specific transactions and liaising with Company staff regarding same.</p> <p>Discussions with Company staff to establish the history of the Company.</p>
	Preference Payments and Voidable Transactions	Conducting a review of the Company's records with respect to potential preference payments and/or voidable transactions and assessment of their potential recovery cross referenced to

Task Area	General Description	Includes
		third party records. Collecting relevant documentation in support of any potential claim.
	Insolvent Trading	Conducting a review of the potential insolvent trading claims identified and assessment of recovery. Collecting relevant documentation in support of any potential claim.
Administration  Hours: 41.26 Cost: \$17,558.90	General matters	Client setup
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists
	ASIC forms	Preparing and lodging ASIC forms including forms 505 and 531. Preparing and lodging ASIC advertisements.
	ATO & other statutory reporting	Notification of appointment. Correspondence with ATO to collect RFD information.
	Planning / Review	Internal communication concerning administration. Discussions regarding status of administration.
	Bank account administration	Preparing correspondence opening accounts. Liaising with banking institutions Requesting bank statements.

Part 3.1 A - Resolution 1 - Calculation of Remuneration

FORUM GROUP PTY LTD (Administrators Appointed) - Calculation of Remuneration												
For Remuneration Not Associated with the Preservation of Assets for the period 08 July 2021 to 22 July 2021												
Employee	Position	\$/hour (ex GST)	Total actual hours	Total (\$)	Task Area						Total	
					Creditors		Investigations		Administration			
					hrs	\$	hrs	\$	hrs	\$	hrs	\$
Domenic Calabretta	Appointee	750	27.30	20,475.00	15.00	11,250.00	10.90	8,175.00	1.40	1,050.00		
Grahame Ward	Appointee	750	21.20	15,900.00	5.20	3,900.00	13.00	9,750.00	3.00	2,250.00		
Thyge Trafford-Jones	Appointee	750	6.90	5,175.00	5.40	4,050.00	-	-	1.50	1,125.00		
Mitchell Ball	Director	750	4.90	3,675.00	-	-	4.70	3,525.00	0.20	150.00		
Andrew Ngo	Director	675	9.80	6,615.00	9.80	6,615.00	-	-	-	-		
Edwin Narayan	Director	675	4.90	3,307.50	0.40	270.00	3.60	2,430.00	0.90	607.50		
Nelson Huang	Senior Manager	620	12.00	7,440.00	6.70	4,154.00	4.20	2,604.00	1.10	682.00		
Matthew Moldrich	Manager	525	20.30	10,657.50	20.10	10,552.50	-	-	0.20	105.00		
Andrew Quinn	Manager	525	6.50	3,412.50	4.10	2,152.50	1.80	945.00	0.60	315.00		
Farees Azzam	Manager	525	9.80	5,145.00	3.40	1,785.00	5.50	2,887.50	0.90	472.50		
Rachel Brown	Supervisor	480	10.10	4,848.00	3.80	1,824.00	4.70	2,256.00	1.60	768.00		
Jack Michie	Supervisor	480	19.40	9,312.00	19.40	9,312.00	-	-	-	-		
Lily Safa	Supervisor	480	13.80	6,624.00	6.50	3,120.00	7.30	3,504.00	-	-		
Thanatorn Phadernmchi	Senior Analyst	350	12.60	4,410.00	3.70	1,295.00	8.70	3,045.00	0.20	70.00		
Harrison Greaves	Senior Analyst	350	17.20	6,020.00	16.30	5,705.00	0.50	175.00	0.40	140.00		
Christopher Knight	Senior Analyst	350	3.70	1,295.00	3.70	1,295.00	-	-	-	-		
Jordan Brittain	Senior Analyst	375	5.50	2,062.50	3.40	1,275.00	0.60	225.00	1.50	562.50		
Katherine Hines	Analyst 1	290	19.70	5,713.00	4.20	1,218.00	9.50	2,755.00	6.00	1,740.00		
Abby Xu	Analyst 1	290	24.70	7,163.00	6.80	1,972.00	10.10	2,929.00	7.80	2,262.00		
Felix Bidwell	Analyst 2	270	6.60	1,782.00	4.20	1,134.00	-	-	2.40	648.00		
George Huxtable	Analyst 2	270	6.70	1,809.00	6.70	1,809.00	-	-	-	-		
Ian Moffat	Analyst 2	270	8.20	2,214.00	0.20	54.00	4.50	1,215.00	3.50	945.00		
Jana Jozsczyk	Analyst 2	270	45.50	12,285.00	45.50	12,285.00	-	-	-	-		
Nelson Wells	Analyst 2	270	12.60	3,402.00	-	-	7.60	2,052.00	5.00	1,350.00		
Maria Boniao	Secretary	190	5.50	1,045.00	4.60	874.00	-	-	0.90	171.00		
Jonathan and Daniel	Secretary	190	0.10	29.00	-	-	-	-	0.10	29.00		
Sasiamol Sumphan	Secretary	190	5.05	959.50	4.80	912.00	-	-	0.25	47.50		
Wanida Sraksa	Secretary	190	4.97	944.49	4.31	819.09	-	-	0.66	125.40		
Wasumon Jaterujikan	Secretary	190	5.30	1,007.00	4.15	788.50	-	-	1.15	218.50		
<b>TOTAL HOURS</b>			<b>350.82</b>		<b>212.36</b>	<b>90,420.59</b>	<b>97.20</b>	<b>48,472.50</b>	<b>41.26</b>	<b>17,558.90</b>		
<b>TOTAL REMUNERATION</b>				<b>156,451.99</b>								
GST				<b>15,645.20</b>								
<b>TOTAL (including GST)</b>				<b>172,097.19</b>								

### 3.3 Likely impact on dividends

We note the following with respect to the dividend:

- Pursuant to Section 556 of the Corporations Act 2001 (“the Act”), the Administrators have priority over all claims of creditors with respect to their remuneration incurred.
- The work the Administrators are entitled to be remunerated for in accordance with the Act is necessary to ensure the greatest possible return to creditors.
- The estimated dividend is subject to the recovery of voidable transactions and insolvent trading claims is detailed in McGrathNicol’s statutory report to creditors.

### 3.4 Remuneration recovered from external sources

We have not been provided with any upfront payments or indemnity for the conduct of this Voluntary Administration.

#### Part 4: Disbursements

Disbursements are divided into three (3) types:

- A Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- B1 Externally provided non-professional costs - these are recovered at cost. Examples of externally provided non-professional costs are travel, accommodation, and search fees.
- B2 Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis. Details of the basis of recovery of each of these costs is discussed below.

We are required to seek creditor approval for disbursement types A and B1, but must provide a full summary of account of disbursements to creditors. We must be satisfied that these disbursements are appropriate, justified and reasonable.

We are required to seek creditor approval prior to the payment of internal disbursements (B2) where there may be a profit or advantage. Creditors will be asking to approve our internal disbursements where there is a profit or advantage prior to these disbursements being paid in the Administration.

#### Part 5: Report on Progress of the Administration

This remuneration report should be read in conjunction with the McGrathNicol's Statutory Report to Creditors which outlines the progress of the external administration.

#### Part 6: Summary of Receipts and Payments

A Summary of the Administrators' receipts and payments made up to 22 July 2021 is attached

#### Part 7: Queries

If you have any queries in relation to the information in this report, please contact Thanatorn Phadermchit of Mackay Goodwin via email at [tphadermchit@mackaygoodwin.com.au](mailto:tphadermchit@mackaygoodwin.com.au). Any queries in respect to the statutory report or the progress of the external administration should be directed to McGrathNicol.

You can also access information which may assist you on the following websites:

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors); and
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets").

#### Part 8: Approval of remuneration and internal disbursements

As previously mentioned throughout this report, the resolutions will be put forward at the meeting of creditors. Please refer to the notice of meeting enclosed with McGrath Nicol's Statutory Report to Creditors for information regarding the meeting to be convened and the resolutions which will be put forward for creditor approval.

Dated this 26<sup>th</sup> day of October 2021



**Domenic Calabretta**  
**JOINT AND SEVERAL ADMINISTRATOR**



**FORUM GROUP PTY LTD**  
**(Administrators Appointed)**  
**Joint and Several Administrators' Summary of Receipts and Payments**  
**To 22 July 2021**

<b>RECEIPTS</b>	<b>Total (AUD)</b>
Cash at Bank	459,239.21
Goodwill	394,847.50
Novated Leases Payable	2,310.23
Superannuation Payable	39,486.98
GST Payable	39,484.75
	935,368.67
<b>PAYMENTS</b>	
Superannuation	38,063.98
Wages & Salaries	421,175.23
Withholding Tax (PAYG)	(109,013.00)
	350,226.21
Balances in Hand	585,142.46
	935,368.67

Title	Description	Hourly Rate (excl GST)
Appointee	Registered liquidator. Brings his or her specialist skills to the administration or insolvency task.	\$750
Director / Consultant	Typically CA/CPA or ARITA qualified with significant restructuring experience.	\$675
Senior Manager	Typically more than 7 years' insolvency experience, more than 3 years as a manager, qualified accountant. Answerable to the appointee but otherwise responsible for all aspects of administration.	\$620
Manager	Typically 6-7 years, qualified accountant, with well-developed technical and commercial skills.	\$525
Supervisor	Typically 4-6 years, CA/CPA or ARITA complete. Assists planning and control of medium to larger jobs.	\$480
Senior Analyst 1	Typically completed or near completion of CA, CPA or ARITA qualifications with 3-5 years insolvency experience. Assists in planning and control of smaller matters as well as performing more difficult tasks on larger matters.	\$375
Senior Analyst 2	Typically CA/CPA would normally be commenced during this period, with 1-2 years insolvency experience. Required to control the fieldwork on small jobs and is responsible for assisting complete fieldwork on medium to large jobs.	\$350
Analyst 1	Typically, would have qualifications with insolvency experience. Works under supervision of more senior staff in performing day-to-day field work. 0-2 years insolvency experience.	\$290
Analyst 2	Trainee undertaking a business related degree or newly qualified graduate. Required to assist in day-to-day fieldwork under supervision of more senior staff. 0-1 years insolvency experience.	\$270
Clerical Assistant	Administration staff supporting professional staff	\$290
Junior Analyst	Junior staff member who has completed or near completion of a university degree. Works under supervision of more senior staff in performing Day-to-day field work	\$240
Secretary	Appropriate secretarial skills	\$190

**Insolvency Practice Rules (Corporations) 2016  
Rules 70-35 and 75-130  
REMUNERATION APPROVAL REQUEST REPORT  
FOR TIME COSTS RELATING TO THE PRESERVATION AND SECURING OF  
COMPANY’S ASSETS**

**FORUM GROUP PTY LTD (IN LIQUIDATION)  
ACN 153 336 997  
("the Company")**

This remuneration report provides you with the information you need to be able to make an informed decision regarding the approval of our remuneration for undertaking the Administration of the Company.

This report has the following information included:

Part 1: Declaration .....	2
Part 2: Executive Summary .....	2
Part 3: Remuneration.....	3
3.1 Remuneration claim resolutions .....	3
3.2 Details of remuneration .....	3
3.3 Likely impact on dividends.....	8
3.4 Remuneration recovered from external sources .....	8
Part 4: Disbursements.....	8
4.1 Internal disbursement claim.....	8
Part 5: Report on Progress of the Administration .....	9
Part 6: Summary of Receipts and Payments.....	9
Part 7: Queries .....	9
Part 8: Approval of remuneration and internal disbursements.....	9

**Creditors’ requirements for meeting of creditors**

You should read this report and the other documentation that have been sent to you and attend the meeting of creditors in order to voice your opinion by casting your vote on the resolutions put to the meeting. The meeting will also give you an opportunity to ask any questions that you may have.

Alternatively, should you be unable to attend the meeting, you may also appoint a representative to attend on your behalf by lodging a proxy form (i.e the Chairperson). Lodging a specific proxy form allows you to specify how your proxy must vote. Lodging a general proxy form allows your representative to choose how your vote is exercised. Creditors should direct all forms and queries in respect to the meeting to McGrathNicol’s office.

## Part 1: Declaration

We, Domenic Calabretta and Grahame Ward, of Mackay Goodwin, have undertaken a proper assessment of this remuneration claim for our appointment as Administrators of the Company in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the Administration.

## Part 2: Executive Summary

At the initial meeting of creditors held on 22 July 2021, creditors resolved that Kathy Sozou, Jason Ireland and Jason Preston of McGrathNicol replace us as Administrators. This report has been prepared as a part of McGrathNicol's Statutory Report to Creditors.

Creditors are advised that Domenic Calabretta, Thyge Trafford-Jones and Grahame Ward of Mackay Goodwin are herein commonly referred to as 'the Administrators' throughout this remuneration report which is in respect to our time costs incurred during the Administration period.

**We hereby claim a lien on the funds to the extent of the remuneration time costs incurred in relation to collecting and preserving the assets of the Company, predominantly being the goodwill and business of the Company. This is in line with the Universal Distributing Principle in *Universal Distributing Company Limited (In Liquidation) (1933)* 48 CLR 171. This includes time costs incurred in the categories of:**

- Assets
- Sale of business
- Trade on
- Insurance
- Employees (as they were required in trading on and the preservation of the business operations).

Creditors should note that any queries in respect to the Meeting of Creditors or the Statutory Report to Creditors are to be directed to McGrathNicol. Any queries in respect to this remuneration report prepared by us is to be directed to Thanatorn Phadermchit of Mackay Goodwin at [tphadermchit@mackaygoodwin.com.au](mailto:tphadermchit@mackaygoodwin.com.au).

Remuneration currently claimed is summarised below:

Period	Report Reference	Amount (\$) (excluding GST)
Voluntary Administration		
Resolution 1 – 8 July 2021 to 22 July 2021	3.1.1	281,117.50
<b>Total - Voluntary Administration</b>		<b>281,117.50</b>

Please refer to report section references detailed in the above table for full details of the calculation and composition of the remuneration approval sought.

## Part 3. Remuneration

### 3.1 Remuneration claim resolutions

#### 3.1.1 Resolution 1 – 8 July 2021 to 22 July 2021

*“That the remuneration of the Administrators, their partners and staff incidental to the collecting, securing and preserving the Company’s assets from 8 July 2021 to 22 July 2021 be approved up to a maximum amount of \$281,117.50 plus GST, calculated in accordance with the Mackay Goodwin hourly rates as attached and that the Administrators be authorised to draw the remuneration as required.”*

### 3.2 Details of remuneration

The basis of calculating the remuneration claims, the details of the major tasks performed, and the costs associated with each of those major tasks are contained below.

#### 3.2.1 Resolution

The below table sets out time charged to each major task area by staff members working on the Administration for the periods 8 July 2021 to 22 July 2021 which is the basis of the Resolution 1 claim. More detailed descriptions of the tasks performed within each task area, matching the amounts below, are detailed below.

Task Area	General Description	Includes
Assets:  Hours: 247.60 Cost: \$169,810.00	Cash at Bank	Liaising with financial institutions regarding freezing of pre-appointment bank accounts and obtaining bank statements. Liaising with banking institutions in relation to the balance of funds held in the Company’s pre-appointment bank accounts Review of management account linked bank statements.
	Debtors	Review debtors as per Company records and assess recoverability. Identification of possible collectible pre-appointment debtors Correspondence with Receivers regarding pre-appointment debtors Meeting with receivers regarding ownership of debtors

	Plant and Equipment	<p>Liaising with Company staff in relation to the Company’s plant and equipment.</p> <p>Review of the plant and equipment ledger.</p> <p>Meetings with receivers regarding ownership of plant and equipment</p> <p>Liaise with valuer regarding stocktake and valuation of company plant and equipment.</p> <p>Liaise with valuer regarding the collection of company equipment</p> <p>All tasks associated with securing plant and equipment.</p>
	Motor Vehicle	<p>Liaising with the Roads and Maritime Services (“RMS”) and VicRoads with respect to current and historical motor vehicle searches.</p> <p>Liaising with valuer regarding the valuation and collection of motor vehicles</p>
	Stock	<p>Liaising with Company staff regarding stock on hand and locations.</p> <p>Review of stock ledger and its value.</p> <p>Dealing with warehouse operator with respect to the release of stock</p> <p>Dealing with the receiver regarding the ownership of stock</p> <p>All tasks associated with securing stock.</p>
	Sale of Business as a Going Concern	<p>Preparation of confidentiality agreement.</p> <p>Liaising with Xclusive Business Sales as the agent to facilitate the sales campaign.</p> <p>Preparation of information to be provided to prospective purchasers.</p> <p>Review and internal discussions in respect to offers from prospective purchasers.</p> <p>Generate reports associated with the sale of business</p> <p>Organise data room</p> <p>Attending to the negotiation for the sale of business.</p> <p>Attending to the settlement and sale of the business.</p>
	Other Assets	<p>All tasks associated with identifying other assets.</p>

<p><b>Trade On</b> Hours: 153.20 Cost: \$89,371.00</p>	<p>Trade on Management</p>	<p>Liaising with Management and Staff. Attendance on site. Issue correspondence to all utility providers advising of the Administrators appointment and continuing trade. Liaising with suppliers to facilitate the setup of new accounts. Prepare exposure statements. Dealing with NAB regarding releasing of funds to meet wages Attend to the payment of wages as required. Prepare cheque requisitions in relation to trading expenses. Authorisation in relation to trading expenses and employee wages. Internal meetings regarding ongoing trade of the Company. Preparing trading statement. Authorising payments to suppliers. Issue correspondence to creditors regarding the company status. Liaising with superannuation funds regarding contributions and reconciliation of liabilities. Continue to monitor the Company's operations. Discussions in respect to the Company's trading position. Liaising with the Company's staff in relation to payment of trading liabilities. Continue to update cash flows and exposure statement as required. Continued to provide updates as required.</p>
	<p>Processing Receipts and Payments</p>	<p>Entering receipts and payments into accounting systems.</p>
	<p>Budgeting and Financial Reporting</p>	<p>Reviewing Company's budgets and financial statements. Preparing cash flow spreadsheet and discussions with Company key staff and accountants. Maintaining cash flow spreadsheet.</p>
<p><b>Employees</b> Hours: 39.90 Cost: \$21,390.50</p>	<p>Employee Enquiries</p>	<p>Receive and return employee enquiries via telephone and email. Maintain employee enquiry register. Review and prepare correspondence to creditors and their representatives via facsimile, email and post</p>

	FEG	Liaising with FEG in respect to a potential funding of trade on operations to preserve employees' jobs and entitlements
	Employee Claims	Liaising with Company staff and former employees in relation to outstanding employee entitlements and PODs received.
<b>Administration</b> Hours: 0.80 Cost: \$546.00	Insurance	Identification of potential issues requiring attention of insurance specialists. Correspondence with Insurer regarding initial and ongoing insurance requirements. Liaising with insurance brokers regarding insurance coverage and lodgement of forms and insurance providers.



Part 3.1 A - Resolution 1 - Calculation of Remuneration

FORUM GROUP PTY LTD (Administrators Appointed) - Calculation of Remuneration													
For Remuneration For the Preservation of Company's Assets for the period 08 July 2021 to 22 July 2021													
Employee	Position	\$/hour (ex GST)	Total actual hours	Total (\$)	Task Area								
					Assets		Trade On		Employees		Administration		
					hrs	\$	hrs	\$	hrs	\$	hrs	\$	
Domenic Calabretta	Appointee	750	60.20	45,150.00	52.20	39,150.00	7.40	5,550.00	7.90	5,925.00	0.60	450.00	
Grahame Ward	Appointee	750	42.00	31,500.00	33.50	25,125.00	8.50	6,375.00	2.00	1,500.00	-	-	
Thyge Trafford-Jones	Appointee	750	45.60	34,200.00	10.90	8,175.00	34.70	26,025.00	0.30	225.00	-	-	
Mitchell Ball	Director	750	80.90	60,675.00	71.80	53,850.00	9.10	6,825.00	0.30	225.00	-	-	
Andrew Ngo	Director	675	0.20	135.00	-	-	0.20	135.00	2.30	1,552.50	-	-	
Anthony Lucic	Consultant	675	26.00	17,550.00	26.00	17,550.00	-	-	-	-	-	-	
Michael Bouge	Consultant	675	14.70	9,922.50	14.70	9,922.50	-	-	-	-	-	-	
Nelson Huang	Senior Manager	620	29.00	17,980.00	5.40	3,348.00	23.60	14,632.00	-	-	-	-	
Matthew Mldrich	Manager	525	1.80	945.00	0.40	210.00	1.40	735.00	13.80	7,245.00	-	-	
Andrew Quinn	Manager	525	9.20	4,830.00	8.20	4,305.00	1.00	525.00	-	-	-	-	
Rachel Brown	Supervisor	480	2.50	1,200.00	0.50	240.00	1.80	864.00	-	-	0.20	96.00	
Jack Michie	Supervisor	480	5.10	2,448.00	2.60	1,248.00	2.50	1,200.00	3.70	1,776.00	-	-	
Lily Safa	Supervisor	480	42.90	20,592.00	-	-	42.90	20,592.00	0.40	192.00	-	-	
Harrison Greaves	Senior Analyst 2	350	4.30	1,505.00	3.30	1,155.00	1.00	350.00	-	-	-	-	
Christopher Knight	Senior Analyst 2	350	0.20	70.00	0.20	70.00	-	-	4.70	1,645.00	-	-	
Jordan Brittain	Senior Analyst 1	375	7.70	2,887.50	5.70	2,137.50	2.00	750.00	-	-	-	-	
Katherine Hines	Analyst 1	290	11.30	3,277.00	1.50	435.00	9.80	2,842.00	1.60	464.00	-	-	
Abby Xu	Analyst 1	290	25.60	-	-	-	-	-	0.90	261.00	-	-	
Felix Bidwell	Analyst 2	270	8.50	2,295.00	8.50	2,295.00	-	-	-	-	-	-	
George Huxtable	Analyst 2	270	2.20	594.00	2.20	594.00	-	-	-	-	-	-	
Nelson Wells	Analyst 2	270	7.30	1,971.00	-	-	7.30	1,971.00	-	-	-	-	
Sasiwimol Sumliphon	Secretary	190	0.50	95.00	-	-	-	-	0.50	95.00	-	-	
Wanida Sitraksa	Secretary	190	0.40	76.00	-	-	-	-	0.40	76.00	-	-	
Wasumon Jaterujikan	Secretary	190	1.10	209.00	-	-	-	-	1.10	209.00	-	-	
<b>TOTAL HOURS</b>			441.50		247.60	169,810.00	153.20	89,371.00	39.90	21,390.50	0.80	546.00	
<b>TOTAL REMUNERATION</b>				281,117.50									
GST				28,111.75									
<b>TOTAL (Including GST)</b>				309,229.25									

### 3.3 Likely impact on dividends

We note the following with respect to the dividend:

- Pursuant to Section 556 of the Corporations Act 2001 (“the Act”), the Administrators have priority over all claims of creditors with respect to their remuneration incurred.
- The work the Administrators are entitled to be remunerated for in accordance with the Act is necessary to ensure the greatest possible return to creditors.
- Creditors should refer to details of a likelihood of dividend as detailed in the statutory report to creditors issued by McGrathNicol.

### 3.4 Remuneration recovered from external sources

We have not been provided with any upfront payments or indemnity for the conduct of this Voluntary Administration

#### Part 4: Disbursements

Disbursements are divided into three (3) types:

- A Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- B1 Externally provided non-professional costs - these are recovered at cost. Examples of externally provided non-professional costs are travel, accommodation and search fees.
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We are required to seek creditor approval for disbursement types A and B1, but must provide a full summary of account of disbursements to creditors. We must be satisfied that these disbursements are appropriate, justified and reasonable.

We are required to seek creditor approval prior to the payment of internal disbursements (B2) where there may be a profit or advantage. Creditors will be asking to approve our internal disbursements where there is a profit or advantage prior to these disbursements being paid in the Administration.

#### Part 5: Report on Progress of the Administration

This remuneration report should be read in conjunction with the McGrathNicol's Statutory Report to Creditors which outlines the progress of the external administration.

#### Part 6: Summary of Receipts and Payments

A summary of the Administrators' receipts and payments made up to 22 July 2021 is attached.

#### Part 7: Queries

If you have any queries in relation to the information in this report, please contact Thanatorn Phadermchit of Mackay Goodwin via email at [tphadermchit@mackaygoodwin.com.au](mailto:tphadermchit@mackaygoodwin.com.au). Any queries in respect to the statutory report or the progress of the external administration should be directed to McGrathNicol.

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- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets").

#### Part 8: Approval of remuneration and internal disbursements

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Dated this 26<sup>th</sup> day of October 2021



**DOMENIC CALABRETTA**  
**FORMER JOINT AND SEVERAL ADMINISTRATOR**

**FORUM GROUP PTY LTD**  
**(Administrators Appointed)**  
**Joint and Several Administrators' Summary of Receipts and Payments**  
**To 22 July 2021**

<b>RECEIPTS</b>	<b>Total (AUD)</b>
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	935,368.67
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Senior Analyst 2	Typically CA/CPA would normally be commenced during this period, with 1-2 years insolvency experience. Required to control the fieldwork on small jobs and is responsible for assisting complete fieldwork on medium to large jobs.	\$350
Analyst 1	Typically, would have qualifications with insolvency experience. Works under supervision of more senior staff in performing day-to-day field work. 0-2 years insolvency experience.	\$290
Analyst 2	Trainee undertaking a business related degree or newly qualified graduate. Required to assist in day-to-day fieldwork under supervision of more senior staff. 0-1 years insolvency experience.	\$270
Clerical Assistant	Administration staff supporting professional staff	\$290
Junior Analyst	Junior staff member who has completed or near completion of a university degree. Works under supervision of more senior staff in performing Day-to-day field work	\$240
Secretary	Appropriate secretarial skills	\$190

# Information sheet: Approving remuneration of an external administrator



If you are a creditor in a liquidation, voluntary administration or deed of company arrangement you may be asked to approve the external administrator's remuneration. An external administrator can be a liquidator, voluntary administrator or deed administrator. The process for approving the remuneration for each of these is the same.

This information sheet gives general information to help you understand the process of approving an external administrator's remuneration and your rights in this process. The following topics are covered in this information sheet:

- About external administrations
- External administrator's remuneration and costs
- Calculating remuneration
- Information you will receive
- Approving remuneration
- Who may approve remuneration
- Deciding if remuneration is reasonable
- What can you do if you decide the remuneration is unreasonable?
- Reimbursement of out of pocket costs
- Queries and complaints
- More information.

## About external administrations

If a company goes into liquidation, voluntary administration or enters into a deed of company arrangement, an independent person is appointed to oversee the administration. They are called an external administrator and include a liquidator, voluntary administrator and deed administrator, depending on the type of administration involved. In this information sheet they are simply referred to as an external administrator.

The duties of an external administrator are specified in legislation and they must adhere to certain standards while conducting the administration.

All external administrators are required by law to undertake certain tasks which may not benefit creditors directly (e.g. investigating whether any offences have been committed and reporting to the Australian Securities and Investments Commission (ASIC)).

## External administrator's remuneration and costs

External administrators are entitled to be paid for the necessary work they properly perform in the administration.

An external administrator is entitled:

- to be paid reasonable remuneration, for the work they perform, once this remuneration has been approved,
- to be paid for internal disbursements they incur in performing their role (these costs do need approval), and
- to be reimbursed for out-of-pocket costs incurred in performing their role (these costs do not need approval).

Common internal disbursements are stationery, photocopying and telephone costs.

Commonly reimbursed out-of-pocket costs include:

- legal fees
- a valuer's, real administration agent's and auctioneer's fees
- postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the amount of an external administrator's remuneration and costs, as these will generally be paid from the administration before any payments are made to creditors.

Remuneration and internal disbursements must be approved in accordance with the Corporations Act and Insolvency Practice Rules (Corporations) before it can be paid.

If there is a shortfall between the external administrator's remuneration and the assets available from the administration, in certain circumstances the external administrator may arrange for a third party to pay the shortfall. As a creditor, you will be provided details of any such arrangement.

If there are not enough assets to pay the external administrator's remuneration and costs, and there is no third party payment arrangement, the external administrator remains unpaid.

## Calculating remuneration

An external administrator may calculate their remuneration using one (or a combination) of a number of methods, such as:

- on the basis of time spent working on the administration, according to hourly rates
- a quoted fixed fee, based on an estimate of the costs
- a percentage (usually of asset realisations), or
- a contingent basis on a particular outcome being achieved.

Charging on the basis of time spent is the most common method used. External administrators have a set of hourly rates that they will seek to charge. These rates are set to reflect the seniority, skills and experience of staff and, where applicable, the complexity and risks of the bankruptcy. They cover staff costs and overheads.

If remuneration is being charged on a time basis, the external administrator must keep time sheets noting the number of hours spent on the tasks performed.

Creditors have a right to question the external administrator about the remuneration and the rates to be charged. They also have a right to question the external administrator about the fee calculation method used and how the calculation was made. The external administrator must justify why the chosen fee calculation method is appropriate for the administration.

## Information you will receive

There are different types of remuneration reports that you may receive during the course of an external administration. The following table details the reports and when you might receive them.

Document	Information it contains	When you will receive it
Initial Remuneration Notice (IRN)	<ul style="list-style-type: none"> <li>• A brief explanation of the types of methods that may be used to calculate fees.</li> <li>• The external administrator's chosen fee calculation method(s) and why it is appropriate.</li> <li>• Details of the external administrator's rates, including hourly rates if time spent basis is used.</li> <li>• An estimate of the external administrator's remuneration.</li> <li>• The method that will be used to calculate disbursements.</li> </ul>	<p>Voluntary Administration – with the notice of first meeting.</p> <p>Creditors' voluntary liquidation – within 10 business days of appointment.</p> <p>Court liquidation – within 20 business days of appointment.</p>
Remuneration Approval Report (RAR)	<ul style="list-style-type: none"> <li>• A summary description of the major tasks performed, or likely to be performed.</li> <li>• The costs associated with each of those major tasks and the method of calculation.</li> <li>• The periods at which the external administrator proposes to withdraw funds from the administration for remuneration.</li> <li>• An estimated total amount, or range of total amounts, of the external administrator's remuneration.</li> <li>• An explanation of the likely impact of that remuneration on the dividends (if any) to creditors.</li> <li>• Where internal disbursements are being claimed, the external administrator will report to creditors on the amount and method of calculation of these disbursements.</li> </ul>	<p>Sent at the same time as:</p> <ul style="list-style-type: none"> <li>• the notice to creditors of the meeting at which approval of remuneration will be sought; or</li> <li>• the notice to creditors of the proposal without a meeting by which approval of remuneration will be sought</li> </ul> <p>If approval of remuneration is not being sought, a RAR will not be provided.</p>

## Approving remuneration

The meeting of creditors (or committee of inspection) gives a chance for those participating to ask questions about the external administrator's remuneration. Fees are then approved by a vote of the creditors. Alternatively, the external administrator may seek approval of remuneration via a proposal without a meeting. Whichever method is used, the external administrator must provide the same report to creditors about their remuneration (Remuneration Approval Report).

Creditors may be asked to approve remuneration for work already performed and/or remuneration estimate for work not yet carried out. If the work is yet to be carried out, the external administrator must set a maximum limit (cap) on the future remuneration approval. For example, 'future remuneration is approved, calculated on hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X'.



If the remuneration for work done then exceeds this figure, the external administrator will have to ask the creditors to approve a further amount of remuneration, after accounting for the amount already incurred.

If an external administrator can't get the creditors' approval, an application can be made to the Court to determine their remuneration.

When there are limited funds available in the administration, or the external administrator's remuneration is below a statutory threshold, an external administrator is entitled to draw a one-off amount of up to that threshold plus GST, without creditor approval. This amount is currently \$5,000 (indexed).

## Who may approve remuneration?

### Committee of inspection approval

A committee of inspection will generally only be established where there are a large number of creditors and/or complex matters which make having a committee desirable. Committee members are chosen by a vote of all creditors and work with the external administrator to represent the creditors' interests.

If there is a committee, the external administrator will ask it to approve the remuneration. A committee makes its decision by a majority in number of its members present in person at a meeting, but it can only vote if a majority of its members attend.

In approving the remuneration, it is important that committee members understand that they represent all the creditors, not just their own individual interests.

### Creditors' approval

Creditors approve remuneration by passing a resolution at a creditors' meeting. Creditors may vote according to their individual interests.

To approve an external administrator's remuneration, a resolution is put to the meeting to be decided on the voices or by a 'poll' (if requested by the external administrator or a person participating and entitled to vote at the meeting). A poll requires a count of each vote and its value to be taken and recorded for each creditor present and voting.

A proxy is a document whereby a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a general proxy or a special proxy. A general proxy allows the person holding the proxy to vote how they want on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator is only able to vote on remuneration if they hold a special proxy.

There are provisions for a resolution to be passed by creditors without a meeting. This still requires a majority in value and number of creditors voting to vote in favour of the resolution. Creditors representing at least 25% in value of those responding to the external administrator's proposal can object to the proposal being resolved without a meeting of creditors.

## Deciding if remuneration is reasonable

If you are asked to approve an external administrator's remuneration, your task is to decide if the amount of remuneration is reasonable, given the work carried out in the administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the remuneration claimed is reasonable:

- the method used to calculate remuneration
- the major tasks that have been performed, or are likely to be performed, for the remuneration
- the remuneration/estimated remuneration (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the administration
- the amount of remuneration (if any) that has previously been approved
- if the remuneration is calculated, in whole or in part, on a time basis:
  - the period over which the work was, or is likely to be performed
  - if the remuneration is for work that has already been carried out, the time spent by each level of staff on each of the major tasks
  - if the remuneration is for work that is yet to be carried out, whether the remuneration is capped.

ARITA's Code of Professional Practice ('the Code') outlines the steps external administrators should take to make sure they fulfil their responsibilities to creditors when asking creditors to approve remuneration, including when those creditors are acting in their capacity as committee members. The Code is available on the ARITA website at [www.arita.com.au](http://www.arita.com.au).

If you need more information about remuneration than is provided in the external administrator's report, you should let them know before the meeting at which remuneration will be voted on.

## What can you do if you think the remuneration is unreasonable?

If you think the remuneration being claimed is unreasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve remuneration. You may also choose to not vote on the resolution (abstain).

You also have the power to put a resolution to the meeting. For example, you could put forward a resolution to change the way the external administrator charges for remuneration, or the periods at which the external administrator may withdraw funds. Any amending resolution must occur before the vote being taken on the resolution to approve remuneration. If the amended proposal is passed, the resolution is binding on the external administrator. However, such an amendment may result in the external administrator seeking to be replaced by another external administrator.

If the external administrator is seeking approval of remuneration via a resolution without a meeting and more than 25% in value of the creditors responding object using the form provided by the external administrator, the proposal will not pass. If the external administrator wants the proposal passed, a meeting will need to be convened and any creditor entitled to participate in the meeting has the right, before the vote is taken, to put a resolution to the meeting as mentioned above.

A creditor may apply to Court for a review of an external administrator's remuneration. Creditors also have the power to appoint, by resolution, a reviewing liquidator to review any remuneration approved within the six months and any disbursements incurred in the 12 months before the reviewing liquidator's appointment. The cost of a reviewing liquidator is paid from the assets of the external administration. An individual creditor may also appoint a reviewing liquidator with the external administrator's consent. An individual creditor seeking the appointment of a reviewing liquidator must pay the cost of the reviewing liquidator.

### Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the administration; as careful as if they were incurring the expenses on their own behalf. Their report on remuneration sent to creditors must also include information on the out-of-pocket costs of the administration (disbursements).

Where these out-of-pocket costs are internal disbursements paid to the external administrator's firm (for example photocopying and phone calls) the external administrator must request creditor approval of these amounts. The external administrator may also ask for approval of internal disbursements in advance. If they do so, they will set the rates for those disbursements and a cap on the maximum amount that can be drawn.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' or committee meeting. If you are still concerned, you have the right to seek the appointment of a reviewing liquidator (refer above).

### Queries and complaints

You should first raise any queries or complaints with the external administrator or their firm.

If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ARITA at [www.arita.com.au](http://www.arita.com.au) or with ASIC at [www.asic.gov.au](http://www.asic.gov.au). ARITA is only able to deal with complaints in respect of their members.

### More information

The [ARITA website](http://www.arita.com.au) contains the ARITA Code of Professional Practice which is applicable to all its members. ARITA also provides general information to assist creditors at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC includes information on its website which may assist creditors. Go to [www.asic.gov.au](http://www.asic.gov.au) and search for 'insolvency information sheets'.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.



## Notice of Meeting

**Forum Group Pty Ltd (Receivers Appointed) (In Liquidation)**  
**ACN 153 336 997**  
**(the Company)**

### **NOTICE OF MEETING OF CREDITORS OF COMPANY UNDER EXTERNAL ADMINISTRATION**

1. Notice is now given that a meeting of the creditors of the Company will be held virtually on **12 November 2021 at 11:00 AM (AEDT)**.
2. The meeting will be held virtually using Zoom webcast/teleconference, in order to ensure compliance with any restrictions that may be in place as a result of COVID-19. The online conference can be joined from a computer (preferred) or telephone. Questions can be typed or asked verbally during the meeting. Voting will be conducted by taking a poll by an electronic survey accessible by computer or mobile device. There will not be an option to attend in person.
3. Should you wish to attend, or nominate someone to attend by proxy or attorney on your behalf, please register your intention to do so by sending an email to [forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com) or call (03) 9038 3148 before 4.00 PM on 11 November 2021 and you will be provided with detailed instructions on how to participate in the meeting during the evening of 11 November 2021.
4. The purpose of the meeting is to:
  - a. provide an update on the progress of the Liquidation;
  - b. consider and if thought fit, approve the remuneration of the Voluntary Administrators and Liquidators;
  - c. consider and if thought fit, approve the remuneration of the Former Voluntary Administrators (Mackay Goodwin);
  - d. consider the appointment of a Committee of Inspection;
  - e. authorise the Liquidators to compromise debts greater than \$100,000 under section 477(2A) of the Act;
  - f. authorise the Liquidators to enter into agreements that may take longer than three months to complete under section 477(2B) of the Act; and
  - g. discuss any other relevant business which may arise.
5. The effect of Insolvency Practice Rules (Corporations) section 75-85 (entitlement to vote as creditor at meetings of creditors) is:
  - a. A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
  - b. Subject to subsections (c), (d) and (e), each creditor is entitled to vote and has one vote.
  - c. A person is not entitled to vote as a creditor at a meeting of creditors unless:
    - i. his or her debt or claim has been admitted wholly or in part by the external administrator;
    - or



- ii. he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
    - those particulars; or
    - if required—a formal proof of the debt or claim.
  - d. A creditor must not vote in respect of:
    - i. an unliquidated debt; or
    - ii. a contingent debt; or
    - iii. an unliquidated or a contingent claim; or
    - iv. a debt the value of which is not established;  
unless a just estimate of its value has been made.
  - e. A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
    - i. treat the liability to him or her on the instrument or security of a person covered by subsection (f) as a security in his or her hands;
    - ii. estimate its value;
    - iii. for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
  - f. A person is covered by this subsection if:
    - i. the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor;
    - ii. the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
    - iii. the person is not an insolvent under administration or a person against whom a winding up order is in force.
6. Proofs of debt and proxies must be submitted by email to [forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com) before **4.00 PM (AEDT) on 11 November 2021**.

Dated: 28 October 2021

Jason Ireland  
*Liquidator*

McGrathNicol  
GPO Box 9986  
Sydney NSW 2001  
+61 2 9338 2600

**FORM 535**

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

Forum Group Pty Ltd  
 (Receivers Appointed) (In Liquidation)  
 ACN 153 336 997  
 "the Company"

To the Liquidator/Administrator of the Company

1. This is to state that the Company was on 8 July 2021 \_\_\_\_\_, and still is, justly and truly indebted to:  
 \_\_\_\_\_ (name of creditor)  
 of \_\_\_\_\_ (address of creditor)  
 for \$ \_\_\_\_\_ and \_\_\_\_\_ cents (GST inclusive) GST amount \_\_\_\_\_

Date	Consideration (state how the Debt arose)	Amount \$ c	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$c	Due Date

3. Select which of the below applies (choose one):

- |   |   |
|---|---|
| <p><input type="checkbox"/> The creditor is a company and I am signing as a director of the company</p> <p><input type="checkbox"/> The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company</p> <p><input type="checkbox"/> I am an individual and I am signing in my personal capacity (which includes employees)</p> <p><input type="checkbox"/> The creditor is a sole trader and I am signing as the proprietor</p> | <p><input type="checkbox"/> The creditor is a partnership and I am signing as a partner of the partnership</p> <p><input type="checkbox"/> I am signing in my personal capacity as a member or contributory of the Company</p> <p><input type="checkbox"/> Other: _____</p> |
|---|---|

4. If you are a related party, state your relationship \_\_\_\_\_

5. Is this debt claimed on the basis of an assignment? Yes  No

If so, what consideration was paid for the debt? \_\_\_\_\_

This debt was incurred for the consideration stated and the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature ..... Dated .....

Name: \_\_\_\_\_

Address: \_\_\_\_\_

I nominate to receive electronic notifications of documents in accordance with Section 600G of the Corporations Act at the following email address

Email: \_\_\_\_\_



## **Proof of Debt Guidance Notes**

(Please read carefully before filling in Form 535 or Form 536)

It is a creditor's responsibility to prove their claim to our satisfaction.

When lodging claims, creditors must ensure:

- the proof of debt form is properly completed in every particular; and
- evidence, as set out under "Information to support your claim", is attached to the Form 535 or Form 536.

### **Directions for completion of a Proof of Debt**

1. Insert the full name and address of the creditor.
2. Under "Consideration" state how the debt arose, for example "goods sold to the company on \_\_\_\_\_".
3. Under "Remarks" include details of any documents that substantiate the debt (refer to the section "Information to support your claim" below for further information).
4. Where the space provided for a particular purpose is insufficient to contain all the information required for a particular item, please attach additional information.

### **Information to support your claim**

Please note that unless you provide evidence to support the existence of the debt, your debt is not likely to be accepted. Detailed below are some examples of debts creditors may claim and a suggested list of documents that should accompany a proof of debt to substantiate the debt.

#### **Trade Creditors**

- Invoice(s) and statement(s) showing the amount of the debt; and
- Advice(s) to pay outstanding invoice(s) (optional).

#### **Guarantees/Indemnities**

- Executed guarantee/indemnity;
- Notice of Demand served on the guarantor; and
- Calculation of the amount outstanding under the guarantee.

#### **Judgment Debt**

- Copy of the judgment; and
- Documents/details to support the underlying debt as per other categories.

#### **Deficiencies on Secured Debt**

- Security Documents (eg. mortgage);
- Independent valuation of the secured portion of the debt (if not yet realised) or the basis of the creditor's estimated value of the security;
- Calculation of the deficiency on the security; and
- Details of income earned and expenses incurred by the secured creditor in respect of the secured asset since the date of appointment.

#### **Loans (Bank and Personal)**

- Executed loan agreement; and





- Loan statements showing payments made, interest accruing and the amount outstanding as at the date of appointment.

**Tax Debts**

- Documentation that shows the assessment of debts, whether it is an actual debt or an estimate, and separate amounts for the primary debt and any penalties.

**Employee Debts**

- Basis of calculation of the debt;
- Type of Claim (eg. wages, holiday pay, etc);
- Correspondence relating to the debt being claimed; and
- Contract of Employment (if any).

**Leases**

- Copy of the lease; and
- Statement showing amounts outstanding under the lease, differentiating between amounts outstanding at the date of the appointment and any future monies.

PROXY FORM

Forum Group Pty Ltd (Receivers Appointed) (In Liquidation)

ACN: 153 336 997

APPOINTMENT OF PROXY

I/We (if a firm, strike out "I" and set out the full name of the firm) \_\_\_\_\_ of

\_\_\_\_\_ (insert address)

a creditor of **Forum Group Pty Ltd (Receivers Appointed) (In Liquidation)** appoint

\_\_\_\_\_ (insert name, address and description of the person appointed)

or in his or her absence

\_\_\_\_\_ (insert name, address and description of the person appointed)

as my/our (choose one):

general proxy

special proxy

to vote at the meeting of creditors to be held on Friday, 12 November 2021 at 11:00 AM (AEDT) or at any adjournment of that meeting.

Resolution (only complete where appointing a special proxy)

For

Against

Abstain

**Voluntary Administrators' remuneration (McGrathNicol)**

- 1 That the remuneration of the voluntary administrators for the period 22 July 2021 to 27 July 2021, calculated at hourly rates as detailed in the Initial Remuneration Notice dated 24 August 2021, is determined in the sum of \$21,056, exclusive of GST.

**Liquidators' remuneration**

- 2 That the remuneration of the Liquidators for the period from 28 July 2021 to 19 September 2021, calculated at hourly rates as detailed in the Initial Remuneration Notice dated 24 August 2021, is determined in the sum of \$203,449, exclusive of GST.

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**Former Voluntary Administrators' remuneration (Mackay Goodwin)**

3 That the remuneration of the Administrators, their partners and staff from 8 July 2021 to 22 July 2021 be approved up to a maximum amount of \$156,451.99 plus GST, calculated in accordance with the Mackay Goodwin hourly rates as attached and that the Administrators be authorised to draw the remuneration as required.

---

**Former Voluntary Administrators' remuneration (Mackay Goodwin) – Preservation and securing of company's assets**

4 That the remuneration of the Administrators, their partners and staff incidental to the collecting, securing and preserving the Company's assets from 8 July 2021 to 22 July 2021 be approved up to a maximum amount of \$281,117.50 plus GST, calculated in accordance with the Mackay Goodwin hourly rates as attached and that the Administrators be authorised to draw the remuneration as required.

---

**Appointment of Committee of Inspection**

5 That a Committee of Inspection be formed and the members of which are to be determined at the meeting.

---

**Liquidators' ability to compromise debts**

6 That so far as necessary for the beneficial winding up of Forum Group Pty Ltd, the Liquidators are hereby authorised pursuant to subsections 506(1A), 477(2A) and 477(2B) of the Corporations Act 2001 to compromise any debts greater than the prescribed amount.

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**Liquidators' ability to enter into agreements**

7 That so far as necessary for the beneficial winding up of Forum Group Pty Ltd, the Liquidators are hereby authorised to enter any agreements on behalf of Forum Group Pty Ltd involving a term or obligations extending for more than three months.

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DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2021

Name \_\_\_\_\_

Signature \_\_\_\_\_

Select which of the below applies (choose one):

The creditor is a company and I am signing as a director of the company

The creditor is a partnership and I am signing as a partner of the partnership

The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company

I am signing in my personal capacity as a member or contributory of Forum Group Pty Ltd

I am an individual and I am signing in my personal capacity (which includes employees)

Other: \_\_\_\_\_

The creditor is a sole trader and I am signing as the proprietor

**Proxy forms should be completed and returned by no later than 4.00PM on Thursday, 11 November 2021.**

RETURN TO: **Forum Group Pty Ltd (Receivers Appointed) (In Liquidation)**  
of care of McGrathNicol  
Email: [forum@mcgrathnicol.com](mailto:forum@mcgrathnicol.com)  
Address: GPO Box 9986, Sydney NSW 2001  
Phone: +61 2 9338 2600  
Fax: +61 2 9338 2699



### **Proxy Guidance Notes**

- Insert full name and address of creditor, contributory or member on the top line.
- On the second line, insert the address of the creditor, contributory or member.
- On the next line insert the name of the person you appoint as your proxy. You may insert "the Chairperson of the meeting" if you wish.
- You may appoint an alternate proxy on the fourth line who may act if your first appointed proxy cannot attend the meeting. You may insert "the Chairperson of the meeting" if you wish.
- Make sure you select whether the proxy is a general or special proxy.
- A general proxy is where you leave it to the proxy to decide how to vote on each of the resolutions put before the meeting.
- A special proxy is where you specify how the proxy is to vote on each resolution and the proxy must vote in accordance with that instruction.
- If the proxy is a special proxy, the form must include details of each resolution and whether the proxy holder is to cast their vote in favour or against each resolution or abstain from voting.
- Date and sign the Proxy form, indicating in which capacity you are signing the form. The person signing must be authorised to do so.



**Forum Group Pty Ltd (In Liquidation) (Receivers Appointed)**  
**ACN 153 336 997**

**General Information for Attending and Voting at Meetings of Creditors**

**Time and Place of Meeting**

Pursuant to *Insolvency Practice Rules (Corporations) (IPR) 75-30*, a meeting of creditors must be convened at the time and place the Chairperson believes are convenient for the majority of creditors entitled to receive notice of the meeting.

**Virtual Meeting**

The meeting will be held virtually using online video conferencing. There will be no in person meeting held for the company.

**Quorum**

Pursuant to IPR 75-105, unless a quorum is present, a meeting must not act for any purpose other than:

- the election of a chairperson; and
- the proving of debts; and
- the adjournment of the meeting.

A quorum is present if two (2) or more persons are entitled to vote and at least two (2) persons are present at the meeting in person, by proxy or by power of attorney.

A quorum is present if only one (1) person is entitled to vote and that person is present at the meeting in person, by proxy or by power of attorney.

A person who participates in the meeting using electronic facilities is taken to be present in person at the meeting.

A meeting is sufficiently constituted if only one (1) person is present in person, if the person represents personally or by proxy or otherwise a number of persons sufficient to constitute a quorum.

**Chairperson**

Pursuant to IPR 75-50, the external administrator is appointed Chairperson of the meeting. Alternatively, pursuant to IPR 75-50 and IPR 75-152 the external administrator may appoint someone else to act as chairperson of the meeting and authorise that person to use any proxies held by the external administrator on the external administrator's behalf.

**Voting**

Pursuant to IPR 75-85, creditors will not be eligible to vote at the meeting unless they have lodged particulars of their debt or claim prior to or at the meeting.

Accordingly, creditors who intend to vote at the meeting should ensure that they lodge a formal proof of debt with the external administrator prior to or at the meeting.

For meetings held virtually, voting must be decided by way of a poll. In this regard, please note the meeting may be adjourned by the chairperson for a short time should time be required to consider votes for each of the proposed resolutions.



Pursuant to IPR 75-115:

- a resolution is passed if a majority in number and a majority in value vote in favour of the resolution; and
- a resolution is not passed if a majority in number and a majority in value vote against the proposed resolution.

In the event of a deadlock, the chairperson may exercise a casting vote. In such situations, the minutes of the meeting must specify the chairperson's reasons for exercising, or not exercising, their casting vote.

### **Proxies**

Pursuant to IPR 75-150, a person entitled to vote at a meeting may, in writing, appoint an individual as their proxy to attend and vote at the meeting on their behalf.

Accordingly, creditors who are unable to attend the meeting but who wish to be represented should ensure that a validly executed proxy form is lodged with the external administrator prior to the meeting.

### **Corporate Creditors**

Corporate creditors who wish to attend the meeting should note that an individual may only represent them if the corporation validly grants that person a proxy or power of attorney.

### **Committee of Inspection**

Pursuant to IPR 80-5, a person may only serve as a member of a Committee of Inspection if the person is:

- a creditor of the company personally; or
- the attorney of a creditor under a general power of attorney; or
- authorised in writing by a creditor; or
- a representative of the Commonwealth if a FEG claim has been, or the Commonwealth considers a claim is likely to be, made in relation to unpaid employee entitlements.

Corporate creditors who are members of a Committee of Inspection may be represented by an individual authorised in writing by the member to represent the member on the committee.



**Forum Group Pty Ltd (In Liquidation) (Receivers Appointed)**  
**ACN 153 336 997**

**Tips for Attending Virtual Meetings**

1. **Arrive at least 30 minutes prior to the meeting.** To ensure the meeting can commence in accordance with the time specified on the agenda, please ensure you have logged into the virtual meeting at least 30 minutes prior to the meeting and familiarise yourself with the meeting software/functionality for voting.
2. **Please ensure you are on mute.** Background noise disrupts the meeting and might prevent creditors from hearing the information presented by the chairperson. Please choose a quiet location and use the mute button when you are not speaking.
3. **Questions for the chairperson.** Please, if possible, save your questions until the end of each segment. The chairperson will open the meeting for questions at the end of each segment.
4. **Identify yourself.** Before you start to speak, please state your name and company (if applicable).
5. **Speak slowly and clearly.** Please try not to talk over another speaker. Be considerate and try to speak one at a time so that the chairperson can follow your point in its entirety.



**Forum Group Pty Ltd (In Liquidation) (Receivers Appointed)  
Nomination Form for Membership of a Committee of Inspection**

**Requirements:** To be eligible for membership of a Committee of Inspection, a person must be: (i) a creditor of the company in liquidation; or (ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor; or (iii) a person authorised in writing by a creditor of the company to be a member; or (iv) a representative of the Commonwealth.

Company	Forum Group Pty Ltd (In Liquidation) (Receivers Appointed) (Forum Group)
Name of Creditor	
Name of nominated representative (if creditor is a company)	
Position of nominated representative	
Organisation of nominated representative (if different to Creditor)	
Creditor / organisation address	
Estimated value of debt owed by Forum Group (in AUD or AUD equivalent)	

Signature of Creditor (or authorised company rep)	
Position	
Date	

Signature of Nominee (if applicable)	
Position	
Date	

Please return by email to: Attention: Walter Jones, Email: [forum@mcgrathnickol.com](mailto:forum@mcgrathnickol.com)

## Information Sheet: Committees of Inspection

You have been elected to be, or are considering standing for the role of, a member of a Committee of Inspection (COI) in either a liquidation, voluntary administration or deed of company arrangement of a company (collectively referred to as an external administration).

This information sheet is to assist you with understanding your rights and responsibilities as a member of a COI.

### What is a COI?

A COI is a small group of creditors elected to represent the interests of creditors in the external administration. The COI advises and assists the external administrator and also has the power to approve and request certain things – this is discussed in more detail below.

Membership of the COI is a voluntary, unpaid position.

### Who can be elected to a COI?

To be eligible to be appointed as a member of a COI, a person must be:

- A creditor
- A person holding the power of attorney of a creditor
- A person authorised in writing by a creditor; or
- A representative of the Commonwealth where a claim for financial assistance has, or is likely to be, made in relation to unpaid employee entitlements.

If a member of the COI is a company, it can be represented by an individual authorised in writing to act on that creditor's behalf. It also allows the creditor to maintain its representation if a change in the individual is required

A COI usually has between 5 and 7 members, though it can have more, or less, depending on the size of the external administration.

A member of a COI can be appointed by:

- resolution at a meeting of creditors
- an employee or a group of employees owed at least 50% of the entitlements owed to employees of the company
- a large creditor or group of creditors that are owed at least 10% of the value of the creditors' claims,

If an employee or group of employees, or a large creditor or group of creditors, appoints a member to the COI, they cannot vote on the general resolution of creditors to appoint members to the COI. Each of these groups also have the power to remove their appointed member of the COI and appoint someone else.

If you are absent from 5 consecutive meetings of the COI without leave of the COI or you become an insolvent under administration, you are removed from the COI.

## What are the roles and powers of a COI?

A COI has the following roles:

- to advise and assist the liquidator, voluntary administrator or deed administrator (collectively referred to as the external administrator)
- to give directions to the external administrator
- to monitor the conduct of the external administration.

In respect of directions, the external administrator is only required to have regard to those directions. If there is a conflict between the directions of the COI and the creditors, the directions of the creditors prevail. If the external administrator chooses not to comply with the directions of the COI, the external administrator must document why.

A COI also has the power to:

- approve remuneration of the external administrator after the external administrator has provided the COI with a Remuneration Approval Report (a detailed report setting out the remuneration for undertaking the external administration)
- approve the use of some of the external administrator's powers in a liquidation (compromise of debts over \$100,000 and entering into contracts over 3 months)
- require the external administrator to convene a meeting of the company's creditors
- request information from the external administrator
- approve the destruction of the books and records of the external administration on the conclusion of the external administration
- with the approval of the external administrator, obtain specialist advice or assistance in relation to the conduct of the external administration
- apply to the Court for the Court to enquire into the external administration.

An external administrator is not required to convene a meeting of creditors if the request by the COI is unreasonable, or provide requested information if the request is unreasonable, not relevant to the administration or would cause the external administrator to breach their duties.

A request to convene a meeting of creditors is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- there are insufficient funds in the external administration to cover the cost of the request
- a meeting of creditors dealing with the same matters has already been held or will be held within 15 business days, or
- the request is vexatious.

If a request for a meeting is reasonable, the external administrator must hold a meeting of creditors as soon as reasonably practicable.

A request for information is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- the information would be subject to legal professional privilege
- disclosure of the information would be a breach of confidence
- there are insufficient funds in the external administration to cover the cost of the request
- the information has already been provided or is required to be provided within 20 business days, or
- the request is vexatious.

If the request for information is not unreasonable, the external administrator must provide the requested information within 5 business days, but the law provides for further time in certain circumstances.

An external administrator must inform the COI if their meeting or information request is not reasonable and the reason why.

### How does the COI exercise its powers?

A COI exercises its powers by passing resolutions at meetings of the COI. To pass a resolution, a meeting must be convened and a majority of the members of the COI must be in attendance.

A meeting is convened by the external administrator by giving notice of the meeting to the members of the COI. Meetings of the COI can be convened at short notice.

The external administrator must keep minutes of the meeting and lodge them with ASIC within one month of the end of the meeting.

ASIC is entitled to attend any meeting of a COI.

### What restrictions are there on COI members?

A member of a COI must not directly or indirectly derive any profit or advantage from the external administration. This includes by purchasing assets of the company or by entering into a transaction with the company or a creditor of the company. This prohibition extends to related entities of the member of the COI and a large creditor(s) that appoints a member to the COI.

Creditors, by resolution at a meeting of creditors, can resolve to allow the transaction. The member of the COI or the large creditor(s) that appoints a member to the COI is not allowed to vote on the resolution.

### Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding external administrations and insolvency.

This information is available from ARITA's website at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [www.asic.gov.au](http://www.asic.gov.au) (search "insolvency information sheets").

# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

**A summary of offences under the Corporations Act that may be identified by the administrator:**

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
588G	Incurring liabilities while insolvent
588GAB	Officer's duty to prevent creditor-defeating disposition
588GAC	A person must not procure a company to make a creditor-defeating disposition
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.
596AB	Entering into an agreement or transaction to avoid employee entitlements.

### Recoverable Transactions

#### *Preferences*

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

#### *Creditor-defeating disposition*

Creditor-defeating dispositions are the transfer of company assets for less than market value (or the best price reasonably obtainable) that prevents, hinders or significantly delay creditors' access to the company's assets in liquidation. Creditor-defeating dispositions are voidable by a liquidator.

### **Uncommercial Transaction**

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to the benefit or detriment to the company; the respective benefits to other parties; and any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person or from members of a corporate group (Contribution Order).

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.

**Queries about the voluntary administration should be directed to the administrator's office.**

## Mackenzie Preston

---

**From:** Melissa Passarelli  
**Sent:** Friday, 5 November 2021 7:09 PM  
**To:** anthony.sommer@minterellison.com  
**Cc:** Sazz Nasimi; Alexandra Lawrence; caitlin.murray@minterellison.com  
**Subject:** NSD616/2021 - Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors [MADG-CURRENT\_MATTERS.18091.047678]  
**Attachments:** 211105 Letter from Madgwicks to Minter Ellison Rv.pdf

Dear Mr Sommer

Please see **attached** for your attention.

Regards

**Melissa Passarelli**  
Associate

MADGWICKS  
LAWYERS

[Visit our COVID-19 Resources Hub for practical information to assist you through this time](#)

T: +61 3 9242 4780 E: [Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)

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[www.madgwicks.com.au](http://www.madgwicks.com.au)

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Anthony Sommer  
Senior Associate  
Minter Ellison  
Level 40 Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Date: 5 November 2021  
File No: 047678  
Partner: Sazz Nasimi  
Your Ref: 1353397

By email: [anthony.sommer@minterellison.com](mailto:anthony.sommer@minterellison.com)

Dear Mr Sommer

**Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors  
Federal Court of Australia proceeding number NSD616/2021 (Proceedings)**

We refer to the numerous articles published in the print media concerning the investigative report commissioned by your client and undertaken by KWM Lawyers.

For convenience, below are links to some of these articles.

<https://www.theaustralian.com.au/business/peter-king-says-westpac-took-correct-staff-action-after-forum-finance-fraud-review/news-story/505ef6d53fec3bc7a16141536c2573fe>



[Peter King says Westpac took correct staff action after Forum Finance fraud review](https://www.theaustralian.com.au/business/peter-king-says-westpac-took-correct-staff-action-after-forum-finance-fraud-review/news-story/505ef6d53fec3bc7a16141536c2573fe)

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<https://www.mpamag.com/au/news/general/westpac-probes-employees-over-alleged-forum-fraud/311217>



[Westpac probes employees over alleged Forum fraud | Mortgage Professional Australia](#)

Westpac and law firm King & Wood Mallesons are conducting a probe of the bank's staff to determine if disciplinary action should be taken in the wake of an alleged \$300 million fraud.. Citing ...

[www.mpamag.com](http://www.mpamag.com)

We are of the view that the investigation commissioned by your client is relevant to the present proceedings concerning our client and to this extent we request that we be provided a copy of the Investigative Report, together with all annexures and attachments contained within the Report.

We would be grateful if you could provide this to us well in advance of the next return date.

Please contact me should you have any concerns.

Yours faithfully  
**MADGWICKS**

Sazz Nasimi  
**Partner**

**T:** 03 9242 4741


**E:** Sazz.Nasimi@madgwicks.com.au

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Copy to: caitlin.murray@minterellison.com

# Peter King says Westpac took correct action after Forum Finance fraud review

By **JOYCE MOULLAKIS**, SENIOR BANKING REPORTER

10:17PM NOVEMBER 1, 2021 •  3 COMMENTS

Westpac chief executive Peter King is adamant the bank has taken “appropriate actions” against a group of its own staff, after assessing the findings of a sweeping investigation into how it was allegedly defrauded of \$300m.

The bank’s 2021 annual report said “a range of remuneration and other consequences were applied” to current and former Westpac employees, relating to the potential fraud against the bank by Forum Finance and its founder, Bill Papas. Sources said the consequences included the partial or full docking of bonuses, while some employees have departed the bank as a result of the review.

The Australian [in September revealed](#) law firm King & Wood Mallesons was assisting Westpac with a staff review to determine accountability and if disciplinary action should be applied after the bank fell victim to the equipment leasing fraud. It is understood the review did not uncover any evidence of Westpac employees assisting Forum in the alleged fraud, but given the size of the loss to the bank there were issues raised under its consequence management framework.

When asked about the accountability measures, Mr King said: “We’ve done a thorough review of what happened, including looking at individuals ... we’ve taken appropriate actions where warranted, but I can’t talk to you about individuals.”

Pressed on whether the review led to dismissals, Mr King said: “It depends on the individual’s seniority and what they did, what the action was, but I can’t go into individual outcomes.”

The fraud allegations are linked to claims Forum used fake invoices, sometimes with forged signatures, to secure finance from the bank, often for goods that did not exist. It is another lapse in

Westpac's systems, which have been under intense pressure for lax compliance with anti-money-laundering and other laws.

Westpac has made a provision for the claimed Forum fraud in its accounts, as the matter is being pursued by the bank in the Federal Court. Offshore-based banks Societe Generale and Sumitomo Mitsui Banking Corporation have also separately lodged civil actions against Forum.

Federal Court judge Michael Lee [last month made an order](#) for the warrant, arrest and detention of Forum founder Mr Papas due to his failure to co-operate with court orders. Justice Lee cited an extradition treaty between Australia and Greece, given Mr Papas has been residing in Greece since June.

Westpac, which is undertaking a multi-year turnaround program to boost compliance functions, admitted in its annual report it had a way to go. The report showed that on a pay scorecard Westpac's executives achieved 40 per cent of a maximum short-term bonus outcome on measures to fix and boost the bank's systems, compliance and culture.

"Significant risk incidents arose: APRA's (Australian Prudential Regulation Authority's) prudential standards on liquidity, potential fraud by Forum Finance, ASIC (corporate regulator) proceedings in relation to the 2016 Ausgrid transaction and the Reserve Bank of New Zealand requiring reviews into risk governance practices," the report said.

Westpac's executives scored better on perform and simplify measures, measuring 47 per cent and 57 per cent of the maximum bonus outcome.

The average 2021 short-term bonus outcome for the executive team was 48 per cent of the available pool, with individual outcomes ranging from zero bonus to 70 per cent of the available payment. Last year, there were no short-term cash bonuses paid across Westpac's executives as they took joint responsibility for the anti-money-laundering scandal that led to the bank paying a record \$1.3bn penalty to Austrac.

Mr King's take-home pay rose to \$3.4m for the 12 months to September 30, up from \$2.4m a year earlier. This year's pay included fixed remuneration of \$2.4m, a cash bonus of \$840,000 and vesting of prior year deferred bonuses.

Mr King was awarded 47 per cent of his available short-term bonus, while his long-term incentives for 2018 lapsed because hurdles were not met.

The annual report showed consumer and business banking boss Chris de Bruin and financial crime and compliance executive Les Vance received pay increases of 11 per cent respectively, due to taking on expanded roles.

The notice for Westpac's December annual general meeting outlined a board review of Mr King's 2022 pay package, which determined a 3 per cent increase to "align with market".

Westpac is separately seeking shareholder approval to award Mr King a 2022 potential long-term bonus reflecting a maximum grant of 127,401 performance share rights valued at \$3.25m. That is subject to the CEO meeting performance hurdles and other vesting criteria.

The annual report showed Westpac managed 1306 employee conduct matters in 2021, with 95 staff exiting the business due to disciplinary outcomes.

#### **JOYCE MOULLAKIS, SENIOR BANKING REPORTER**

Joyce Moullakis is a senior banking reporter. Prior to joining The Australian, she worked as a senior banking and deals reporter at The Australian Financial Review.

#### **More stories on this topic**

- [Westpac claims benefits from risk governance overhaul](#)
- [Westpac swoops on Forum boss's soccer club](#)
- [Fixed rate rises to bite into housing surge](#)

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# Westpac probes employees over alleged Forum fraud

The bank is conducting an investigation to determine whether any employees are culpable in the alleged \$300 million scam



By [Ryan Smith](#)

27 Sep 2021 / [Share](#)

[Westpac](#) and law firm King & Wood Mallesons are conducting a probe of the bank's staff to determine if disciplinary action should be taken in the wake of an alleged \$300 million fraud.

Citing anonymous sources, *The Australian* reported that the employee probe was already well underway. The review is focused on determining if any staff or managers – largely in the leasing unit exposed to the alleged fraud – are culpable.

The \$300 million fraud was allegedly perpetrated by Forum Finance and its founder, Bill Papas. Westpac claims that Papas and Forum used phony documents and forged signatures to scam it out of



about \$300 million in loans. Two other banks, France's Société Générale and Japan's Sumitomo, have also accused Papas and Forum of defrauding them.

Westpac's investigation centers on whether managers conducted proper spot checks and ongoing due diligence of Forum, and the goods underpinning the equipment leases involved in the alleged fraud, *The Australian* reported. In some cases, the goods that were the subject of the leases appeared to be non-existent, yet financing was still secured.

The probe has reportedly found no evidence as yet that any employee conspired with Forum or Papas to perpetrate the alleged fraud. However, if the investigation finds that a Westpac employee did not adequately conduct their duties, the bank is considering disciplinary action and possible termination, according to *The Australian*.

**Read more:** [Papas dumped by lawyer](#)

Westpac has also reportedly given key material to regulators and the NSW Financial Crimes Squad.

Westpac's investigation has not triggered potential consequences under the Banking Executive Accountability Regime since it isn't targeting group executives that report to CEO Peter King, *The Australian* reported.

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## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/02/2022 5:29:49 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172  
& ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 8/02/2022 5:36:11 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59

Rule 29.02(1)

## Affidavit

No. NSD of 616/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

**Westpac Banking Corporations ABN 33 007 457 141** and another named in the Schedule  
Applicants

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others named in the  
Schedule  
Respondents

Affidavit of: **Sarwar (Sazz) Nasimi**

Address: Level 6, 140 William Street, Melbourne 3000

Occupation: Legal practitioner

Date: 8 February 2022

### Contents

Document number	Details	Paragraph	Page
1.	Affidavit of Sarwar (Sazz) Nasimi sworn 8 February 2022	1-12	2-4
2	Exhibit SN-4 being a paginated bundle of documents	-	1-9

Filed on behalf of (name & role of party) Vincenzo Frank Tesoriero, Third Respondent

Prepared by (name of person/lawyer) Sazz Nasimi

Law firm (if applicable) Madgwicks Lawyers

Tel 03 9242 4720



Fax 03 9242 4777

Email [Sazz.Nasimi@Madgwicks.com.au](mailto:Sazz.Nasimi@Madgwicks.com.au)

**Address for service** Level 6, 140 Williams Street, Melbourne 3000 VIC

(include state and postcode)

[Version 3 form approved 02/05/2019]

  977

047678:4693791\_2



I, Sarwar (Sazz) Nasimi, of Level 6,140 William Street Melbourne in the State of Victoria hereby make Oath and Say:

1. I am a legal practitioner and a partner within the Victorian law firm Madgwicks.
2. I make this affidavit from my own knowledge save where otherwise indicated. Where I depose to matters that I have been informed of by others, I believe those matters to be true and correct.
3. Madgwicks represents the Third Respondent and his associated entities in the present proceeding, and I am the responsible partner within the firm with the ultimate care and conduct of the matter on their behalf.
4. Annexed to this affidavit and shown to me at the time of swearing this affidavit is a paginated bundle of documents marked "SN-4". This exhibit contains all the documents referred to in my affidavit. Where reference is made to specific document or part of a document, contained within "SN-4", it will be referred to by my initials followed by the page number on which that document or reference appears, i.e **SN-#**.
5. I swear this affidavit following receipt of the application filed by MinterEllison dated 7 February 2022.
6. On 2 February 2022, I received an email from MinterEllison stating that Westpac required that the surplus funds from the sale of the 23 Margaret Street property be deposited into a controlled bank account pursuant to a purported obligation provided in accordance with a deed dated 3 September 2021.

A true copy of the email from MinterEllison dated 2 February 2022 is exhibited at SN-4 at page 1.

7. The following day I received an email by copy from MinterEllison which stated the following:

*"Dear Ms Lawrence*

*I note that we have not received a response to the below email.*

*To the extent that we have not received a response before 8.30am tomorrow morning, we propose to indicate to his Honour at tomorrow's listing that it may be necessary for our client to bring an application to enforce the deed."*

A true copy of the email from MinterEllison dated 3 February 2022 is exhibited at SN-4 at page 2.

8. On 4 February 2022 at 7.36am, I caused a letter to be sent to MinterEllison in response to their email of 2 February 2022. This was within the timeframe stated in their 3 February 2022 email. This letter confirmed, *inter alia*, the following:

*"In any event, it appears that the parties are in agreement with respect to the sale of the Property and the only dispute which remains is that concerning the application of the surplus monies. We are unsure as to why you believe that this issue must be addressed prior to settlement.*

*We acknowledge that there is a dispute concerning the application of the surplus monies and we have proposed to hold the surplus moneys in their entirety, in our trust account until that dispute is resolved.*

*Our proposal is made to you in circumstances where there are real time pressures faced by our client to ensure settlement occurs by 9 February 2022. Furthermore, our proposal preserves each parties' rights to make any application it wishes to make to the Court without the risk of the funds being dissipated."*

A true copy of the letter dated 4 February 2022 is exhibited at SN-4 at pages 3 to 4.

9. On 4 February 2022, the Australian published an article which indicated that at a hearing that same day (where Mr Tesoriero was unrepresented), the Court heard submissions made on behalf of Westpac in relation to the issue regarding the surplus funds and the caveat.

A true copy of the article published on 4 February 2022 is exhibited at SN-4 at pages 5 to 6.

10. I became aware of this article on 7 February 2022.
11. On 7 February 2022, I sent a letter to MinterEllison requesting the transcript and any documents handed up to the Court at the 4 February hearing as Mr Tesoriero was concerned about what comments were made at the hearing in the absence of both him and his legal representatives.

A true copy of the letter from Madgwicks dated 7 February 2022 is exhibited at SN-4 at pages 7 to 8.

12. On 8 February 2022, I received a response from MinterEllison.

A true copy of the email from MinterEllison dated 8 February 2022 is exhibited at SN-4 at page 9.

13. I provide the exhibited documents for the Court's consideration as, whilst Mr Tesoriero is hopeful that complete disclosure was made to the Court at the 4 February hearing, it appears from the, The Australian article that full disclosure may not have been made.

**The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.**

Sworn by Sarwar (Sazz) Nasimi )

at Melbourne on 8 February 2022 ) -----

Before me:

**Melissa Passarelli**  
6th Floor, 140 William St, Melbourne, Vic, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria).

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW).
2. I observed the deponent signing a copy of this affidavit in real time.
3. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
4. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
5. I has confirmed the person's identity based on the following identification document presented to me: Drivers Licence

# Schedule of Parties

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

## Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141

Second Applicant Westpac New Zealand Limited (company registration number company number 1763882)

## Respondents

First Respondent Forum Finance Pty Limited (in liquidation) ACN 153 301 172

Second Respondent: Basile Papadimitriou

Third Respondent Vincenzo Frank Tesoriero

Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705

Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997

Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840

Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364

Eighth Respondent 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662

Ninth Respondent 14 James Street Pty Ltd (in liquidation) ACN 638 449 206

Tenth Respondent 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129

Eleventh Respondent 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160

Twelfth Respondent 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473

Thirteenth Respondent 23 Margaret Street Pty Ltd ACN 623 715 373

Fourteenth Respondent 1160 Glen Huntly Road Pty Ltd ACN 639 447 984

Fifteenth Respondent 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093

Sixteenth Respondent Canner Investments Pty Ltd ACN 624 176 049

Seventeenth Respondent 123 High Street Taradale Pty Ltd ACN 639 872 512

Eighteenth Respondent 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921

Nineteenth Respondent 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887

Twentieth Respondent 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352

Twenty-First Respondent 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912

Twenty-Second Respondent 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179

Twenty-Third Respondent 9 Gregory Street Ouyen Pty Ltd ACN 641 392 707

Twenty-Fourth Respondent 9 Main Street Derrinallum Pty Ltd ACN 639 872 736

Twenty-Fifth Respondent 286 Carlisle Street Pty Limited ACN 610 042 343

Twenty-Sixth Respondent 275 High Street Golden Square Pty Ltd ACN 639 870 545

Twenty-Seventh Respondent Mazcon Investments Hellas IKE

Twenty-Eighth Respondent Palante Pty Ltd ACN 135 344 151

Twenty-Ninth Respondent Anastasios Giamouridis

Thirtieth Respondent The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964  
626

Thirty-First Respondent Iugis Pty Ltd (in liquidation) ACN 632 882 243

Thirty-Second Respondent Iugis (UK) Limited

Thirty-Third Respondent Iugis Holdings Limited

Thirty-Fourth Respondent Iugis Global Financial Services Limited

Thirty-Fifth Respondent Iugis Finance Limited

Thirty-Sixth Respondent Spartan Consulting Group Pty Ltd (in liquidation) ACN 168  
989 544 ACN

Thirty-Seventh Respondent Intrashield Pty Ltd (in liquidation) ACN 133 426 534

Thirty-Eighth Respondent Tesoriero Investment Group Pty Ltd ACN 161 088 115

Thirty-Ninth Respondent Mangusta (Vic) Pty Ltd ACN 631 520 682

Fortieth Respondent 193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237

Forty-First Respondent 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626

Forty-Second Respondent Iugis Hellas IKE

Forty-Third Respondent Iugis Energy SA

# Exhibit certificate

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 616 of 2021

**Westpac Banking Corporations ABN 33 007 457 141**

Applicant

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others according to the  
Schedule

Respondents

This is the exhibit marked “**SN-4**” now produced and shown to Sazz (Sarwar) Nasimi at the time of swearing his affidavit on 8 February 2022 before me:



Solicitor

**Melissa Passarelli**  
6th Floor, 140 William St, Melbourne, Vic, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria).



## Candy Nelson

---

**From:** Andrew Clarke <Andrew.Clarke@minterellison.com>  
**Sent:** Wednesday, 2 February 2022 11:33 AM  
**To:** Alexandra Lawrence  
**Cc:** Sazz Nasimi; Mackenzie Preston; Caitlin Murray; Michael Hughes; Claire Latham  
**Subject:** FCA Proceedings NSD616/2021 - Westpac Banking Corporation v Forum Finance Pty Limited (in liq) & Ors [ME-ME.FID6353985]  
**Attachments:** 220131 Letter from Madgwicks to Minter Ellison(4683545.2).pdf; Sale process deed - Rozelle property - 3 September 2021.PDF

Dear Ms Lawrence

We refer to your letter dated 31 January 2022 (**attached**).

At the outset we reject your contention that our correspondence dated 18 January 2022 and other correspondence to your office was 'unnecessary'. First, corresponding with your office was (and remains) necessary in circumstances where your clients have failed to comply with the **attached** Deed in connection with the sale of 23 Margaret Street (**Property**) and secondly, in circumstances where your office has continually refused to respond to our communications. We do not see any utility in ventilating this issue any further and thank you for now providing our office with the documents required to be provided in accordance with the Deed.

As previously indicated, our client's clear position is that that the process set out in the Deed for the settlement of the sale of the Property should be followed. Our clients require confirmation that the cash surplus arising from the sale of the property following payment of the outstanding mortgage and any deductions related to the Property will be paid into a **controlled monies account** to be opened in the joint names of Westpac and Mr Tesoriero which can only be operated on the joint signature of their respective solicitors as provided for in clause 2.2(n) of the Deed. We do not accept that payment into your trust account (as outlined in your letter) complies with the agreement. Noting the upcoming proposed date of settlement of 9 February 2022, we look forward to receiving your clients' confirmation without delay and ahead of that time. Once we have your confirmation, we will obtain instructions regarding the removal the caveat to enable settlement to complete, noting that our client's agreement to do so was always dependent on your clients' compliance with the Deed. For the avoidance of any doubt, our client also requires to be provided with details of the proposed distribution of the purchase price ahead of settlement.

Regards

—  
**Andrew Clarke**

Associate

T +61 2 9921 8514 M + 61 475 670 974

andrew.clarke@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com **Follow us on LinkedIn and Twitter**



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### IMPORTANT INFORMATION, PLEASE READ

#### RETURN TO OFFICE

Public health orders influence our Return to Office Policy in each office jurisdiction. The Policy promotes a vaccinated workplace, and takes effect when professional services employees are permitted to return to the office following lockdown or when borders open to interstate travel without the need to quarantine. When the Policy takes effect in each jurisdiction, only fully vaccinated partners, employees, clients and visitors will have access to our office. [Read more for access procedures.](#)

#### OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its



## Candy Nelson

---

**Subject:** FW: FCA Proceedings NSD616/2021 - Westpac Banking Corporation v Forum Finance Pty Limited (in liq) & Ors [ME-ME.FID6353985]

---

**From:** Caitlin Murray <Caitlin.Murray@minterellison.com>

**Sent:** Thursday, 3 February 2022 2:51 PM

**To:** Andrew Clarke <Andrew.Clarke@minterellison.com>; Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>

**Cc:** Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>; Mackenzie Preston <Mackenzie.Preston@madgwicks.com.au>; Michael Hughes <Michael.Hughes@minterellison.com>; Claire Latham <Claire.Latham@minterellison.com>; Caitlin Murray <Caitlin.Murray@minterellison.com>

**Subject:** RE: FCA Proceedings NSD616/2021 - Westpac Banking Corporation v Forum Finance Pty Limited (in liq) & Ors [ME-ME.FID6353985]

Dear Ms Lawrence

I note that we have not received a response to the below email.

To the extent that we have not received a response before 8.30am tomorrow morning, we propose to indicate to his Honour at tomorrow's listing that it may be necessary for our client to bring an application to enforce the deed.

Regards  
Caitlin

---

**Caitlin Murray**

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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Andrew Clarke  
Associate  
Minter Ellison  
Level 40 Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Date: 4 February 2022  
File No: 047678  
Partner: Sazz Nasimi  
Your Ref: 1353397

By email: [Andrew.Clarke@minterellison.com](mailto:Andrew.Clarke@minterellison.com)

Dear Mr Clarke

**23 Margaret Street, Rozelle  
Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors  
Federal Court of Australia proceeding number NSD616/2021**

We refer to the above matter and your email to our office dated 2 February 2022.

As you are aware, our client has sold the property known as 23 Margaret Street, Rozelle (**Property**) with settlement to take place on 9 February 2022.

Your client presently has a caveat registered over the title of the Property which, unless removed, will prevent the settlement from taking place.

You have stated to us in your correspondence of 2 February 2022, that your client's caveat will only be removed if our client agrees to place the surplus monies from the sale into a controlled monies account, in the name of our client and Westpac jointly. You allege that this was an obligation imposed upon our client pursuant to a deed entered into on or about 3 September 2021.

In response to your claim, we confirm that the issue concerning settlement occurring is separate and distinct from any issues concerning surplus monies. It appears to us that your client is seeking to use its caveat as a mechanism by which to exert pressure on our client in order to achieve an improper commercial advantage. There is ample authority which states that caveats are not to be used as a debt collection tool, yet your client appears to be utilising it as such.

As it presently stands, your client has not proven that it has a proprietary interest in the Property and any debt it alleges as being owed by our client is the subject of a continued dispute. As such we take opposition to the manner in which the caveat is being utilised and reserve our client's rights accordingly.



**MADGWICKS**  
ABN 82 199 611 971

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DX 485

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W: [madgwicks.com.au](http://madgwicks.com.au)



In any event, it appears that the parties are in agreement with respect to the sale of the Property and the only dispute which remains is that concerning the application of the surplus monies. We are unsure as to why you believe that this issue must be addressed prior to settlement.

We acknowledge that there is a dispute concerning the application of the surplus monies and we have proposed to hold the surplus moneys in their entirety, in our trust account until that dispute is resolved.

Our proposal is made to you in circumstances where there are real time pressures faced by our client to ensure settlement occurs by 9 February 2022. Furthermore, our proposal preserves each parties' rights to make any application it wishes to make to the Court without the risk of the funds being dissipated.

No doubt your client will agree that the deed dated 3 September 2021 is valid and binding and ought to be complied with. Equally, we are of the view that the deed is not binding, and our client ought to be allowed to use the surplus monies to reduce his other indebtedness.

The competing views are best ventilated in Court with the aid of submissions and authorities as opposed to through correspondence.

We assure you that our client has no intention to deal with the surplus monies until either an agreement is reached or an order is made by the Court. In such circumstances, we cannot see any prejudice being caused to your client and accordingly, once again request that its caveat be removed.

Our client reserves all rights in this matter.

Yours faithfully  
**MADGWICKS**



Sazz Nasimi  
**Partner**

T: 03 9242 4741

E: [Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)

**Copy to:** [Anthony.Sommer@minterellison.com](mailto:Anthony.Sommer@minterellison.com);  
[Caitlin.Murray@minterellison.com](mailto:Caitlin.Murray@minterellison.com); [Michael.Hughes@minterellison.com](mailto:Michael.Hughes@minterellison.com);  
[Claire.Latham@minterellison.com](mailto:Claire.Latham@minterellison.com)

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# Forum Group Vincenzo Tesoriero's resistance to \$4.4m property sale 'hopeless': judge

By **CINDY CAMERONNE**, BUSINESS WRITER

1:08PM FEBRUARY 4, 2022 •  2 COMMENTS

Forum Finance Group director Vincenzo Tesoriero has resisted handing over proceeds from a \$4.4m Sydney property sale to solicitors, in a move that a Federal Court judge has branded “hopeless”.

Appearing for Westpac, Jeremy Giles SC said in a court hearing on Friday that there was a “brewing problem” after the property in Sydney suburb Rozelle was sold in December, because Mr Tesoriero refused to transfer the proceeds to a bank account controlled by solicitors.

In an agreement with Westpac last year, Mr Tesoriero said the sale of the property would proceed and he would hand over any profit from it into a “controlled moneys account”, Mr Giles said.

But in a letter sent to Westpac's legal team on Friday morning, Mr Tesoriero claimed his agreement with the bank was “not binding” and resisted handing over the proceeds, the barrister added.

Westpac, Societe Generale and Sumitomo Mitsui Banking Corporation are separately pursuing Forum and its founder Bill Papas in court over a \$500m alleged fraud. They claim Mr Papas was involved in creating false invoices to seek bank funding, often for goods that didn't exist. Mr Tesoriero is the 3rd of 49 defendants named in the action. Forum and associated entities were placed in liquidation last year.

Justice Michael Lee last month varied a freezing order against Mr Papas which was made last June, and revised a month later, so that Westpac can seek that action in Greece.

Mr Papas departed Australia for Greece mid last year, when customer WesTrac started asking questions about its Forum account. He initially promised to return to Australia to defend the case, before providing a positive Covid-19 test result, telling the court he couldn't travel. Mr Papas also disconnected his personal email that was being used to communicate with him.

In November, Justice Lee ordered that Westpac could cross-examine Mr Tesoriero on his role in the alleged fraud in a hearing set for March. Mr Tesoriero is disputing key aspects of Westpac's civil action against him, as the bank also sues equipment leasing firm Forum Group, its entities, and founder Bill Papas over the alleged fraud.

Forum founder Mr Papas and his partner, Louisa Agostino, lived in the four bedroom house in Rozelle, which was owned by a company controlled by Mr Tesoriero, before Mr Papas left Australia for Greece last June.

In August, Justice Lee questioned Mr Tesoriero's attempt to sell the Rozelle property for a low price, saying the offer rang "alarm bells" because it would be the only property in Sydney that had reduced in value.

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Also on Friday, NSW police secured access to Forum Finance documents seized by Westpac when it uncovered the company's alleged fraud last year. The court heard that the NSW police would run chemical tests on the original documents which would render them "toxic or carcinogenic", but the court was assured relevant parties hold copies of the material.

In October, Justice Lee issued a warrant for Mr Papas' arrest, which is expected to trigger an extradition order. Despite the warrant, Mr Papas was [spotted in recent days](#) watching his Xanthi football team compete in the Greek Super League 2.

**CINDY CAMERONNE, BUSINESS WRITER**

Cindy Cameronne joined The Australian in 2022. Previously, she worked as a reporter for legal news start-up Lawyerly and held a senior role at Thomson Reuters as a legal editor. She has a law degree and worked ... [Read more](#)



Andrew Clarke  
Associate  
Minter Ellison  
Level 40  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Date: 7 February 2022  
File No: 047678  
Partner: Sazz Nasimi  
Your Ref: 1353397

By email: [Andrew.Clarke@minterellison.com](mailto:Andrew.Clarke@minterellison.com)

Dear Mr Clarke

**23 Margaret Street, Rozelle  
Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors  
Federal Court of Australia proceeding number NSD616/2021**

We refer to the above matter and the hearing before the Honourable Justice Lee on Friday, 4 February 2022 at which our client did not appear.

The Australian newspaper has reported in part as to what transpired on that day.

Please find **enclosed** article published in the Australian on 4 February 2022.

In light of the contents of the enclosed article, we hold serious concerns with respect to the comments that were reportedly made before the Court and in circumstances where our client was not represented to have a right of reply.

By virtue of the seriousness of what has been reported, we require that you provide to us, as a matter of *urgency*, a copy of the transcript of the hearing and copies of any documents handed up in Court concerning the issue of surplus proceeds and the caveat.

As you are aware, the Australian article inaccurately records what was proposed by our client with respect to the surplus proceeds. It is clear from the correspondence exchanged that our client's proposal to hold the funds in our trust account was on an interim basis only. This was so that the property, the subject of the present claims, could still proceed to settlement and the parties could maintain and reserve their rights otherwise.

Accordingly, you will note that we specifically stated that the parties were at liberty to make an application to the Court and the funds would otherwise not be dealt with.



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W: [madgwicks.com.au](http://madgwicks.com.au)



We would like to examine the transcript of the 4<sup>th</sup> of February in order to see whether these facts were brought to the Courts attention.

Our client continues to reserve all his rights in this matter.

Yours faithfully

**MADGWICKS**



Sazz Nasimi  
**Partner**

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Melissa Passarelli  
**Associate**

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**Copy to: [Caitlin.Murray@minterellison.com](mailto:Caitlin.Murray@minterellison.com); [Michael.Hughes@minterellison.com](mailto:Michael.Hughes@minterellison.com);  
[Claire.Latham@minterellison.com](mailto:Claire.Latham@minterellison.com)**

Enc.

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## Candy Nelson

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**Subject:** FW: 23 Margaret Street, Rozelle - NSD616/2021 - Westpac Banking Corporation v Forum Finance Pty Limited (in liq) & Ors [MADG-CURRENT\_MATTERS.18091.047678]

---

**From:** Caitlin Murray <Caitlin.Murray@minterellison.com>

**Sent:** Tuesday, 8 February 2022 11:32 AM

**To:** Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>; Andrew Clarke <Andrew.Clarke@minterellison.com>

**Cc:** Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>; Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>; Candy Nelson <Candy.Nelson@madgwicks.com.au>; Mackenzie Preston <Mackenzie.Preston@madgwicks.com.au>; Claire Latham <Claire.Latham@minterellison.com>; Michael Hughes <Michael.Hughes@minterellison.com>; Caitlin Murray <Caitlin.Murray@minterellison.com>

**Subject:** RE: 23 Margaret Street, Rozelle - NSD616/2021 - Westpac Banking Corporation v Forum Finance Pty Limited (in liq) & Ors [MADG-CURRENT\_MATTERS.18091.047678]

Dear Mr Nasimi and Ms Passarelli

I refer to your letter sent at 11.45pm last night.

To the extent that your letter suggests that our clients have somehow misled the Court, that allegation is denied.

In any event, the listing of the matter on Friday was inter partes – your clients were aware of the listing and also our intention to raise the issues regarding 23 Margaret Street with his Honour (as per my email to you sent at 2.50pm on 3 February 2022).

As to your request for the provision of a copy of the transcript, we suggest that you contact Auscript to obtain a copy. We are prevented by virtue of the relevant copyright laws from providing you with a copy of the same.

Regards  
Caitlin

---

**Caitlin Murray**

Partner

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caitlin.murray@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/02/2022 5:52:20 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172  
& ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 8/02/2022 5:58:40 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59

Rule 29.02(1)

## Affidavit

No. NSD of 616/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

**Westpac Banking Corporations ABN 33 007 457 141** and another named in the Schedule  
Applicants

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others named in the  
Schedule  
Respondents

Affidavit of: **Sarwar (Sazz) Nasimi**

Address: Level 6, 140 William Street, Melbourne 3000

Occupation: Legal practitioner

Date: 8 February 2022

### Contents

Document number	Details	Paragraph	Page
1.	Affidavit of Sarwar (Sazz) Nasimi sworn 9 November 2021	1-23	2-5
2	Exhibit SN-3 being a paginated bundle of documents		1-25

Filed on behalf of (name & role of party) Vincenzo Frank Tesoriero, Third Respondent

Prepared by (name of person/lawyer) Sazz Nasimi

Law firm (if applicable) Madgwicks Lawyers

Tel 03 9242 4720

Fax 03 9242 4777

Email [Sazz.Nasimi@Madgwicks.com.au](mailto:Sazz.Nasimi@Madgwicks.com.au)

**Address for service** Level 6, 140 Williams Street, Melbourne 3000 VIC  
(include state and postcode)

[Version 3 form approved 02/05/2019]

I, Sarwar (Sazz) Nasimi, of Level 6,140 William Street Melbourne in the State of Victoria hereby make Oath and Say:

1. I am a legal practitioner and a partner within the law firm Madgwicks.
2. I make this affidavit from my own knowledge save where otherwise indicated. Where I depose to matters that I have been informed of by others, I believe those matters to be true and correct.
3. Madgwicks represents the Third Respondent and his associated entities in the present proceeding, and I am the responsible partner within the firm with the ultimate care and conduct of the matter on their behalf.
4. Annexed to this affidavit and shown to me at the time of swearing this affidavit is a paginated bundle of documents marked "SN-3". This exhibit contains all the documents referred to in my affidavit. Where reference is made to specific document or part of a document, contained within "SN-3", it will be referred to by my initials followed by the page number on which that document or reference appears, i.e **SN-#**.
5. I refer to my affidavit sworn on 9 November 2021 in this proceeding and in particular the portions of that affidavit which commences at 13 through to 21.

### **Pleadings**

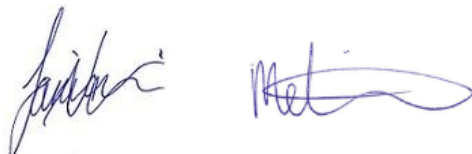
6. On 21 July 2021, the Applicant filed in the proceeding NSD 616/2021 their Statement of Claim, which contained, as at that point in time, 1486 paragraphs spanning over 297 pages.
7. On 11 August 2021 the Applicant filed as Amended Statement of Claim which contained 542 pages and in excess of 2300 paragraphs.
8. On or about 23 August 2021, Fortis law, acting for the respondents as they then were, requested from the Applicant further and better particulars of the Amended Statement of Claim.
9. In response to the Fortis request, the Applicant submitted particulars which consisted of a further 15 pages of documents.
10. On or about 23 September 2021, the Applicants filed the Further Amended Statement of Claim (FASOC) which contained 2,771 paragraphs and spanned 599 pages.

11. The FASOC did not incorporate the particulars that had previously been sought by the respondent and provided by the Applicant. As a result, the Applicant's FASOC had to be read with the further and better particulars provided on 14 September 2021.
12. On 5 November 2021, the Applicant filed a SFASOC and again the Applicant did not incorporate the particulars that had been sought and provided on the previous two occasions such that SFASOC had to be read alongside two further documents being the original and subsequent response to Respondent's request for particulars dated 23 August 2021.
13. Despite the previous versions of the pleadings, the SFASOC was again found to be lacking in particulars such that the Respondent was again compelled to request further and better particulars from the applicant. When doing so, the Respondent did suggest to the Applicant that it may be prudent to file a 3<sup>rd</sup> further amended statement of claim but which incorporated the particulars that had been provided on the two earlier occasions.
14. On 31 January 2022, the Applicant provided its response to the most recent request for particulars. Unfortunately, the Respondents suggestion of incorporating all the particulars into one document had not been taken up by the Applicant and as a result, in order to properly understand the Applicant's claim as pleaded in the SFASOC, one was required to read both responses to the Respondents' request for particulars. In this regard, Madgwicks were provided with a letter from MinterEllison which stated the following:

*"Although you have requested that we include these particulars in a third further amended statement of claim, we consider that such a course is unnecessary at this stage, particularly in circumstances where detailed particulars have already been provided to Fortis Law in our letter of 14 September 2021 and to you in our letter of 22 September 2021 (22 September Letter) in response to Fortis Law's letter of 23 August 2021 regarding the Amended Statement of Claim (ASOC)."*

A true copy of the letter is exhibited at SN-3 at pages 1 to 25.

15. The response to the particulars sought for the SFASOC consisted of 25 pages and made a further reference to approximately 240 documents and each document consisting of multiple pages. Thus in totality, the pleadings and the documents referred to within the pleadings alone consisted of some 1400 pages being the equivalent of some 3 lever arch folders.



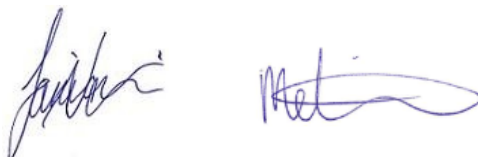
16. Furthermore, the Respondent in the present matter is also simultaneously contending with claims having been brought by the liquidators in proceeding NSD 747/2021. These proceedings are equivalent in size and scope to that brought by the Applicant in the present proceeding.
17. In addition to the above, the Respondent has also had to attend to addressing several statutory demands that have been served on various entities related to it by the liquidators.
18. On 5 November 2021, SMBC Leasing and Finance Inc (**SMBC**) joined the Third Respondent's related entities to proceeding NSD681/2021. The Interlocutory Application and Amended Statement of Claim filed by SMBC consist of 174 pages with just the Amended Statement of Claim consisting of 538 paragraphs pleaded over 174 pages.

### **Fortis Law Taxation**

19. As indicated to the Court previously, the Third Respondent was being sued by its previous legal representative in relation to outstanding legal fees. These legal fees equate to \$233,660.52.
20. On or about 15 December 2021, Fortis Law issued a summons for taxation for their legal fees associated with the present matter.
21. Madgwicks has made enquiries of a costs consultant in order to assist in responding to the summons. I am informed by the tax consultant that following a preliminary review, they believe that they will require 20-25 hours in order to assist in the matter from start to end.
22. I am informed by the costs consultant that their fees will be in the amount of \$7,900-\$9,875 plus GST which includes attending at a contested hearing.

### **Evidence**

23. On 4 February 2022, Westpac and SMBC filed the evidence they intend to rely on in proceedings NSD616/2021 and NSD747/2021. Westpac filed 20 affidavits which include a voluminous amount of exhibits. SMBC filed four affidavits which include 148 pages including exhibits.



24. As at the date of swearing this affidavit, there have been 114 subpoenas issued across proceedings NSD616/2021 and NSD681/2021.

25. I estimate that thousands of documents have been produced pursuant to subpoenas which will be required to be reviewed by a number of lawyers over a few days.

**Legal Costs**

23. At paragraph 21 of my affidavit sworn on 9 November 2021, I provided a table which contained my best estimate of legal fees expected to be incurred by the Respondent. Having regard to the above matters, I am compelled to revise the estimate previously provided. The following table provides the updated estimate:

	Senior Counsel		Junior Counsel		Fortis Law	Madgwicks
	Days	\$	Days	\$	\$	\$
Works conducted by previous solicitors					\$233,660.52	
Fees charged to date	-	\$126,472.50	-	\$28,500		\$94, 962.51
Appearance at hearing on 9 February 2022	1	\$9,900	1	\$2,500		\$2,625
Strike out application by Mr Tesoriero including preparation and appearance	4	\$34,650	4	\$10,000		\$10,745
Interlocutory applications	8	\$79,200	10	\$25,000		\$39,445
Reviewing further and better particulars and related documents	2	\$19,800	2	\$5,000		\$6,825

including conferring with counsel and instructing solicitors						
Attendance to drafting defence	3	\$29,700	4	\$10,000		\$8,785
Miscellaneous Interlocutory/client updates	1	\$9,900	2	\$5,000		\$36,715
<b>Sub-total</b>		\$309,622.50		\$86,000	\$233,660.52	\$102,515
	<b>Total</b>	<b>\$731,798</b>				

**The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.**

Sworn by Sarwar (Sazz) Nasimi )

at Melbourne on 8 February 2022 )

Before me:

\_\_\_\_\_  
**Melissa Passarelli**  
 6th Floor, 140 William St, Melbourne, Vic, 3000  
 An Australian Legal Practitioner  
 within the meaning of the  
 Legal Profession Uniform Law (Victoria).

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW).
2. I observed the deponent signing a copy of this affidavit in real time.
3. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
4. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
5. I have known the person for at least 12 months.

# Schedule of Parties

No. NSD616 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

## Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141

Second Applicant Westpac New Zealand Limited (company registration number company number 1763882)

## Respondents

First Respondent Forum Finance Pty Limited (in liquidation) ACN 153 301 172

Second Respondent: Basile Papadimitriou

Third Respondent Vincenzo Frank Tesoriero

Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705

Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997

Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840

Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364

Eighth Respondent 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662

Ninth Respondent 14 James Street Pty Ltd (in liquidation) ACN 638 449 206

Tenth Respondent 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129

Eleventh Respondent 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160

Twelfth Respondent 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473

Thirteenth Respondent 23 Margaret Street Pty Ltd ACN 623 715 373

Fourteenth Respondent 1160 Glen Huntly Road Pty Ltd ACN 639 447 984



Fifteenth Respondent 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093

Sixteenth Respondent Canner Investments Pty Ltd ACN 624 176 049

Seventeenth Respondent 123 High Street Taradale Pty Ltd ACN 639 872 512

Eighteenth Respondent 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921

Nineteenth Respondent 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887

Twentieth Respondent 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352

Twenty-First Respondent 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912

Twenty-Second Respondent 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179

Twenty-Third Respondent 9 Gregory Street Ouyen Pty Ltd ACN 641 392 707

Twenty-Fourth Respondent 9 Main Street Derrinallum Pty Ltd ACN 639 872 736

Twenty-Fifth Respondent 286 Carlisle Street Pty Limited ACN 610 042 343

Twenty-Sixth Respondent 275 High Street Golden Square Pty Ltd ACN 639 870 545

Twenty-Seventh Respondent Mazcon Investments Hellas IKE

Twenty-Eighth Respondent Palante Pty Ltd ACN 135 344 151

Twenty-Ninth Respondent Anastasios Giamouridis

Thirtieth Respondent The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626

Thirty-First Respondent Iugis Pty Ltd (in liquidation) ACN 632 882 243

Thirty-Second Respondent Iugis (UK) Limited

Thirty-Third Respondent Iugis Holdings Limited

Thirty-Fourth Respondent Iugis Global Financial Services Limited

Thirty-Fifth Respondent Iugis Finance Limited

Thirty-Sixth Respondent Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544 ACN

Thirty-Seventh Respondent Intrashield Pty Ltd (in liquidation) ACN 133 426 534

Thirty-Eighth Respondent Tesoriero Investment Group Pty Ltd ACN 161 088 115

Thirty-Ninth Respondent Mangusta (Vic) Pty Ltd ACN 631 520 682

Fortieth Respondent 193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237

Forty-First Respondent 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626

Forty-Second Respondent Iugis Hellas IKE

Forty-Third Respondent Iugis Energy SA

# Exhibit certificate

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 616 of 2021

**Westpac Banking Corporations ABN 33 007 457 141**

Applicant

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others according to the  
Schedule

Respondents

This is the exhibit marked “**SN-3**” now produced and shown to Sazz (Sarwar) Nasimi at the time of swearing his affidavit on 8 February 2022 before me:



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Solicitor

**Melissa Passarelli**  
6th Floor, 140 William St, Melbourne, Vic, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria).



# MinterEllison

31 January 2021

**BY EMAIL: sazz.nasimi@madgwicks.com.au**

Sazz Nasimi  
Partner  
Madgwicks Lawyers  
Level 6, 140 William Street  
Melbourne VIC 3000

Dear Mr Nasimi

**Westpac Banking Corporation & Anor v Forum Finance Pty Limited & Ors - Federal Court of Australia Proceeding NSD616/2021 (Proceedings)**

1. We refer to your letter dated 3 December 2021 requesting further and better particulars of our clients' Second Further Amended Statement of Claim filed 10 August 2021 (**2FASOC**) and to the Orders of Justice Lee dated 12 November 2021.
2. As in your letter, terms defined in the 2FASOC have the same meaning in this letter.
3. This letter provides, where appropriate, further particulars of the paragraphs of the 2FASOC referred to in your letter. Although you have requested that we include these particulars in a third further amended statement of claim, we consider that such a course is unnecessary at this stage, particularly in circumstances where detailed particulars have already been provided to Fortis Law in our letter of 14 September 2021 and to you in our letter of 22 September 2021 (**22 September Letter**) in response to Fortis Law's letter of 23 August 2021 regarding the Amended Statement of Claim (**ASOC**).
4. In many instances, your letter requested further particulars of allegations which we have already provided to you in response to Fortis Law's previous requests, or which were already adequately particularised in the 2FASOC. In many instances, your requests extend beyond a request for particulars, necessary for your client to know the case he is to meet at trial and to confine the proceedings at trial, into a request for evidence or are in the nature of interrogatories. In order to facilitate the expeditious conduct of the proceedings, we have responded to these matters even though the requests are not proper requests for particulars. Further particulars will be provided to you in respect of some matters after service of evidence and the completion of discovery, if applicable.

**Part C: The Scheme**

5. The below facts, matters and circumstances of the Scheme are a matter for evidence. However, Westpac and WNZL intend to rely on the following facts, matters and circumstances, among others.

*Paragraph 55*

6. In response to Request 1 in relation to paragraph 55 of the 2FASOC, paragraph 12 of our 22 September Letter already details the facts, matters and circumstances from which it can be inferred that Mr Tesoriero devised the Scheme with Mr Papas pleaded in paragraph 55 of the ASOC, not paragraph 35 as erroneously stated. The request is also inappropriate as Westpac and WNZL are not required to prove (let alone plead) the "usual details" of the conspiracy. Conspiracy is proved by proving overt acts from which the conspiracy, the content of which is known only to the conspirators, is proven by inference.
7. In addition to paragraph 12 of the 22 September Letter, the following further facts, matters and circumstances are relied upon:



- (a) Further to that set out in paragraph 12(a) of our 22 September Letter, Mr Tesoriero has been involved in the Forum business since at least February 2013, attending board meetings for TFGC see for example [FOG.1000.0008.0753](#); [FOG.1000.0008.1084](#) and [FOG.1000.0008.1085](#) and “Executive Meetings” for Forum: see for example [FOG.1000.0008.1940](#) and [FOG.1000.0008.1941](#).
- (b) In addition to being privy to TFGC’s financial information and that of its controlled entities from 1 October 2014, as set out at paragraph 12(c) of our 22 September Letter, Mr Tesoriero was privy to TFGC’s financial information as at the time that the Scheme was devised (see for example email from Tony Bouchahine (**Mr Bouchaine**), Chief Financial Officer for Forum, attaching the TFGC company structure and its financial statements for the years ending 30 June 2016 and 30 June 2017: [FOG.1000.0001.6954](#), [FOG.1000.0001.6955](#), [FOG.1000.0001.6956](#), [FOG.1000.0001.6998](#). Mr Tesoriero was also provided with TFGC’s FY 2018 accounts: see [FOG.1000.0003.2165](#) and [FOG.1000.0003.2168](#); FY 2019 accounts: see [FOG.1000.0004.4751](#) and [FOG.1000.0004.4752](#); and FY 2020 accounts: see [FOG.1000.0004.5114](#) and [FOG.1000.0004.5115](#).
- (c) As at the date of incorporation of FGFS, 23 November 2017, Mr Tesoriero was aware that Mr Bouchahine had instructed the Forum group of companies’ accountants that the services to be provided by FGFS were “financial services”, when no such services were in fact provided by it: see [FOG.1000.0007.9073](#).
- (d) On 23 March 2018, Mr Tesoriero emailed Mr Papas a list of purchases for which he required finance from “Forum”, totalling \$2.125m: see [FOG.1000.0002.2616](#). On 25 March 2018 a further list was email to Mr Papas: see [FOG.1000.0002.2590](#). It can be inferred from these requests that Mr Tesoriero had the ability to direct, and in fact directed, TFGC and FGFS’s expenditure prior to the time of devising and implementing the Scheme and therefore had the relevant knowledge of those entities’ spending at the time the Scheme was devised.
- (e) Mr Tesoriero held an authorisation for FGFS’ NAB bank account number 271058642: see [FOG.1000.0003.9690](#), and apparently used that authorisation to cause transactions on the account: see [FOG.1000.0001.6613](#) and [FOG.1000.0005.9543](#). From this it can be inferred that Mr Tesoriero knew where FGFS obtained funds and to whom it dispersed those funds, providing further particularisation of the matters set out in paragraph 12(e) of our 22 September Letter.
- (f) Mr Tesoriero and Mr Papas, from time to time, exchanged emails about acquisitions that could be financed through Forum and the funds that could be extracted from FGFS: see for example [FOG.1000.0002.7062](#); [FOG.1000.0002.9301](#); and [FOG.1000.0003.0767](#). It is to be inferred from these emails that Mr Tesoriero and Mr Papas intended for Forum entities, including FGFS, to be used to purchase assets and properties from funds unlawfully obtained from the Scheme.
- (g) From as early as August 2018, Mr Tesoriero regularly received from Mr Bouchahine or from Brandon Chin, an accountant working with the Forum group, a schedule titled “BP & VT Outstanding Payments” or “Outstanding and Recurring Payments for BP & VT” which recorded third party payments and finance repayments to be made in relation to properties and assets purchased with funds obtained through the Scheme including those owned by the Tesoriero Entities and Jointly Owned Entities and used for Mr Tesoriero and Mr Papas’ benefit, for example rental properties, motor vehicles and boats: see for example [FOR.001085373](#) and [FOR.001085374](#). From at least July 2020 these schedules disclosed FGFS’ Cashflow including disclosing that funds from the “ORCA bank account” were a source of cashflow (including amounts described as “future funding” meaning payments received in relation to financing transactions which did not then exist), and referred to recurring payments to be made to “funders”, including “BHO”, “SMBC” and “Flexi” (see worksheet titled “Recurring”) and referred to payments to be made for “Funding for Forum group”; “Funding for lugis”, and “BHO – New Funder” (see worksheet titled “FGFS”): see [FOG.1000.0001.3302](#), [FOG.1000.0001.3303](#),. A detailed list of these spreadsheets, and the date on which each was provided to Mr Tesoriero, is annexed at **Annexure A** to this letter.

- (h) At the time of receipt of the schedules referred to in the previous paragraph, Mr Tesoriero knew that at least Forum Finance acted as an intermediary in equipment finance transactions and that the money received from financiers (including Westpac and WNZL) was paid by those financiers for the purpose of acquisition of the equipment subject of the finance arrangement with the debtor (or occasionally to refinance equipment subject of an equipment finance arrangement which that debtor had with another creditor). Forum Finance and FGFS had no entitlement to use the principal sum raised, or to raise money prior to completion of a genuine equipment finance agreement. On receipt of the schedules (if not before) Mr Tesoriero knew that money paid by the financiers for the purpose of funding equipment leases was not used for that purpose but was used to fund FGFS and for various purposes including the acquisition of properties and other chattels for the benefit of Mr Papas and Mr Tesoriero, payments to the benefit of Mr Papas and Mr Tesoriero, payment of debts owed by companies ultimately owned by Mr Papas and Mr Tesoriero and to other companies in the Forum Group or which were owned by Mr Papas.
- (i) Mr Tesoriero also directed payments to be made by FGFS to his account, or to entities associated with him, see for example: [FOR.000569394](#), [FOR.001352750](#); [FOR.001352845](#); [FOR.001411033](#); [FOG.1000.0001.6552](#); [FOG.1000.0002.4504](#); [FOG.1000.0003.7329](#) and [FOG.1000.0003.7330](#). A detailed list of the occasions on which Mr Tesoriero made directions as to the use of funds from FGFS is annexed at **Annexure B**.

8. With respect to the specific requests made in Request 1, we respond as follows:

- (a) As to Request 1(a), as pleaded at paragraph 55, the precise date on which the Scheme was devised is not known to Westpac and WNZL, but it is alleged to have been no later than 31 August 2018, or alternatively, 13 September 2018. The precise date is not required for your client to know the case he is to meet.
- (b) As to Request 1(b), a request as to the manner by which the Scheme is alleged to have been devised is not a proper request for particulars and is a matter for evidence. The material fact is the Scheme, not how it came to be. Westpac and WNZL rely on inferences arising from various facts, matters and circumstances as pleaded and particularised in establishing the creation of the Scheme.
- (c) As to Request 1(c), contrary to what is stated at paragraph 1(c) of your letter, it is not alleged in paragraph 55 that Mr Papas and Mr Tesoriero devised the Scheme *with* the “persons or entities related to one or both of them (including entities that they would later bring into existence)”, but that the scheme *involved* these persons or entities. The persons or entities known to Westpac and WNZL are pleaded throughout the 2FASOC, including in paragraph 1844, and are listed as follows.
- (i) Forum Group Financial Services Pty Ltd (in liquidation) ACN 623 033 705;
  - (ii) Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997;
  - (iii) Forum Enviro Pty Ltd (in liquidation) ACN 168 709 840;
  - (iv) Forum Enviro (Aust) Pty Ltd (in liquidation) ACN 607 484 364;
  - (v) 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662;
  - (vi) 14 James Street Pty Ltd (in liquidation) ACN 638 449 206;
  - (vii) 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129;
  - (viii) 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160;
  - (ix) 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473;
  - (x) 23 Margaret Street Pty Ltd ACN 623 715 373;
  - (xi) 1160 Glen Huntly Road Pty Ltd ACN 639 447 984;

- (xii) 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093;
- (xiii) Canner Investments Pty Ltd ACN 624 176 049;
- (xiv) 123 High Street Taradale Pty Ltd ACN 639 872 512;
- (xv) 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921;
- (xvi) 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887;
- (xvii) 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352;
- (xviii) 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912;
- (xix) 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179;
- (xx) 9 Gregory Street Ouyen Pty Ltd ACN 641 392 707;
- (xxi) 9 Main Street Derrinallum Pty Ltd ACN 639 872 736;
- (xxii) 286 Carlisle Street Pty Limited ACN 610 042 343;
- (xxiii) 275 High Street Golden Square Pty Ltd ACN 639 870 545;
- (xxiv) Mazcon Investments Hellas IKE;
- (xxv) Palante Pty Ltd ACN 135 344 151;
- (xxvi) The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626;
- (xxvii) Iugis Pty Ltd (in liquidation) ACN 632 882 243;
- (xxviii) Iugis (UK) Limited;
- (xxix) Iugis Holdings Limited;
- (xxx) Iugis Global Financial Services Limited;
- (xxxi) Iugis Finance Limited;
- (xxxii) Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544;
- (xxxiii) Intrashield Pty Ltd (in liquidation) ACN 133 426 534;
- (xxxiv) Tesoriero Investment Group Pty Ltd ACN 161 088 115;
- (xxxv) Mangusta (Vic) Pty Ltd ACN 631 520 682;
- (xxxvi) 193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237;
- (xxxvii) 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626;
- (xxxviii) Iugis Hellas IKE;
- (xxxix) Iugis Energy SA;
- (xl) Giovanni (John) Tesoriero;
- (xli) Moussa (Tony) Bouchahine; and
- (xlii) Louisa Maria Agostino.

- (d) As to request 1(d), the substance of the means or process by which Mr Papas and/or Mr Tesoriero planned to obtain money dishonestly and fraudulently from Westpac and WNZL is pleaded at paragraph 56 of the 2FASOC.

- (e) As to request 1(e), the request mistakes the pleading. The allegation is that (relevantly) Mr Papas and Mr Tesoriero devised a Scheme involving Forum Finance and others to obtain money dishonestly and fraudulently. That is not a pleading of knowledge, but a characterisation of the devised conduct. It also follows from the allegation that Mr Papas and Mr Tesoriero devised the fraudulent and dishonest Scheme that they knew the Scheme was fraudulent and dishonest, each of which are objective characterisations. Further, that the Scheme would involve Mr Tesoriero dishonestly and fraudulently obtaining money that he was not entitled to receive follows from the nature of the Scheme, in that it did in fact involve him dishonestly and fraudulently obtaining money that he was not entitled to receive as well as the facts, matters and circumstances set out in paragraph 7 above and the matters set out in paragraph 12 of our 22 September Letter, including paragraph 12(m).

#### *Paragraph 56*

9. In response to Request 2 regarding paragraph 56(f), we have provided you with the total figures of the funds dispersed to Mr Tesoriero or companies related to him which have been identified by Westpac and WNZL in paragraph 14 of our 22 September Letter, noting that particulars of further funds and payments used and dispersed to Mr Tesoriero will be provided after evidence. Westpac and WNZL's case that the funds were dispersed by implementation of the Scheme. The request for the "usual calculations" is otherwise not a proper request for particulars. The material fact is the dispersal of funds and, we accept, a proper particular of that allegation is identification of to whom the dispersal was made and the amount of that dispersal.
10. With respect to the funds disbursed to Mr Tesoriero, the individual payments that have been identified by Westpac and WNZL to date, and the date on which each was made by FGFS, is set out in particular (i) to paragraph 1895 of the 2FASOC. Our 22 September Letter referred to FGFS' bank statements which evidence many of these payments. As the bank statements were accidentally omitted from enclosure with that letter, a copy of the bank statements and FGFS' balance sheet is now **enclosed**. The precise details of each of the payments is (at the highest) a matter for evidence and will be disclosed as part of Westpac and WNZL's evidence.
11. With respect to funds disbursed to companies related to Mr Tesoriero, we refer to the FGFS balance sheet together with the worksheets included in FGFS's Xero records (**enclosed**) which record payments made to or to the benefit of the companies related to Mr Tesoriero. While the characterisation of the payments in the Xero records as "loans" from FGFS is not accepted, Westpac and WNZL rely on those records as recording payments made to and for the benefit of the relevant entities.
12. In response to Request 3 regarding paragraph 56(h), we repeat paragraphs 9 to 11 above. We add that the request for the "usual details" is also not a proper request for particulars.
13. In response to Request 4, paragraph 56 does not contain any allegations as to Mr Tesoriero's involvement in the operation of the Scheme beyond the receipt and use of funds (see the chapeau to paragraph 56). The actions taken by Mr Tesoriero in furtherance of the Scheme Agreement are pleaded at paragraph 1900 of the 2FASOC, which we note is the subject of separate requests numbered 28 to 36 in your letter to which we respond accordingly below.

#### *Paragraph 57*

14. We have responded to Requests 5(a) and (c) in our response to Request 1 at paragraphs 6 to 8 above. Further, the dishonest and fraudulent intent follows from the nature of the Scheme. As to Request 5(b), the facts, matters and circumstances relied upon for the allegation that Mr Tesoriero implemented the Scheme are the matters specified in paragraph 12 of our 22 September Letter, the matters specified at paragraphs 6 to 8 above and the matters pleaded at paragraph 1900 of the 2FASOC. Further:
- (a) Mr Tesoriero was involved in the selection and purchase of properties and the execution of contracts for sale of certain of the properties purchased by the Jointly Owned Entities and the Tesoriero Entities: see for example [FOG.1000.0003.1468](#); [FOG.1000.0004.2645](#); [FOG.1000.0003.4901](#) and [FOG.1000.0011.3341](#);



- (b) Mr Tesoriero was involved in causing new entities to be incorporated for the purposes of purchasing properties, including certain of the Jointly Owned Entities and the Tesoriero Entities, which used money fraudulently obtained from our clients to fund those purchases: see for example [FOG.1000.0005.1467](#); and in causing bank accounts to be opened for certain of the Jointly Owned Entities and Tesoriero Entities: see for example [FOR.000970329](#);
- (c) Mr Tesoriero was involved in directing which entities would be used to purchase properties to be purchased in part with the funds from the Scheme, and consequently how the money procured by the Scheme was to be used: see for example [FOG.1000.0002.4542](#); [FOG.1000.0003.2764](#); [FOG.1000.0010.5032](#) and [FOG.1000.0012.7070](#). We refer to Annexure B in this regard;
- (d) Mr Tesoriero was involved in identifying and acquiring assets with funds obtained through the Scheme, and in directing or requesting the purchase of particular assets: see for example [FOR.001350580](#); [FOG.1000.0003.2806](#); [FOG.1000.0003.2808](#) and [FOG.1000.0012.1011](#) and [FOG.1000.0015.3160](#).
15. In response to Request 6, the alleged benefit is a financial benefit, being the receipt and use of funds received from the Scheme and assets purchased with funds received from the Scheme. Those benefits are identified in paragraph 1895 of the 2FASOC and the paragraphs of the 2FASOC identified in paragraph 26(e) below.
16. In response to Request 7, paragraph 57(b) relevantly concerns the purpose of Mr Tesoriero rather than funds he in fact spent. The request is therefore not a proper request for further and better particulars in relation to this subparagraph. In any event, we refer to paragraphs 9 to 12 above regarding the funds spent by Mr Tesoriero. The funds spent by Mr Tesoriero on properties is a matter for evidence. Payments made towards properties include those that are set out in FGFS's Xero records and pleaded in Part H of the 2FASOC onwards.
17. In response to Request 8, paragraph 57(c) relevantly concerns the purpose of Mr Tesoriero rather than funds he in fact spent. The request is therefore not a proper request for further and better particulars in relation to this subparagraph. Nevertheless, in our 22 September Letter we have responded at paragraph 19 (and the opening words of paragraph 20) to this request. The businesses include those within the Forum Group overseas, as well as Theion Ike and D&D which received funds via 286 Carlisle St (although it is not accepted that those entities conducted any legitimate business). The amounts include amounts that are set out in FGFS' Xero records and pleaded in Part H of the 2FASOC onwards.
18. In response to Request 9(a), paragraph 57(d) relevantly concerns the purpose of Mr Tesoriero rather than funds he in fact spent or loans he in fact made. The request is not a proper request for further and better particulars in relation to this paragraph. Nevertheless, the FGFS balance sheet, with which you have been provided, sets out purported loans to businesses or subsidiaries of TFGC.
19. In response to Request 9(b)(i), the relevant businesses which are alleged to have been unprofitable absent the fraud, are those operated by FGFS (insofar as it operated a business), FE, FEA, Iugis, and Intrashield. In response to Request 9(b)(ii), the request is not a proper request for particulars and is a matter for evidence. In any event, we refer you to the affidavit of Jason Ireland affirmed on 29 September 2021 at paragraphs 22 to 25 regarding the financial position of FE and FEA. It can be inferred from the financial positions of each of these companies that they would have been unprofitable, absent the fraud.
20. In response to Request 10, paragraph 57(e) relevantly concerns the purpose of Mr Tesoriero rather than any acquisitions he in fact made. As such, requests (a) and (b) are not proper requests for particulars and are matters for evidence. Nevertheless, the goods and choses in action presently known to Westpac and WNZL which were acquired by Mr Papas and Mr Tesoriero, or Mr Papas include:
- (a) the Audi Race Cars pleaded at paragraph 2647 of the 2FASOC;
- (b) the XOXO yacht pleaded at paragraph 2543 of the 2FASOC, which although purchased in or prior to May 2018, payments in respect of which were still being made by FGFS after

entry into the Scheme, see for example the payments set out in the affidavit of Ms Caitlin Maria Murray (**Ms Murray**) sworn on 25 August 2021 at paragraph [31] and pages 285 to 296 of CMM-10 and see [FOG.1000.0001.5323](#) and [FOG.1000.0001.5324](#);

- (c) the jewellery particularised at particular (xiv) to paragraph 2684 of the 2FASOC;
- (d) a race horse, which again although purchased prior to August 2018, payments in respect of which were still being made by FGFS after entry into the Scheme, see for example: see [FOG.1000.0004.7299](#) and [FOG.1000.0004.7307](#);
- (e) a Porsche 911 GT2, in respect of which Mr Tesoriero and Mr Papas provided personal guarantees: see [FOG.1000.0003.2689](#) and [FOG.1000.0003.2691](#); [FOG.1000.0015.3214](#) and [FOG.1000.0015.3215](#). Further, the chattel mortgage for the Porsche GT2 RS is recorded on the FGFS balance sheet under non-current liabilities;
- (f) a Lamborghini Huracan, as to which see [FOG.1000.0004.5247](#), [FOG.1000.0004.5249](#), [FOG.1000.0010.9345](#) and [FOG.1000.0010.9346](#);
- (g) a Porsche Cayman GT4, see: [FOG.1000.0004.8721](#); [FOG.1000.0010.7081](#), [FOG.1000.0010.7082](#) and [FOG.1000.0010.7083](#). Further the chattel mortgage for the Porsche Cayman GT4 is recorded on the FGFS balance sheet under non-current liabilities;
- (h) two Jet skis, see [ROA.5000.0001.0001](#) at 4-11 and 22-28;
- (i) a 2020 Grady 325 Freedom boat, see: [ROA.5000.0001.0001](#) at 33-41; and
- (j) a Regal 2250 boat, as to which see [ROA.5000.0001.0001](#) at 54.

Payments in respect of a number of these assets are recorded the books and records of FGFS: see for example FGFS Account Transactions for the period 1 July 2020 to 30 April 2021: [SEC.5000.0144.2237](#).

## **Part F: The claim against Forum Finance**

### *Paragraph 1839*

21. In response to Request 11, we have responded to this request at paragraph 24 of our 22 September Letter.

### *Paragraph 1844*

22. In response to Request 12:
- (a) As to Request 12(a), as is evident from paragraph 1844 of the 2FASOC, the precise date on which the Scheme Agreement was entered into is unknown to Westpac and WNZL, but it is alleged that it was no later than 31 August 2018, or alternatively 13 September 2018. The date on which a conspiracy was entered into is not a material fact, or a particular necessary for a respondent to know the case that respondent is to meet.
  - (b) As to Request 12(b), this is not a proper request for particulars and is, at its highest, a matter for evidence. Westpac and WNZL rely on inferences arising from various facts, matters and circumstances as pleaded and particularised in establishing the entry into the Scheme Agreement, which is the material fact.
  - (c) As to Request 12(c), the basis of the allegation that Mr Tesoriero was a party to the Scheme Agreement is the facts, matters and circumstances set out in paragraph 12 of our 22 September Letter, together with the additional matters set out at paragraph 7 above.
  - (d) As to Request 12(d), the known co-conspirators are those identified in the particulars to paragraph 1844 of the 2FASOC; Mr Tesoriero Snr as pleaded in paragraph 2663 of the 2FASOC; Mr Bouchahine as pleaded in paragraph 2679 of the 2FASOC; and Ms Agostino as pleaded in paragraph 2697 of the 2FASOC. Westpac and WNZL do not know the identities of the other co-conspirators.

- (e) As to Request 12(e), Westpac and WNZL do not know whether the Scheme Agreement is express or implied (or partly express and partly implied). A conspiracy may be pleaded and proved by reference to overt acts (for example, *Dresna v Misu Nominees Pty Limited* [2004] FCA 1537 (2004) ATPR (Digest) 46-245 at [103]) and it is not necessary to allege whether it was express or implied.
- (f) As to Request 12(f), we refer to the matters set out in paragraph 12 of our 22 September Letter and the matters set out in paragraphs 6 to 8, 10 and 11 above.
23. In response to Request 13, we assume that your request relates to particular (a) to this paragraph which relevantly particularises the known co-conspirators as including Forum Finance and IUGIS NZ which were the corporations that Mr Papas and Mr Tesoriero controlled and used as the vehicles to implement the Scheme. That particular relevantly provides that Forum Finance and IUGIS NZ were the corporations that Mr Papas and Mr Tesoriero “controlled and used”, rather than “knowingly controlled and used”, as the vehicles to implement the Scheme. Sufficient particularisation of the allegation of the Scheme Agreement have been provided and no further particularisation of the detailed particulars already provided is necessary, but in any event, particulars of Mr Tesoriero’s control and use of Forum Finance as a vehicle to implement the Scheme are the matters pleaded at paragraph 56 and 1900 of the 2FASOC (including that Mr Tesoriero was a director of and acted as a director of Forum Finance), the matters set out in paragraph 12(a), (b), (d) and (p) to (r) of our 22 September Letter and the matters set out in paragraphs 6 to 8 above.
24. Particulars of Mr Tesoriero’s control and use of IUGIS NZ as a vehicle to implement the Scheme are the matters pleaded at paragraph 56 and 1900 of the 2FASOC, together with the fact that as a director of FGFS, it can be inferred that in accordance with his legal obligations, Mr Tesoriero was aware of a purported loan of \$10,432,022 from “Forum NZ” (IUGIS NZ) to FGFS, referred to in the accounts for FGFS: see [FOR.000182671](#), page 3 and [FOR.000182669](#). Further, a number of the spreadsheets referred to in Annexure A make reference to funding for “IUGIS NZ” and it is to be inferred from this that Mr Tesoriero was aware that FGFS was obtaining funds from Iugis NZ.
25. In response to Request 14, we assume your request relates to particular (c) which refers to FG, FE and FEA (rather than FEWA). The details of the monies received, used and disbursed by these entities is pleaded in Part D, Part J, in particular paragraphs 1933 and 1939 (in the case of FG), Part K, in particular paragraphs 1952 and 1958 (in the case of FE) and Part L, in particular paragraphs 1971 and 1977 (in the case of FEA). The proportion of monies used to benefit Mr Tesoriero is a matter for evidence. We refer to FGFS’ bank statements and balance sheet enclosed with this letter, and FGFS’s Xero records, which shows payments from FGFS to FG, FE and FEA. In addition, a preliminary analysis of the flow of funds from Forum Finance to FGFS, FEA, FE and FG in the month of October 2019 was referred to in paragraph [9] of the affidavit of Ms Murray dated 15 July 2021, the summary table being exhibited at page 20-33 of Exhibit CMM-7 to that affidavit. The bank statements relied upon in that analysis were included from pages 34 of Exhibit CMM-7. Further, a schedule of the payments made from FG (account number 121782934) to accounts held in the name of Tesoriero Investments Group (account 10572179) and John and Teresa Tesoriero (accounts 213608896 and 780597) that have been identified to date is annexed as **Annexure C** to this response. Payments received from Westpac and made by Forum Finance are identified in pages 1 to 11 of Exhibit CMM-7 to the first affidavit of Ms Murray sworn on 15 July 2021 in support of Westpac’s application for the appointment of provisional liquidators.
26. In response to Request 15:
- (a) As to Request 15(a), the knowledge that Mr Tesoriero had of these entities is of their operations and affairs, as a:
- (i) director of FGFS (or was a director of FGFS until April 2020 according to the records of ASIC); 64-66 Berkely St; 14 James St (until 1 May 2020); 26 Edmonstone Rd (until 1 May 2020); 5 Bulkara St (until 30 April 2020); 6 Bulkara St (until 27 October 2020); 23 Margaret St; 1160 Glen Huntley Rd; 14 Kirwin Rd; Canner Investments; 123 High St; 160 Murray Valley Hwy; 31 Ellerman St; 4 Cowslip St; 55 Nolan St; 89 Betka Rd; 9 Gregory St; 9 Main St; 286 Carlisle St; 275 High St; TIG; Mangusta; 193 Carlisle St; and 8-12 Natalia Ave;

- (ii) shareholder (either directly or indirectly) of FGFS, TFGC (indirectly through his shareholding in TIG and through his indirect shareholding in TFGC of FG, FE and FEA and other entities in the Forum group); 64-66 Berkely St; 14 James St; 26 Edmonstone Rd; 5 Bulkara St; 6 Bulkara St; 23 Margaret St; 1160 Glen Huntley Rd; 14 Kirwin Rd; Canner Investments; 123 High St; 160 Murray Valley Hwy; 31 Ellerman St; 4 Cowslip St; 55 Nolan St; 89 Betka Rd; 9 Gregory St; 9 Main St; 286 Carlisle St; 275 High St; TIG; Mangusta; 193 Carlisle St; and 8-12 Natalia Ave,

as pleaded at the following paragraphs of the 2FASOC: 5(h) (Jointly Owned Entities), 7(d) (286 Carlisle St), 7(e) (Tesoriero Entities), 34H (TIG), 34I (Mangusta), 34J (193 Carlisle St), 34K (8-12 Natalia Ave), 31 (275 High St). This information is apparent on the face of company searches of each of these entities. Further, with the exception of FGFS, TIG, 193 Carlisle St and 286 Carlisle St, each of the companies was a single venture or purpose company, where the venture or purpose was to acquire property (using debt and funds provided by FGFS) for the benefit or one or both of Mr Papas and Mr Tesoriero. 286 Carlisle St (of which Mr Tesoriero and Mr Tesoriero Snr were the only directors) received funds from FGFS and paid those funds overseas at Mr Papas' direction or to his benefit.

- (b) Further to paragraph (a), on numerous occasions, Mr Tesoriero directed or caused the payment of money to or from, or for the benefit of, these entities. On other occasions, he caused those entities to purchase property. Further particulars will be provided following the service of evidence. We refer to the list at **Annexure B**.
- (c) As to Request 15(b), see subparagraphs (a) and (b) above.
- (d) As to Request 15(c), the control that Mr Tesoriero had of these entities which caused them to become a co-conspirator is the fact that he (together with Mr Papas in the case of the Jointly Owned Entities) used them to receive funds and acquire assets as pleaded in the 2FASOC in Part I and following with respect to each entity. He did so as a director of the companies referred to in sub-paragraph (a)(i) above, and with the authority to direct that payments be made to the benefit of those companies (see **Annexure B**).
- (e) As to Request 15(d), the details of the monies received, used and disbursed by each of these entities is pleaded in the 2FASOC, and summarised in paragraph 19 of our 22 September Letter, and is set out further below, by reference to paragraph numbers of the 2FASOC.

(i) The Jointly Owned Entities –

- (A) FGFS – at least \$282,368,524.94 as set out in paragraph 1914;
- (B) 64-66 Berkeley St – at least \$1,865,000 as set out in paragraph 1990;
- (C) 14 James St – at least \$2,838,000 as set out in paragraph 2008;
- (D) 26 Edmonstone Rd - at least \$2,470,124.35 (as set out in paragraph 2026, less the payments recorded as made by FGFS prior to 31 August 2018);
- (E) 5 Bulkara St – at least \$3,779,000 as set out in the paragraph 2044;
- (F) 6 Bulkara St - at least \$4,953,000 as set out in paragraph 2062;

(ii) The Tesoriero Entities –

- (A) 23 Margaret St – at least \$605,674.09 as pleaded in paragraph 2080 less the payments recorded as made by FGFS prior to 31 August 2018 (and see further paragraph 29(a) below);
- (B) 1160 Glen Huntly – at least \$1,054,000 as pleaded in paragraph 2098.
- (C) 14 Kirwin – at least \$300,794 as pleaded in paragraph 2116.
- (D) Canner – at least \$1,180,000 as pleaded in paragraph 2134.

- (E) 123 High St – at least \$78,353 as pleaded in paragraph 2152.
- (F) 160 Murray Valley – at least \$260,202.74 as pleaded in paragraph 2170.
- (G) 31 Ellerman St – at least \$155,262 as pleaded in paragraph 2188.
- (H) 4 Cowslip St – at least \$346,623 as pleaded in paragraph 2206.
- (I) 55 Nolan – at least \$173,907 as pleaded in paragraph 2224.
- (J) 89 Betka – at least \$174,574 as pleaded in paragraph 2242.
- (K) 9 Gregory – at least \$18,969 as pleaded in paragraph 2260.
- (L) 9 Main St – at least \$146,136 as pleaded in paragraph 2278.
- (iii) 286 Carlisle St – at least \$2,405,000 as pleaded in paragraph 2296 (and see further paragraph 30(b) below).
- (iv) 275 High St – at least \$339,214 as set out in 2314.
- (v) TIG – at least \$1,159,000 as pleaded in paragraph 2425 (and see further paragraph 30(c) below).
- (vi) Mangusta – at least \$150,009.85 as pleaded in paragraph 2543.
- (vii) 193 Carlisle St- at least \$30,304.64 as pleaded in paragraph 2562. and
- (viii) 8-12 Natalia Ave – at least \$1,436,000 as pleaded in paragraph 2581 (and see further paragraph 29(d) below).

*Paragraph 1845*

27. In response to Request 16, we have answered this request in part at paragraph 27 of our 22 September Letter. The knowledge of Mr Tesoriero that is alleged to have caused Forum Finance to become a party to the Scheme Agreement is the knowledge of its operations and affairs which he had by reason of having been its director since 1 April 2017, as pleaded at paragraph 3(e) of the 2FASOC, as well as the other matters set out at paragraph 12 of our 22 September Letter and the matters set out in paragraphs 6 to 8, 10 and 11 above.

**Part G: The claim against Mr Papas**

*Paragraph 1867*

28. In response to Request 17(a), we have answered this request at paragraph 29 of our 22 September Letter by reference to paragraphs 12 and 13 of that letter. In particular, we refer to paragraph 12(q) of that letter. We further refer to the fact that Mr Tesoriero directed Mr Bouchahine and Forum staff to make payments in relation to those entities, some examples of which are given in response to Requests 64 and 65 below.
29. In response to Request 17(b), we repeat paragraph 29 of our 22 September Letter. Further, that the Jointly Owned Entities were created to hold property financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36 is inferred from the fact that the Jointly Owned Entities in fact did so, as pleaded in the 2FASOC at paragraph 6 together with the Scheme Agreement and the matters pleaded at paragraphs 55 to 57 of the 2FASOC and paragraph 12 of our 22 September Letter; and that the Jointly Owned Entities had no other business.

*Paragraph 1872*

30. In response to Request 18(a), we refer to our response at paragraph 30 of our 22 September Letter, the Xero worksheets referred to in paragraph 11 above and our response in paragraph 26(e) above. Additionally, details of the payments received by the following entities are found in interlocutory evidence already filed and served in the proceedings, as follows:

- (a) 23 Margaret St – see the affidavit of Ms Murray sworn on 25 August 2021: see [36]-[38] and pages 308-338 of CMM-10;
  - (b) 286 Carlisle St – see the second affidavit of Ms Murray sworn on 30 September 2021: see [23]-[26] and pages 94-123 of Exhibit CMM-14;
  - (c) TIG – see the second affidavit of Ms Murray sworn on 30 September 2021: see [29]-[30] and pages 136-169 of CMM-14; and
  - (d) 8-12 Natalia Ave – see the second affidavit of Ms Murray sworn on 30 September 2021: see [32]-[34] and pages 181-207 of CMM-14 and the first affidavit of Ms Murray of 30 September 2021: see [20]-[22] and pages 30, 59, 153-154 of CMM-13.
31. In response to Request 18(b), the basis of the allegation that each of Mr Tesoriero, the Jointly Owned Entities, the Tesoriero Entities and 286 Carlisle St had no legitimate basis to receive those payments is that those monies were stolen from Westpac and WNZL, and the repetition of conduct in which money stolen from Westpac and WNZL was paid to FGFS and then by FGFS to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle St and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero. Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet and the documents received by Mr Tesoriero as set out in paragraph 7 above, as well as the list of spreadsheets set out in **Annexure A**. Further, we add that Annexure D to Mr Tesoriero's affidavit of 21 July 2021 ascribes a nominal value of shares to all entities there listed, with the exception of Canner, suggesting that the companies do not carry out any business, a fact supported by Mr Tesoriero's deposing that their nominal value was "due to there being no trading or business activity in them": at paragraph 14. The lack of trading or business activity of these entities supports a conclusion that there was no business arrangement justifying receipt of those payments.

*Paragraph 1875*

32. In response to Request 19, we repeat paragraph 31 of our 22 September Letter, and the basis of the allegation that each of Mr Tesoriero and the entities identified in your letter were receiving substantial payments from FGFS which they had no legitimate basis to receive is that those monies were stolen from Westpac and WNZL, and the repetition of conduct in which money stolen from Westpac and WNZL was paid to FGFS and then by FGFS to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle Street and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero. Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet, the documents received by Mr Tesoriero as set out in paragraph 7 above, as well as the list of Schedules set out in **Annexure A**. We otherwise repeat paragraphs 30 and 31 above.

**Part H: The claim against Mr Tesoriero**

*Paragraph 1895*

33. In response to Request 20, we repeat our response at paragraph 34 of our 22 September Letter. The legal basis on which the funds are said to be held on trust is, as stated at paragraph 6 of our 22 September Letter by reference to 23 Margaret St, a trust arising at law under *Black v S Freedman & Company* (1910) 12 CLR 105. Stolen money, or the traceable proceeds of stolen money, is held by the recipient on trust for the owner. There is academic debate as to whether that trust is categorised as a constructive or a resulting trust, but the categorisation is not a proper particular. No further particularisation of that claim is required. It arises at law from the fact that the money was stolen from Westpac and WNZL.
34. In response to Request 21, it is not alleged in paragraph 1895 of the 2FASOC that Mr Tesoriero knowingly received the funds in a *Barnes v Addy* sense (those claims are pleaded in paragraphs 1902 to 1910). We refer to paragraph 33 above.

35. In response to Request 22, this is a matter for evidence. Nevertheless, the amounts and dates of payments directly received by Mr Tesoriero identified by Westpac and WNZL are particularised at paragraph 1895. We repeat paragraphs 9 to 12 above. Further, the tracing of the money from Westpac or WNZL to the recipient will be the subject of a report served with Westpac and WNZL's evidence.
36. In response to Request 23, this is a matter for evidence. We repeat paragraphs 9 and 10 above. Further, the tracing of the money from Westpac or WNZL to the recipient will be the subject of a report served with Westpac and WNZL's evidence.
37. In response to Request 24, this is a matter for evidence. We repeat paragraphs 9-11 above. Further, the tracing of the money from Westpac or WNZL to the recipient will be the subject of a report served with Westpac and WNZL's evidence. We refer to paragraph 20 above in relation to acquisitions of boats and cars.

*Paragraphs 1896 and 1897*

38. In response to Request 25, we repeat our response at paragraph 37 of our 22 September Letter and our response at paragraph 33 above as to the legal basis for the trust and liability to account for the amounts received. As to the details and calculations of the amounts received and paid away or caused or permitted to be paid away by Mr Tesoriero, we repeat paragraphs 9 and 10 above. Further particulars of these funds will be provided following evidence.
39. In response to Request 26, it is not alleged in paragraphs 1896 and 1897 of the 2FASOC that Mr Tesoriero knowingly received the funds in a *Barnes v Addy* sense. We refer to paragraph 33 above.

*Paragraph 1898*

40. Request 27 repeats Request 12. We refer to paragraph 22 above.

*Paragraph 1900*

41. In response to Request 28, the facts, matters and circumstances relied upon to support the allegation that Mr Tesoriero signed the First Forum Agreement in furtherance of the Scheme Agreement are that the First Forum Agreement bears his signature, in addition to the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter.
42. In response to Request 29, the facts, matters and circumstances relied upon to support the allegation that Mr Tesoriero signed the Second Forum Agreement in furtherance of the Scheme Agreement are that the Second Forum Agreement bears his signature, in addition to the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter.
43. In response to Request 30, the facts, matters and circumstances relied upon to support the allegation are that Mr Tesoriero was the director of Forum Finance, in addition to the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter. Forum Finance's only corporate activity was to receive from Westpac the money stolen from Westpac (by Transactions 1 to 100) as pleaded in paragraphs 56(a)-(d) and then pay away those moneys as pleaded in paragraph 56(f). The payments received from Westpac and made by Forum Finance are identified in pages 1 to 11 of Exhibit CMM-7 to the first affidavit of Ms Murray sworn on 15 July 2021 in support of Westpac's application for the appointment of provisional liquidators.
44. In response to Request 31, the facts, matters and circumstances relied upon to support the allegation are that Mr Tesoriero was a shareholder in FGFS, that FGFS had no business but received money stolen from Westpac and paid away that money to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle St and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero. Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet. In addition, Westpac and WNZL repeat



the matters pleaded at paragraph 4(e), 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter. Westpac and WNZL also rely on the fact that Mr Papas and Mr Tesoriero considered that FGFS was the default entity for the purchase of property and certain assets paid for with funds received by Westpac: see for example [FOR.000300453](#) and [FOG.1000.0003.2764](#).

45. In response to Request 32(a) and (b), this is not a proper request for particulars and is a matter for evidence. In any event, the amounts alleged to have been paid away to FG, FE, FEA and FGFS are identified in pages 256 to 282 Exhibit CMM-5 to the affidavit of Ms Murray sworn on 12 July 2021 (paragraph 15). The money paid to FGFS which is traced to further recipients will be further identified in a report served with Westpac and WNZL's evidence. We repeat paragraphs 9 to 12 above.
46. In response to Request 32(c), we repeat paragraph 38 of our 22 September Letter. Additionally, Westpac and WNZL rely on the fact that Mr Tesoriero caused FGFS to disperse funds (originally paid to Forum Finance and by Forum Finance to FGFS) to various recipients, including himself, as set out in paragraphs 40 and 41 of our 22 September Letter and see further, by example, [FOG.1000.0002.7062](#).
47. In response to Request 32(d), Westpac and WNZL rely upon the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraphs 12 and 38 of our 22 September Letter.
48. In response to Request 33, we repeat paragraph 39 of our 22 September Letter. The basis on which those payments are said to have been received in furtherance of the Scheme Agreement is as a result of the matters pleaded at paragraphs 55 to 57 of the 2FASOC and the matters set out in paragraph 12 of our 22 September Letter. The tracing of the money paid by Westpac and WNZL will be the subject of a report served with Westpac's evidence.
49. In response to Request 34, we repeat paragraph 40 of our 22 September Letter and paragraphs 28 and 29 above.
50. In response to Request 35, we repeat paragraph 41 of our 22 September Letter. Further, that the Tesoriero Entities were created to hold property financed in part through amounts improperly obtained from Transactions 1 to 100 and NZ1 to NZ36 is inferred from the fact that the Tesoriero Entities in fact did so, as pleaded in the 2FASOC at paragraph 8 together with the Scheme Agreement and the matters pleaded at paragraphs 55 to 57 of the 2FASOC and paragraph 12 of our 22 September Letter; and that the Tesoriero Entities had no other business.
51. In response to Request 36, we repeat paragraph 42 of our 22 September Letter. We add that the receipt of funds by 286 Carlisle St, including the dates and amounts of receipts, is evidenced in Ms Murray's second affidavit sworn on 30 September 2021 at paragraphs 23-26 and pages 94-123 of Exhibit CMM-14, and the payments by 286 Carlisle St offshore are identified in the particulars to paragraphs 2704(b) and 2709(b).
52. In respect of paragraph 1900 generally, we further refer to the fact that Mr Tesoriero was a director and shareholder of Mangusta. Mr Papas was neither a director or shareholder of that entity, yet was a beneficiary (together with Mr Tesoriero) under the Mangusta Trust Deed: see [VIN.5000.0001.1142](#) (at .1190).

#### *Paragraph 1901*

53. In response to Request 37, we repeat paragraph 43 of our 22 September Letter as well as the matters set out at paragraphs 6 to 8 and 14 above. The allegation that Westpac and WNZL's loss and damage was a consequence of those acts flows as a direct consequence from dishonest theft of those moneys and the receipt and use of funds stolen by Westpac and WNZL, as alleged throughout the 2FASOC.

#### *Paragraph 1904*

54. In response to Request 38, we repeat paragraph 44 of our 22 September Letter. Further, a report as to the tracing of the money from Westpac and WNZL will be served as part of Westpac's evidence.



Paragraph 1905

55. In response to Request 39, we repeat paragraphs 12 and 45 of our 22 September Letter and rely on the matters pleaded at paragraphs 55 to 57 of the 2FASOC. By reason of the matters set out in paragraph 7 above, including the receipt of bank statements and spreadsheets as set out in Annexure A, Mr Tesoriero knew that the source of funds for assets and properties of which he or his companies were the beneficiaries was FGFS, and that FGFS had no legitimate source for those funds and was not indebted to him personally or to the Jointly Owned Entities or Tesoriero Entities.
56. In response to Request 40(a):
- (a) The amounts paid by Westpac and received by Forum Finance from Westpac were for the discrete purpose of financing acquisition of assets for underlying customers pursuant to the Eqwe/ Forum Programme, as pleaded at paragraphs 54 and 1905(g) of the 2FAOSC and were to fund equipment finance agreements, which did not exist. That is, Forum Finance received the money paid by Westpac but did not enter into the corresponding obligation or acquire the rights for which the money was paid;
  - (b) Forum Finance paid away the money it received, not to acquire finance equipment or for the debtor to acquire that equipment, but to FG, FE, FEA and FGFS for their own purposes or those of Mr Papas and Mr Tesoriero, as pleaded in the 2FASOC.
  - (c) Forum Finance also had no business.
57. In response to Request 40(b), we repeat paragraph 45 of our 22 September Letter and paragraph 55 above.
58. In response to Request 41(a):
- (a) The amounts paid by WNZL and received by IUGIS NZ from WNZL were for the discrete purpose of financing acquisition of assets for underlying customers pursuant to the Eqwe/ Forum Programme, as pleaded at paragraphs 54 and 1905(g) of the 2FAOSC and were to fund equipment finance agreements, which did not exist. That is, Forum Finance received the money paid but did not enter into the corresponding obligation or acquire the rights for which the money was paid;
  - (b) IUGIS NZ paid the money it received away, not to acquire finance equipment or for the debtor to acquire that equipment, but to FGFS for its own purposes or those of Mr Papas and Mr Tesoriero, as pleaded in the 2FASOC.
  - (c) IUGIS NZ also had no business.
59. In response to Request 41(b), we repeat paragraph 45 of our 22 September Letter and paragraph 55 above.
60. In response to Request 42, we repeat paragraph 12 and 45 of our 22 September Letter. We further rely on the following matters in support of the allegation as to Mr Tesoriero's awareness that any amounts received by Forum Finance or IUGIS NZ pursuant to the Eqwe/ Forum Programme were to finance the acquisition of assets for the underlying customers and were not amounts to which Forum Finance or IUGIS NZ were entitled themselves to use and pay away:
- (a) Mr Tesoriero had been provided with a pro forma rental plan for Forum Finance in February 2018 which set out the terms and conditions on which Forum Finance was to lease equipment to customers: see [FOG.1000.0002.7267](#) and [FOG.1000.0002.7268](#).
  - (b) From as early as April 2018, Mr Tesoriero knew that Forum Finance was looking to finance its equipment loan book, with equipment financed under a principal and agent agreement: see [FOR.000140164](#) and attached spreadsheet.
  - (c) Mr Tesoriero was also aware of a similar funding program that was offered by MAIA, the indicative term sheet for which stated that the proposal being put forward was for "a funding program for the rental of ORCA equipment across...international operations for

*clients of Forum Group Pty Ltd and its related entities*": see [FOG.1000.0002.7325](#) and [FOG.1000.0002.7326](#).

- (d) Mr Tesoriero knew from June 2018 that finance was to be sought for ORCAs, from which it can be inferred that Mr Tesoriero knew that the ORCAs were assets to be acquired for customers: see [FOR.000140393](#).
  - (e) From August 2018, Mr Tesoriero knew that Veolia contracts as part of the MAIA scheme were intended to be transferred with due diligence to be conducted to check that assets were in place and rental contracts would be recognised by the customer: see [FOR.001440924](#)/ FOR.00077247.
61. In about February 2019, Mr Tesoriero was involved in the negotiation of a release sought from a funder over FGFS's assets. In the course of these communications emails were exchanged (which he received) in which Mr Papas wrote "*[w]e sell hardware and services under managed services agreements which are ultimately funded by financial institutions as an underwriter. This release is for our funders who finance our client contracts where they are funding these contracts under and undisclosed arrangement*": see [FOG.1000.0002.7145](#) and [FOG.1000.0001.7524](#), [FOG.1000.0001.7527](#); and [FOG.1000.0001.7533](#).
62. In response to Request 43(a):
- (a) It follows from the fact that the money was raised to finance acquisition of equipment for or by the end debtor that FGFS had no legitimate business which entitled it to receive that money.
  - (b) Further, FGFS did not carry on any business and instead used the money as pleaded in paragraph 56. Our clients rely on FGFS' Xero balance sheet, its bank statements and the tracing report which will be served as part of their evidence.
  - (c) Westpac and WNZL also rely on the matters pleaded at paragraph 4(e)(iii), the instances where Mr Tesoriero requested or directed payment for his and his companies' benefit from FGFS, as set out in Annexure B, and the fact that FGFS' only or predominant corporate purpose was to carry out the Scheme, as pleaded at paragraph 1867(d) of the 2FASOC.
63. In response to Request 43(b), we repeat paragraph 45 of our 22 September Letter and paragraph 55 above.
64. In response to Request 44, those entities had no legitimate basis to receive substantial payments from FGFS because those payments resulted from monies stolen from Westpac and WNZL, were not creditors of FGFS and otherwise repeat paragraph 32 above.

#### *Paragraph 1906*

65. In response to Request 45, Mr Tesoriero as the knowing recipient of those moneys holds that which he received, or the benefit, on a constructive trust for Westpac and WNZL (as the case may be), or as a knowing recipient is liable to account for the profit he has made or alternatively pay equitable compensation.

#### *Paragraph 1907*

66. In response to Request 46, we repeat paragraph 47 of our 22 September Letter and paragraphs 6 to 8 and 14 above.

#### *Paragraph 1908*

67. In response to Request 47, we repeat paragraph 48 of our 22 September Letter and paragraphs 6 to 8 and 14 above.
68. Request 48, which we assume is intended to refer to paragraph 1908(c), is not a proper request for particulars and is a matter for evidence. Westpac and WNZL rely upon the fact that the only business engaged in by Forum Finance was that undertaken as part of the Scheme, being to steal money from Westpac and WNZL.

69. Request 49 is not a proper request for particulars and is a matter for evidence. Westpac and WNZL also rely upon:
- (a) the fact that the only business engaged in by FGFS was that undertaken as part of the Scheme, being to steal money from Westpac and WNZL and either hold assets bought with that money or to pay that money away.
  - (b) the repetition of conduct in which money stolen from Westpac and WNZL was paid to FGFS and then by FGFS to the benefit of companies owned by Mr Papas, to the Jointly Owned Entities, the Tesoriero Entities, 286 Carlisle St and to Mr Papas and Mr Tesoriero. That conduct was directed, from time to time, by Mr Papas and Mr Tesoriero and was for the benefit of Mr Papas and Mr Tesoriero in circumstances in which FGFS had no business and was not indebted to Mr Papas or Mr Tesoriero.
  - (c) Westpac and WNZL rely on the payments recorded in FGFS's Xero balance sheet, the documents received by Mr Tesoriero as set out in paragraph 7 above and in the list of spreadsheets set out in Annexure A.
70. In response to Request 50(a), we repeat paragraph 49(e) of our 22 September Letter.
71. In response to Request 50(b) and (c), the details and calculations of the amounts Mr Tesoriero is alleged to have procured Forum Finance to pay away, and the recipients of those amounts, are identified in pages 256 to 282 Exhibit CMM-5 to the affidavit of Ms Murray sworn on 12 July 2021 (paragraph 15).
72. In response to Request 51, we repeat paragraph 49(f) of our 22 September Letter. The tracing of the money will be the subject of a report served with Westpac's evidence.
73. In response to Request 52(a), we repeat paragraph 49(g) of our 22 September Letter and refer to **Annexure B**.
74. In response to Request 52(b), that the Jointly Owned Entities were created for that purpose is to be inferred from the creation of the Scheme, and the fact that property held by those entities was in fact financed by amounts improperly obtained from the transactions pleaded.
75. In response to Request 53(a), we repeat paragraph 49(h) of our 22 September Letter and refer to **Annexure B**.
76. In response to Request 53(b), that the Tesoriero Entities were created for that purpose is to be inferred from the creation of the Scheme, and the fact that property held by those entities was in fact financed by amounts improperly obtained from the transactions pleaded.
77. In response to Request 54, we repeat paragraph 49(i) of our 22 September Letter. We also repeat paragraph 51 above. The tracing of the money will be the subject of a report served with Westpac's evidence.

*Paragraph 1909*

78. In response to Request 55, we repeat paragraphs 51 and 52 of our 22 September Letter as well as the matters set out in paragraphs 6 to 8 above. The allegation that Westpac and WNZL's loss and damage was a consequence of those acts flows as a direct consequence from the receipt and use of funds stolen by Westpac and WNZL.

*Paragraph 1910*

79. In response to Request 56, we repeat paragraph 53 of our 22 September Letter as well as the matters set out in paragraphs 6 to 8 above.

*Paragraph 1911*

80. Request 57 repeats Request 12 and Request 27. We repeat paragraph 22 above.
81. In response to Request 58, we repeat paragraph 54 of our 22 September Letter as well as the matters set out in paragraphs 6 to 8 above.

## **Parts I-BBB: The claims against other parties**

### *Tort of unlawful means conspiracy*

82. Request 59 repeats Request 12, Request 27 and Request 57. We repeat paragraph 22 above.
83. In response to Request 60(a) and (b), the knowledge and control of Mr Tesoriero that is alleged to have caused each entity to become a party to the Scheme Agreement is that exercised by him as a director and/ or direct or indirect shareholder of each entity, as appropriate and as set out in response to Request 15(a) above, and his management of those entities (as to which, we refer to paragraph 40 and 41 of our 22 September Letter). We also refer further to paragraph 26 above.
84. In response to Request 60(c), we repeat paragraphs 6 to 8 above and paragraph 1844 of the 2FASOC and paragraph 22 above.
85. In response to Request 61(a), we refer to paragraph 1895 of the 2FASOC and paragraphs 9 to 11 above. The tracing of the money will be the subject of a report served with Westpac's evidence.
86. In response to Request 61(b), we refer to paragraphs 12 and 13 of our 22 September Letter.

### *Knowing receipt and knowing assistance*

87. In response to Request 62(a), this is not a proper request for particulars and is a matter for evidence. However:
  - (a) We repeat paragraphs 6 to 8 above and paragraph 12 and 13 of our 22 September Letter;
  - (b) As to the amounts received, we repeat paragraph 26(e) above, and refer you to FGFS's Xero balance sheet. The tracing of those payments will be the subject of a report served with Westpac's evidence.
  - (c) As to Mr Tesoriero's knowledge, we repeat paragraph 8 above.
88. In response to Request 62(b), we repeat paragraphs 56 to 59 and 62 to 63 above.
89. Request 62(c) repeats Request 42. We repeat paragraphs 60 and 61 above.
90. Request 62(d) repeats Request 43. We repeat paragraphs 62 and 63 above.
91. In response to Request 62(e):
  - (a) Request 62(e)(i) is not a proper request for particulars and is a matter for evidence. We otherwise repeat paragraph 87(b) above.
  - (b) Request 62(e)(ii) repeats Request 44. We refer to paragraph 64 above.
  - (c) Request 62(e)(iii), we refer to Mr Tesoriero's knowledge of and control of those entities as pleaded in the 2FASOC, paragraph 12 of our 22 September Letter and paragraphs 6 to 8 and 26 above.
92. In response to Request 63, we repeat paragraphs 6 to 8, 26, 67, 83 and 84 above and paragraph 12 and 13 of our 22 September Letter.
93. In response to Request 64(a), the details and calculations of the funds are a matter for evidence and, further, the pleading is one against a respondent other than Mr Tesoriero. Nonetheless, as to the amounts paid, we repeat paragraph 26(e), and refer you to FGFS's Xero balance sheet. The sub-set paid to Mr Tesoriero and the Jointly Owned Entities, the Tesoriero Entities and 286 Carlisle St are identified in the particulars to paragraph 1895 of the 2FASOC, FGFS's Xero balance sheet and (insofar as traced from payments made by Westpac or WNZL) will be identified further in a report served with Westpac's evidence. The tracing of those payments will be the subject of a report served with Westpac's evidence.
94. In response to Request 64(b), the basis for the allegation that the funds were used at the direction of Mr Tesoriero is that Mr Tesoriero directed Forum staff to pay money to or for the benefit of particular entities, and that he was both able to make those directions and benefited from those

directions (as to which see **Annexure B**). Otherwise, this is a matter for evidence, but we refer to the examples given at paragraph 40 and 41 of our 22 September 2021 Letter. Further examples include [FOG.1000.0003.6648](#) and [FOG.1000.0005.8634](#); [FOG.1000.0005.8666](#), and [FOG.1000.0005.8668](#).

95. In response to Request 65, the details of the funds and assets are matters for evidence and repeat paragraph 93 above. We also refer paragraphs 9 to 11 above. Occasions on which Mr Bouchahine caused amounts to be paid away include on the following dates:
- (a) 4 December 2019, when Mr Tesoriero asked Mr Bouchahine to pay the amount of \$126,859.69: see [FOG.1000.0003.0136](#), [FOG.1000.0004.2357](#) and [FOG.1000.0004.2359](#).
  - (b) 19 December 2019, when Mr Tesoriero instructed Mr Bouchahine to pay the deposit for Mr Tesoriero's intended purchase of 8-12 Natalia Ave Oakleigh South: see [FOG.1000.0004.2455](#); [FOG.1000.0004.4989](#) and [FOG.1000.0004.4991](#).
  - (c) On 9 June 2020, Mr Bouchahine paid a further instalment for the deposit for Mr Tesoriero's intended purchase of 8-12 Natalia Ave Oakleigh South: see [FOG.1000.0004.1278](#) and [FOG.1000.0004.1283](#).
  - (d) 6 October 2020, when Mr Tesoriero instructed Mr Bouchahine to pay the amount of \$239,197.18 to GraysOnline for the purchase of a 1969 Ford Mustang Boss 429 Z-Code Coupe: see [FOG.1000.0001.0255](#); [FOG.1000.0001.2368](#), [FOG.1000.0001.2370](#); [FOG.1000.0006.7480](#); and [GRY.5000.0001.0016](#).
  - (e) On 22 October 2020, a payment made in the amount of \$5,912.46 from FGFS with the description "Vince 13480794" for the benefit of an account in the name of 286 Carlisle St: see [FOG.1000.0001.2150](#) and [FOG.1000.0001.2158](#).
  - (f) On 19 November 2020, Mr Bouchahine made in the amount of \$110,171.13 to Middle Point Marine for the Mangusta XOXO yacht: see [FOG.1000.0001.2199](#) and [FOG.1000.0001.2208](#).
  - (g) Payment of the insurance amounts referred to in paragraph 97 below.
96. Some of the above payments are recorded in the Xero records for FGFS: see the worksheet relating to Mr Tesoriero (VT Transactions) and the worksheet relating to Natalia Ave.

#### *Paragraph 2654*

97. In response to Request 66, this is a matter for evidence. But by way of example, on 6 October 2020, the amount of \$239,197.18 was paid from FGFS to GraysOnline for the purchase of a 1969 Ford Mustang Boss 429 Z-Code Coupe: see [FOG.1000.0001.0255](#); [FOG.1000.0001.2368](#), [FOG.1000.0001.2370](#); [FOG.1000.0006.7480](#); and [GRY.5000.0001.0016](#), which vehicle is insured in Mr Tesoriero Snr's name: see Metrix insurance renewal for 2021 [FOR.001232020](#) and [FOR.001232023](#). Additional examples of insurance for the benefit of motor vehicles in Mr Tesoriero Snr's name include [FOR.001465311](#); [FOR.001465329](#); [FOR.001462708](#), [FOR.001462710](#); [FOR.001462712](#); [FOR.001462718](#).

#### *Paragraph 2655*

98. In response to Request 67(a), a list of the payments identified to date which have been received from FGFS by Mr Tesoriero Snr is set out in the particulars to 2654 of the 2FASOC. Payments made to Mr Tesoriero Snr at the direction of Mr Tesoriero are a matter for evidence. Nevertheless, by way of example, Mr Tesoriero directed payments to be made into a Westpac account in the name of Mrs Teresa Tesoriero and Mr Giovanni Tesoriero with account number 78-0597 and directed payments to be made into an ANZ account in the name Mrs Teresa Tesoriero and Mr Giovanni Tesoriero with account number 213608896: see for example [FOR.001352750](#); [FOR.001352845](#); [FOR.001411033](#); [FOG.1000.0001.6552](#); [FOG.1000.0002.4504](#); [FOG.1000.0003.7329](#) and [FOG.1000.0003.7330](#). Westpac have also identified payments from FG to these two accounts associated with Mr Tesoriero Snr as set out in the annexed Annexure C and referred to in paragraph 25 above. Payments have been identified from the Westpac account associated with Mr Tesoriero Snr to an account in the name Samantha Pagano with

account number 59-1875. Ms Pagano is the girlfriend of Mr Tesoriero. Payments to Ms Pagano were used for the purchase of shares in online trading platforms.

99. In response to Request 67(b), this is a matter for evidence, however, can be inferred from the fact that Mr Tesoriero Snr paid funds to an account in the name of Mr Tesoriero's girlfriend, Ms Pagano as set out in paragraph 98 above.

*MinterEllison*

Yours faithfully  
**MinterEllison**

Contact: Anthony Sommer T: +61 2 9921 4182  
anthony.sommer@minterellison.com  
Partner: Caitlin Murray T: +61 2 9921 4279  
OUR REF: 1353397

**ANNEXURE A – LIST OF SPREADSHEETS RECEIVED BY MR TESORIERO**

<b>Date</b>	<b>Details</b>	<b>Doc IDs</b>
7/08/2018	Mr Bouchahine emails Mr Tesoriero a schedule titled "Outstanding Payments for BP VT". Schedule shows outstanding invoices for certain Jointly Owned Entities and Tesoriero Entities.	<a href="#">FOG.1000.0003.7710</a> <a href="#">FOG.1000.0003.7711</a>
7/08/2018	Mr Chin emails Mr Tesoriero an updated schedule titled "Outstanding Payments for BP & VT". Various versions are emailed to Mr Tesoriero.	<a href="#">FOG.1000.0004.0835</a> <a href="#">FOG.1000.0004.0836</a> <a href="#">FOG.1000.0004.0834</a>
17/08/2018	Email from Mr Chin to Mr Tesoriero attaching schedule titled "Outstanding payments for BP & VT".	<a href="#">FOG.1000.0002.3887</a> <a href="#">FOG.1000.0002.3889</a>
30/08/2018	Email from Mr Chin to Mr Tesoriero attaching schedule titled "Outstanding payments for BP & VT" as at 30 August 2018.	<a href="#">FOG.1000.0002.3922</a> <a href="#">FOG.1000.0002.3923</a>
7/09/2018	Email from Mr Chin to Mr Tesoriero attaching schedule titled "Outstanding payments for BP & VT" as at 7 September 2018.	<a href="#">FOG.1000.0002.4249</a> <a href="#">FOG.1000.0002.4250</a>
4/10/2018	Email from Mr Chin to Mr Tesoriero (Mr Papas and Mr Bouchahine) attaching schedule titled "Outstanding payments for BP & VT" as at 4 October 2018.	<a href="#">FOG.1000.0004.0859</a> <a href="#">FOG.1000.0004.0861</a>
19/10/2018	Emails from Mr Bouchahine to Mr Tesoriero and Mr Papas attaching a schedule titled "Cashflow for Bill and Vince 19 Oct". Schedule shows amounts outstanding for certain Jointly Owned Entities and Tesoriero Entities and includes a worksheet for FGFS.	<a href="#">FOG.1000.0001.6550</a> <a href="#">FOG.1000.0001.6551</a>
19/10/2018	Emails from Mr Bouchahine to Mr Tesoriero and Mr Papas attaching an updated schedule titled "Cashflow for Bill and Vince 19 Oct". Schedule shows amounts outstanding for certain Jointly Owned Entities and Tesoriero Entities and includes a worksheet for FGFS.	<a href="#">FOG.1000.0001.6593</a> <a href="#">FOG.1000.0001.6594</a>
22/11/2018	Email from Mr Chin to Mr Bouchahine (cc Mr Tesoriero and Mr Papas) attaching a schedule titled "Outstanding payments for BP & VT" as at 15 November 2018.	<a href="#">FOG.1000.0004.0866</a> <a href="#">FOG.1000.0004.0867</a>
29/11/2018	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding payments for BP & VT" as at 29 November 2018.	<a href="#">FOG.1000.0004.7393</a> <a href="#">FOG.1000.0004.7394</a>
5/12/2018	Email from Mr Bouchahine to Mr Tesoriero and Mr Papas attaching a schedule titled "Outstanding Payments for BP VT – 5 Dec 18".	<a href="#">FOG.1000.0003.7317</a> <a href="#">FOG.1000.0003.7318</a>
11/12/2018	Email from Mr Bouchahine to Mr Tesoriero forwarding a copy of the schedule titled "Outstanding Payments for BP VT – 5 Dec 18".	<a href="#">FOG.1000.0003.7335</a> <a href="#">FOG.1000.0003.7336</a>
21/12/2018	Email from Mr Bouchahine to Mr Tesoriero (and Mr Bouchahine) attaching a schedule titled "Outstanding Payments for BP VT" as at 21 December 2018.	<a href="#">FOG.1000.0004.0872</a> <a href="#">FOG.1000.0004.0873</a>
16/01/2019	Email from Mr Chin to Mr Tesoriero (and Mr Bouchahine) attaching schedule titled "Outstanding Payments for BP & VT".	<a href="#">FOG.1000.0004.0877</a> <a href="#">FOG.1000.0004.0883</a>
20/02/2019	Email from Mr Chin to Mr Tesoriero, Mr Papas and Mr Bouchahine attaching a schedule titled "Outstanding Payments for BP & VT as at 20 February 2019.	<a href="#">FOG.1000.0004.0894</a> <a href="#">FOG.1000.0004.0895</a>
03/10/2019	Email from Mr Bouchahine to Mr Papas attaching a schedule titled "Cashflow FGFS Other Companies 1 Oct 2019".	<a href="#">SEC.5000.0056.5944</a> <a href="#">SEC.5000.0056.5945</a>
07/04/2020	Email from Mr Chin to Mr Tesoriero (copy Mr Bouchahine) attaching schedule titled "Outstanding and Recurring Payments for BP & VT"	<a href="#">FOG.1000.0001.4401</a> <a href="#">FOG.1000.0001.4402</a>
16/04/2020	Email from Mr Bouchahine to Mr Tesoriero (copy Mr Papas) attaching schedule titled "Outstanding and Recurring	<a href="#">FOG.1000.0002.9286</a> <a href="#">FOG.1000.0002.9287</a>



	Payments for BP & VT". Schedule includes worksheets titled <i>Outstanding</i> and <i>recurring</i> .	
17/04/2020	Email from Mr Bouchahine to Mr Tesoriero (copy Mr Papas) attaching schedule titled "Book 1". Schedule is headed "Summary Cash Flow Forum Group financial Services".	<a href="#">FOG.1000.0002.9305</a> <a href="#">FOG.1000.0002.9306</a>
1/06/2020	Email from Mr Chin to Mr Tesoriero (and Mr Bouchahine) attaching schedule titled "Outstanding and Recurring Payments for BP & VT". Schedule includes worksheets titled <i>Outstanding</i> and <i>recurring</i> .	<a href="#">FOG.1000.0001.2698</a> <a href="#">FOG.1000.0001.2701</a>
30/07/2020	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT". Schedule has worksheet titled <i>outstanding</i> , a worksheet titled <i>recurring</i> ; and a worksheet titled <i>cashflow</i> .	<a href="#">FOG.1000.0001.3302</a> <a href="#">FOG.1000.0001.3303</a>
19/08/2020	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 19 August 2020. Schedule has worksheet titled <i>outstanding</i> , a worksheet titled <i>recurring</i> ; and a worksheet titled <i>cashflow</i> .	<a href="#">FOG.1000.0001.3402</a> <a href="#">FOG.1000.0001.3403</a>
24/08/2020	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 24 August 2020. Schedule has worksheet titled <i>outstanding</i> , a worksheet titled <i>recurring</i> ; and a worksheet titled <i>cashflow</i> .	<a href="#">FOG.1000.0001.4208</a> <a href="#">FOG.1000.0001.4209</a>
18/02/2021	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 18 February 2021. Schedule has worksheets titled <i>Outstanding</i> ; <i>Recurring</i> ; <i>FGFS Petrol Stations</i> ; <i>Rental Properties</i> ; <i>Other Assets</i> ; <i>FGFS</i> . The worksheet titled <i>FGFS</i> has the heading "Summary Cash Flow".	<a href="#">FOG.1000.0001.5040</a> <a href="#">FOG.1000.0001.5041</a>
24/02/2021	Email from Mr Chin to Mr Tesoriero attaching a schedule titled "Outstanding and Recurring Payments for BP & VT" as at 24 February 2021 and Payment Register report – 24.02.2021. Schedule has worksheets titled <i>Outstanding</i> ; <i>Recurring</i> ; <i>FGFS Petrol Stations</i> ; <i>Rental Properties</i> ; <i>Other Assets</i> ; <i>FGFS</i> . The worksheet titled <i>FGFS</i> has the heading "Summary Cash Flow".	<a href="#">FOG.1000.0001.5054</a> <a href="#">FOG.1000.0001.5055</a> <a href="#">FOG.1000.0001.5056</a>



**ANNEXURE B – INSTANCES WHERE MR TESORIERO DIRECTED OR REQUESTED PAYMENTS BE MADE FROM FGFS TO OTHER ENTITIES**

<b>Date</b>	<b>Details</b>	<b>Doc IDs</b>
23/01/2018	Email from Mr Bouchahine to Adriana Tsiallis cc Mr Tesoriero and Mr Papas attaching remittance for deposit for 26 Edmonstone Rd, remittance showing \$290,000 paid from FG account.	<a href="#">FOG.1000.0001.5616</a> <a href="#">FOG.1000.0001.5617</a>
18/05/2018	Email from Mr Bouchahine to Mr Tesoriero attaching remittance for deposit for Atherton Rd property, remittance showing \$100,000 paid from FG account.	<a href="#">FOG.1000.0003.8796</a> <a href="#">FOG.1000.0003.8797</a> <a href="#">FOR.000867479</a> <a href="#">FOG.1000.0005.6369</a>
22/06/2018	Email from MS Fiona Yang to Mr Tesoriero attaching remittance showing \$321,000 paid from FGFS account to "Crabtrees"	<a href="#">FOG.1000.0010.3951</a> <a href="#">FOG.1000.0010.3952</a>
13/08/2018	Email from Mr Tesoriero to Mr Bouchahine and Mr Papas titled "Fwd: upcoming"	<a href="#">FOG.1000.0002.3852</a>
29/08/2018	Email chain between Mr Tesoriero and Mr Chin titled Re: Invoice #30536; M Motorsport Pty Ltd	<a href="#">FOG.1000.0005.5844</a>
4/09/2018	Email chain between Mr Tesoriero and Mr Bouchahine titled "RE loan interest payments"	<a href="#">FOG.1000.0001.6390</a>
26/09/2018	Email chain between Mr Tesoriero and Mr Chin titled "RE: boat payment"	<a href="#">FOG.1000.0002.4515</a>
27/09/2018	Email from Mr Tesoriero to Mr Bouchahine and Mr Papas titled "Fwd: loan interest payments banks"	<a href="#">FOG.1000.0002.4504</a>
3/10/2018	Email chain between Mr Tesoriero and Mr Bouchahine (and others) titled "Re Atherton Rd Settlement"	<a href="#">FOG.1000.0002.4542</a>
4/10/2018	Email from Mr Tesoriero to Mr Chin titled "Fwd: Insurance Policy - Pleasure Craft – MY Mangusta 105 Open XOXO"	<a href="#">FOG.1000.0003.6484</a> <a href="#">FOG.1000.0003.6486</a>
5/10/2018	Email chain between Mr Tesoriero and Ms Fiona Yang titled "RE: loan interest payments banks"	<a href="#">FOG.1000.0010.3966</a>
9/10/2018	Email chain between Mr Tesoriero and Mr Bouchahine (Mr Chin and Mr Papas) titled Re: boat payment.	<a href="#">FOG.1000.0002.4733</a>
15/10/2018	Email chain between Mr Tesoriero and Ms Yang (and Mr Bouchahine) titled "RE: payments", attaching remittance showing \$20,000 paid from FG account to "Carbay Net"	<a href="#">FOG.1000.0010.3968</a> <a href="#">FOG.1000.0010.3971</a>
16/10/2018	Email from Mr Tesoriero to Mr Bouchahine and Mr Papas titled "Fwd: loan interest payments"	<a href="#">FOG.1000.0005.6384</a>
17/10/2018	Email from Mr Bouchahine to Mr Tesoriero showing remittances for payment of deposit of \$421,000 for Atherton Rd. \$321,000 paid from FGFS account and \$100,000 paid from FG account.	<a href="#">FOG.1000.0003.8592</a> <a href="#">FOG.1000.0003.8593</a> <a href="#">FOG.1000.0003.8596</a>
18/10/2018	Email chain between Mr Bouchahine and Ms Fiona Yang, forwarding email from Mr Tesoriero titled "FW: loan interest payments".	<a href="#">FOG.1000.0001.6552</a>
21/11/2018	Email from Mr Tesoriero to Ms Kathleen Wang (Mr Bouchahine and Ms Suzi Phillips) titled "Fwd: 126463 & 126464 - Forum Group Financial Services Pty Ltd"	<a href="#">FOG.1000.0003.6436</a> <a href="#">FOG.1000.0003.6438</a> <a href="#">FOG.1000.0003.6439</a>
3/12/2018	Email chain between Mr Tesoriero and Mr Papas titled "Re: wish list"	<a href="#">FOG.1000.0002.7062</a>
6/12/2018	Email chain between Mr Tesoriero, Mr Papas and Mr Bouchahine titled "Re: Bowen Hills Loan - 1 month   \$68,067"	<a href="#">FOG.1000.0005.7205</a>

7/12/2018	Email from Mr Bouchahine to Mr Tesoriero attaching remittance.	<a href="#">FOG.1000.0003.7329</a> <a href="#">FOG.1000.0003.7330</a>
11/01/2019	Email chain between Mr Tesoriero and Mr Bouchahine titled "Re: Funds"	<a href="#">FOG.1000.0003.6597</a>
22/01/2019	Email from Mr Tesoriero to Mr Papas and Mr Bouchahine titled "Fwd: Vince: Here are my wire instructions for BTY."	<a href="#">FOG.1000.0003.6615</a>
20/02/2019	Email from Mr Tesoriero to Mr Chin (copy Mr Papas and Mr Bouchahine) titled "Re: Invoices Payable - BP & VT Entities"	<a href="#">FOG.1000.0003.6648</a>
15/03/2019	Email from Mr Chin to Mr Tesoriero (copy Mr Bouchahine and Mr Papas) titled "RE: Monaco transaction" attaching remittance showing payment	<a href="#">FOG.1000.0001.7620</a> <a href="#">FOG.1000.0001.7623</a>
10/04/2019	Email from Mr Tesoriero to Joel Freeman of Freeman Group (copy Mr Bouchahine) titled "RE: Account details".	<a href="#">FOG.1000.0005.8634</a>
15/04/2019	Email from Mr Tesoriero to Joel Freeman of Freeman Group (copy to Mr Papas and Mr Bouchahine) titled "Fwd: remittance for JAF" attaching remittance showing \$500,000 paid from FGFS account.	<a href="#">FOG.1000.0005.8666</a> <a href="#">FOG.1000.0005.8668</a>
23/04/2019	Email from Mr Bouchahine to Mr Tesoriero and Mr Papas confirming that UD\$20,000 has been paid to Barclay Yachts as requested. Remittance shows amount is paid from FGFS account	<a href="#">FOG.1000.0001.5323</a> <a href="#">FOG.1000.0001.5324</a>
14/06/2019	Email from Mr Tesoriero to Mr Bouchahine titled "Fw: Tesoriero Investment Group – Extension"	<a href="#">FOG.1000.0001.8192</a> <a href="#">FOG.1000.0001.8193</a>
21/06/2019	Email from Mr Chin to Mr Tesoriero titled "RE: Tesoriero Investment Group – Extension"	<a href="#">FOG.1000.0004.7350</a> <a href="#">FOG.1000.0004.7352</a>
27/06/2019	Email from Mr Tesoriero to Mr Bouchahine (copy Mr Papas) titled "monaco outstanding"	<a href="#">FOG.1000.0001.8318</a>
26/09/2019	Email chain between Mr Tesoriero, Mr Chin, Mr Bouchahine and Mr Papas titled "Re: overdrafts closed off"	<a href="#">FOG.1000.0005.0444</a>
7/11/2019	Email chain between Mr Tesoriero and Mr Bouchahine (copy Mr Papas) titled "Re: 18005_1b_20191106_26 Edmondstone Rd Bowen Hills_METIER3 Invoice 9721_LH"	<a href="#">FOG.1000.0003.2284</a>
15/11/2019	Email from Mr Chin to Mr Papas and Mr Tesoriero titled "Remittance - NV Finance", attaching remittance	<a href="#">FOG.1000.0003.1950</a> <a href="#">FOG.1000.0003.1951</a>
15/11/2019	Email from Mr Chin to Rodney King (copy Mr Tesoriero and Mr Papas) titled "1160 Glen Huntly Road Glen Huntly - Payment Remittance", attaching remittance showing \$152,000 paid from FGFS account	<a href="#">FOG.1000.0003.1953</a> <a href="#">FOG.1000.0003.1954</a>
23/11/2019	Email chain between Mr Chin, Mr Tesoriero, Mr Papas and Mr Bouchahine titled "Fwd: 8-18 James St, Clayton Deposit"	<a href="#">FOG.1000.0005.1464</a>
25/11/2019	Email chain between Mr Chin, Mr Tesoriero, Mr Papas and Mr Bouchahine titled "RE: 8-18 James St, Clayton Deposit", attaching remittance showing \$289,072 paid from FGFS account.	<a href="#">FOG.1000.0003.0123</a> <a href="#">FOG.1000.0003.0126</a>
286/11/2019	Email from Mr Chin to Andrew Norbury (copy Mr Tesoriero) titled "Payment Remittance - Invoice 9722" attaching a remittance showing \$42,651.34 paid from the FGFS account.	<a href="#">FOG.1000.0004.7055</a> <a href="#">FOG.1000.0004.7056</a>
2/12/2019	Email from Mr Tesoriero to Mr Bouchahine and Mr Chin titled "interest payments"	<a href="#">FOG.1000.0004.2353</a>

54/12/2019	Email chain between Mr Tesoriero and Mr Bouchahine (copy Mr Papas) titled "Re: upcoming payment"	<a href="#">FOG.1000.0003.0136</a>
19/12/2019	Emails between Mr Tesoriero and Mr Bouchahine, including remittance showing \$586,000 paid from FGFS account.	<a href="#">FOG.1000.0004.2455</a> <a href="#">FOG.1000.0004.4989</a> <a href="#">FOG.1000.0004.4991</a>
5/12/2019	Email from Mr Chin to Mr Tesoriero (copy Mr Bouchahine) titled "RE: upcoming payment" attaching remittance showing \$126,859.68 paid from FGFS account.	<a href="#">FOG.1000.0004.2357</a> <a href="#">FOG.1000.0004.2359</a>
15/01/2020	Email chain between Mr Chin, Mr Tesoriero (copy Mr Papas) titled "RE: Invoice 14206 from PROFESSIONAL HELICOPTER SERVICES PTY LTD is due". Attached remittance shows \$5,000 paid from FGFS account.	<a href="#">FOG.1000.0004.2500</a> <a href="#">FOG.1000.0004.2503</a>
25/05/2020	Email chain between Mr Chin, Mr Tesoriero, Mr Bouchahine and Mr Papas titled "RE: 1160 Glen Huntly Road VIC 3163", attaching remittance showing \$100,000 paid from FGFS account.	<a href="#">FOG.1000.0001.2688</a> <a href="#">FOG.1000.0001.2693</a>
27/05/2020	Email from Mr Chin to Mr Tesoriero (and others) titled "James St – Payment 6" attaching remittance showing \$100,000 paid from FGFS account.	<a href="#">FOG.1000.0001.2694</a> <a href="#">FOG.1000.0001.2695</a>
28/05/2020	Email from Mr Chin to Mr Tesoriero titled "Monthly Invoice – Remittance" attaching remittance showing \$55,000 paid from FGFS account.	<a href="#">FOG.1000.0001.2696</a> <a href="#">FOG.1000.0001.2697</a>
9/06/2020	Email chain between Mr Chine and John Servinis (copy to Mr Tesoriero and Mr Bouchahine) titled RE: Placelea Pty Ltd to Vince Tesoriero and/or Nominee - Sale of 8-12 Natalia Avenue, Oakleigh South (GM 190144). Attached remittance shows \$586,000 paid from FGFS account.	<a href="#">FOG.1000.0004.1278</a> <a href="#">FOG.1000.0004.1283</a>
16/06/2020	Email from Mr Tesoriero to Mr Chin and Mr Bouchahine titled "Fwd: Remittance - Berkeley 300k". Attached remittance shows \$300,000 paid from FGFS account.	<a href="#">FOG.1000.0004.1292</a> <a href="#">FOG.1000.0004.1293</a>
6/10/2020	Emails between Mr Tesoriero and Mr Bouchahine and Mr Chin titled "RE: GraysOnline Invoice 20007068-22". Remittance shows \$239,197.18 paid from FGFS account.	<a href="#">FOG.1000.0001.0255</a> <a href="#">FOG.1000.0001.2368</a> <a href="#">FOG.1000.0001.2370</a> <a href="#">FOG.1000.0006.7480</a>
30/10/2020	Email chain between Mr Chin, Mr Tesoriero and Mr Bouchahine titled "RE: Tesoriero - Change of Corporate Structure **IMPORTANT**". Attached remittance shows \$5,912.46 paid from FGFS account	<a href="#">FOG.1000.0001.2150</a> <a href="#">FOG.1000.0001.2158</a>
5/05/2021	Emails between Mr Chin, Imogen Moyle, Mr Tesoriero, Mr Bouchahine and others titled "RE: Tesoriero Investment Group Pty Ltd - Facility Maturity". Remittance shows \$2,401,755.00 paid from FGFS account.	<a href="#">FOG.1000.0001.4676</a> <a href="#">FOG.1000.0001.4678</a> <a href="#">FOG.1000.0001.4680</a> <a href="#">FOG.1000.0001.4681</a>
21/05/2021	Email chain between Mr Tesoriero, Mr Papas and Mr Bouchahine titled Re: Vince".	<a href="#">FOG.1000.0003.7021</a>

## ANNEXURE C

	Date	Currency	Transaction Am	Beneficiary BSB	Beneficiary Account	Transaction Account Name	Transaction Reference	Remitter BS	Remitter Account
123043979	4/09/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
123043979	4/09/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
123043979	4/09/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
124913559	5/10/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
124913559	5/10/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
124913559	5/10/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
125598984	18/10/2018	AUD	30,000.00	063-104	10572179	Tesoriero	FG1012	082-080	121782934
125598984	18/10/2018	AUD	10,000.00	733-349	780597	Tesoriero	ForumGroup Inv1012	082-080	121782934
125598984	18/10/2018	AUD	10,000.00	013-214	213608896	TESORIERO INVESTMENTS	TESORI	082-080	121782934
126573804	2/11/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
126573804	2/11/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
126573804	2/11/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
128668779	7/12/2018	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
128668779	7/12/2018	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
128668779	7/12/2018	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
130446875	11/01/2019	AUD	30,000.00	063-104	10572179	TESORIERO INVESTMENTS	TESORI	082-080	121782934
130577248	15/01/2019	AUD	10,000.00	013-214	213608896	TESORIERO INVESTMENTS	TESORI	082-080	121782934
130577248	15/01/2019	AUD	10,000.00	733-349	780597	TESORIERO	INV1015	082-080	121782934
131612489	1/02/2019	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
131612489	1/02/2019	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
131612489	1/02/2019	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
131612399	1/02/2019	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
131612399	1/02/2019	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
131612399	1/02/2019	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
133259975	28/02/2019	AUD	30,000.00	063-104	10572179	Tesoriero	Vince Consulting	082-080	121782934
133259975	28/02/2019	AUD	10,000.00	733-349	780597	Tesoriero	Contractor fee	082-080	121782934
133259975	28/02/2019	AUD	10,000.00	013-214	213608896	Tesoriero Investments	Contractor fee	082-080	121782934
135146404	1/04/2019	AUD	30,000.00	063-104	10572179	TESORIERO INVESTMENTS	TESORI	082-080	121782934
135146404	1/04/2019	AUD	10,000.00	733-349	780597	TESORIERO INVESTMENTS	TESORI	082-080	121782934
135146404	1/04/2019	AUD	10,000.00	013-214	213608896	TESORIERO INVESTMENTS	TESORI	082-080	121782934

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/06/2022 8:38:54 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172  
& ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 29/06/2022 8:48:31 AM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59

Rule 29.02(1)

# Affidavit

No. NSD of 616/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

**Westpac Banking Corporations ABN 33 007 457 141** and another named in the Schedule  
Applicants

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others named in the  
Schedule  
Respondents

Fourth Affidavit of **Sarwar (Sazz) Nasimi**

Address: Level 6, 140 William Street, Melbourne 3000

Occupation: Legal practitioner

Date: 28 June 2022

## Contents

Document number	Details	Paragraph	Page
1.	Affidavit of Sarwar (Sazz) Nasimi sworn 28 June 2022	1-33	2-12
2	Exhibit SN-5 being a paginated bundle of documents	4-33	1-42

Filed on behalf of (name & role of party) Vincenzo Frank Tesoriero, Third Respondent  
 Prepared by (name of person/lawyer) Sazz Nasimi  
 Law firm (if applicable) Madgwicks Lawyers  
 Tel 03 9242 4720 Fax 03 9242 4777  
 Email [Sazz.Nasimi@Madgwicks.com.au](mailto:Sazz.Nasimi@Madgwicks.com.au)  
 Address for service Level 6, 140 Williams Street, Melbourne 3000 VIC  
 (include state and postcode)

[Version 3 form approved 02/05/2019]

1031

I, Sarwar (Sazz) Nasimi, of Level 6,140 William Street Melbourne in the State of Victoria hereby make on Oath and Say:

1. I am a legal practitioner and a partner within the law firm Madgwicks.
2. Madgwicks represents the Third Respondent and his associated entities in the present proceeding, and I am the responsible partner within the firm with the ultimate care and conduct of the matter on their behalf.
3. I make this affidavit from my own knowledge save where otherwise indicated. Where I depose to matters that I have been informed of by others, I believe those matters to be true and correct.
4. Annexed to this affidavit and shown to me at the time of swearing this affidavit is a paginated bundle of documents marked "**SN-5**". This exhibit contains all the documents referred to in my affidavit. Where reference is made to a specific document or part of a document, contained within "SN-5", it will be referred to by my initials followed by the page number on which that document or reference appears, i.e. **SN-#**.
5. I have previously sworn affidavits in this matter on 9 November 2021, 3 February 2022 and 8 February 2022. For present purposes, I also rely on those affidavits and in particular paragraphs 13-21 of the affidavit sworn 9 November 2021 and para 23 of the affidavit sworn 8 February 2022.

### **Legal Costs**

6. At paragraph 21 of my 9 November 2021 affidavit and paragraph 23 of my 8 February 2022 affidavit, I provided tables that contained estimates of legal fees that I believed would be incurred by Mr Tesoriero in undertaking various steps in the proceeding. I have since revised my estimate to include the estimated costs up to the conclusion of the trial listed for 10 October 2021 and have provided this estimate to Mr Tesoriero. I have read the affidavit of Mr Tesoriero dated 17 June 2022 and confirm that the table provided by Mr Tesoriero at paragraph 34 of his affidavit is consistent with the most recent estimate that I have provided to Mr Tesoriero.
7. I confirm that paragraph 35 of Mr Tesoriero's 17 June affidavit is true and correct. As at the time of swearing this affidavit, Madgwicks has only applied \$36,457.21 (inclusive of GST) towards its fees for the legal work undertaken for and on behalf of Mr Tesoriero and his entities.




1032



## Correspondence On The Issue of Legal Costs

8. I am informed and verily believe that in early March 2022, junior counsel for Mr Tesoriero, on my insistence, discussed the issue of legal costs with the junior counsel for Westpac. In particular, consent was sought from Westpac to allow Mr Tesoriero to apply some of the funds from the sale 23 Margaret Street, which were being held in the Madgwicks trust account, towards outstanding legal fees. This was in circumstances where the Court had, a mere few weeks earlier, varied the freezing orders by increasing the cap for legal fees that were carved out from the freezing orders. Previously, Westpac had insisted that all moneys obtained from the sale of 23 Margaret Street be placed in a controlled monies account (**CMA**). As the CMA had not, as at that time, been created the request was made of Westpac to allow Mr Tesoriero to apply the funds (up to the revised cap) towards his legal fees. The request was made in the hope of avoiding the unnecessary double handling which required the funds to be first withdrawn from the Madgwicks trust account and placed in the CMA and then be withdrawn from the CMA and paid back to Madgwicks. Despite the pragmatism of this approach, junior counsel for Westpac, disappointingly opposed this request and instead insisted on the CMA being created first and that too with the Westpac bank.
9. On 9 March 2022, Madgwicks sent an email to MinterEllison attaching a document required by Westpac in order to set up a CMA in the joint control of Madgwicks and MinterEllison. The email noted that an original copy needed to be signed and requested confirmation of the best address to send the original to. Now produced and shown to me at pages 1 to 8 of SN-5 is a true copy of the email dated 9 March 2022.
10. On 14 March 2022, MinterEllison emailed Madgwicks requesting that the original forms be sent to MinterEllison's Sydney office. Madgwicks then arranged for the documents to be sent by express post (next day delivery) to the nominated address. Now produced and shown to me at page 9 of SN-5 is a true copy of the email dated 14 March 2022.
11. On 23 March 2022, MinterEllison confirmed receipt of the original documents and stated they would send the signed documents back to Madgwicks' office via express post. Now produced and shown to me at page 10 of SN-5 is a true copy of the email from MinterEllison dated 23 March 2022.
12. On or about 1 April 2022, Madgwicks received the signed original documents and forwarded these documents to Westpac Bank so that they could set up the CMA. Westpac then informed Madgwicks that it required 8-digit customer numbers for the



1033



nominated partners at MinterEllison, or alternatively the partners' residential address, to assist with their identification process. On 5 April 2022, Madgwicks wrote to MinterEllison asking them to provide the information requested by Westpac Bank. Now produced and shown to me at page 11 of SN-5 is a true copy of the email dated 5 April 2022

13. On 20 April 2022, Madgwicks sent an email to MinterEllison following them up on the details requested by Westpac Bank as a matter of urgency. Now produced and shown to me at page 12 of SN-5 is a true copy of the email dated 20 April 2022
14. On 21 April 2022, MinterEllison emailed Madgwicks to inform them that MinterEllison had completed the partner verification process directly with Westpac and there should be no need for the 8-digit customer number of residential addresses to be provided. Madgwicks then forwarded the signed form to Westpac Bank to set up the controlled monies account. The CMA was ultimately set up on 26 May 2022 and the proceeds from 23 Margaret Street were transferred into this account. Now produced and shown to me at page 13 of SN-5 is a true copy of the email dated 21 April 2022.
15. On 30 May 2022, Madgwicks sent an email to MinterEllison confirming that the proceeds from the sale of 23 Margaret St had been paid into the CMA and informing them of anticipated legal costs. Further, that email requested that Westpac agree to:
  - (a) the immediate release of \$270k from the CMA (being the amount remaining in the existing cap on legal fees pursuant to the orders of the Court dated 12 November 2021);
  - (b) a revised cap of \$1.86m for legal fees in the freezing orders; and
  - (c) a further release from the CMA/ Court funds to cover the shortfall in actual costs once the cap on legal fees was increased.

Now produced and shown to me at pages 14 to 16 of SN-5 is a true copy of the email sent by Madgwicks to MinterEllison dated 30 May 2022.


16. In the intervening period Madgwicks had made enquiries of the bank in order to ascertain what was required by it in order to facilitate the release of the funds. Westpac informed us of the procedure and provided a bank document which was required to be signed by all the signatories to the CMA and the original (not in counterpart) be returned to the bank.



17. On the same day, Madgwicks received a response from MinterEllison stating that Westpac was concerned about property and assets over which it asserts a proprietary claim being eroded and demanded that Mr Tesoriero demonstrate to them that he did not have access to his own and other funds. Now produced and shown to me at page 17 of SN-5 is a true copy of the email sent by MinterEllison to Madgwicks dated 30 May 2022.
18. On 2 June 2022, Madgwicks received further correspondence from MinterEllison agreeing that a variation of the freezing orders was required. However, the letter stated that to the extent that Westpac claimed a proprietary interest over the funds, Westpac would oppose those funds being used for payment of legal fees. In essence, this equated to a proprietary claim being made over all of the assets available to our client.

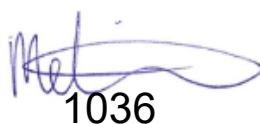
As to the release of the \$270,000 pursuant to the orders of the Court dated 12 November 2021, Westpac did provide its partial consent. I use the term “partial” because in addition to its consent, Westpac unilaterally imposed a further condition to the release of the \$270,000, namely the consent of SMBC Leasing and Finance Inc (**SMBC**). As SMBC was not involved in the creation of the CMA or taken part in the freezing order against Mr Tesoriero I was uncertain as to why SMBC’s consent was required. Now produced and shown to me at pages 18 to 21 of SN-5 is a true copy of the email and attached letter sent by MinterEllison to Madgwicks dated 2 June 2022.

19. On 14 June 2022, Madgwicks sent MinterEllison a copy of the document they were requested to sign in order to have the funds released from the CMA. Further, Madgwicks requested that MinterEllison sign and return the document to it immediately via express post. Later that same day, Madgwicks received an email from MinterEllison reasserting that SMBC’s consent was required before they would sign any document authorising the release of funds from the CMA. Now produced and shown to me at pages 22 to 24 of SN-5 is a true copy of the correspondence between MinterEllison and Madgwicks dated 14 June 2022.
20. On 16 June 2022, Madgwicks wrote to the solicitors for SMBC requesting their consent to the release of the \$270,000 from the CMA without admission that SMBC’s consent was required. MinterEllison was copied into this correspondence. Now produced and shown to me at pages 25 to 28 of SN-5 is a true copy of the email sent to Jones Day dated 16 June 2022.



1035

21. On 22 June 2022, SMBC consented to the release of the \$270,000 for reasonable legal expenses, though SMBC withheld consent for any funds being released to pay Mr Tesoriero's living expenses. I note that Mr Tesoriero, despite the Court's Orders, has also been unable to withdraw any funds from the CMA by virtue of the positions taken by SMBC and Westpac respectively. MinterEllison was copied into this email. Now produced and shown to me at page 29 of SN-5 is a true copy of the email dated 22 June 2022.
22. Later that same day, having obtained the consent of SMBC, Madgwicks wrote to MinterEllison requesting that they urgently sign and deliver the document previously provided on 14 June 2022. Now produced and shown to me at page 30 of SN-5 is a true copy of email to MinterEllison dated 22 June 2022
23. On 24 June 2022, Madgwicks sent MinterEllison a follow-up to the 22 June 2022 email, noting that Madgwicks had received final demands in relation to various disbursements incurred for Mr Tesoriero in connection with the proceedings. Now produced and shown to me at page 31 of SN-5 is a true copy of the email dated 24 June 2022.
24. Later that same day, MinterEllison sent Madgwicks an email stating the letter was in the process of being signed and would be posted later that day. MinterEllison then sent Madgwicks a soft copy of the document. Now produced and shown to me at pages 32 of SN-5 is a true copy of the email to Madgwicks dated 24 June 2022.
25. As of the date of swearing this affidavit, Madgwicks have still not received the original signed document despite making the urgency clear to MinterEllison.
26. On 28 June 2022, at approximately 2:00pm Madgwicks received an email from Jones Day solicitors stating that SMBC "*objects to the release of any funds*" to Mr Tesoriero to the extent that they are subject to a proprietary claim by SMBC. Further the email requested that basis on which Mr Tesoriero asserts his entitlement to access the funds. It is unclear from this email as to whether the previous consent, provided on 22 June 2022 is now being withdrawn by SMBC. Hence out of an abundance of caution I have instructed my accounts department to not deal with the \$270,000 once it is received and receipted by us. Later the same day Madgwicks responded to say we would be filing submissions shortly which provides a response to that query. Now produced and shown to me at pages 33 to 34 of SN-5 are true copies of the email chain between Jones Day and Madgwicks dated 28 June 2022.



1036

### Statutory demand proceedings

27. Further to paragraphs 25-28 of Mr Tesoriero's 17 June 2022 affidavit, on 28 June 2022 the Associate to the Honourable Justice McEvoy informed the parties that the statutory demand proceeding was listed for interlocutory hearing on 7 July 2022.

### Interest of Aksara Holdings Pty Ltd

28. On 3 June 2022, Madgwicks sent a letter to Dentons, the solicitors for National Australia Bank (**NAB**) who is the mortgagee in possession of 5 Bulkara Street, Wagstaff (**5 Bulkara St**), and copied in the interested parties. In this letter, Madgwicks requested the details concerning the sale of 5 Bulkara St and informed Dentons that Aksara Holdings Pty Ltd (**Aksara**) holds an equitable mortgage over 5 Bulkara St. Now produced and shown to me at pages 35 to 36 of SN-5 is a true copy of the letter sent to Dentons dated 3 June 2022.
29. On 8 June 2022, Madgwicks received a letter from MinterEllison claiming the Westpac claim to the proceeds from the sale of 5 Bulkara St took priority over Aksara's equitable mortgage. Westpac did not however dispute Aksara's interest. Later the same day, Madgwicks received an email from Dentons stating that NAB did not propose to provide any details of the prospective sale, and absent an agreement between all claimants to any surplus, they would pay the surplus into Court. Now produced and shown to me at pages 37 to 39 of SN-5 are true copies of the correspondence received from MinterEllison and Dentons dated 8 June 2022.
30. On 20 June 2022, Madgwicks received an email from Dentons stating that NAB had exchanged contracts for the sale of 5 Bulkara St. The correspondence noted that they were not aware of any interest being claimed by Mr Tesoriero in the proceeds from the sale of 5 Bulkara St. Now produced and shown to me at pages 40 to 41 of SN-5 is a true copy of the email dated 20 June 2022.
31. On 27 June 2022, Madgwicks wrote to Dentons setting out Mr Tesoriero and his associated entities' interest in 5 Bulkara Street. Now produced and shown to me at page 42 of SN-5 is a true copy of the email to Dentons dated 27 June 2022.
32. To date, NAB maintains its refusal to provide Mr Tesoriero with any documents pertaining to the sale of 5 Bulkara St.



33. Likewise, to date the liquidators for 14 James Street Pty Ltd (in liquidation) have refused to provide Mr Tesoriero with any documents pertaining to the sale of 14A James Street Clayton South Vic.

**The contents of this my affidavit are true and correct and I make it known that a person making a false affidavit may be prosecuted for the offence of perjury.**



Sworn by Sarwar (Sazz) Nasimi )

at Melbourne on 28 June 2022 )

Before me:



**MELISSA PASSARELLI**  
Level 6, 140 William Street Melbourne VIC 3000  
Australian Legal Practitioner within the meaning  
of the Legal Profession Uniform Law (Victoria)

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio-visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW).
2. I observed the deponent signing a copy of this affidavit in real-time.
3. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
4. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
5. I have known the person for at least 12 months.

# Schedule of Parties

No. NSD616 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

## Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141

Second Applicant Westpac New Zealand Limited (company registration number company number 1763882)

## Respondents

First Respondent Forum Finance Pty Limited (in liquidation) ACN 153 301 172

Second Respondent: Basile Papadimitriou

Third Respondent Vincenzo Frank Tesoriero

Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705

Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997

Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840

Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364

Eighth Respondent 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662

Ninth Respondent 14 James Street Pty Ltd (in liquidation) ACN 638 449 206

Tenth Respondent 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129

Eleventh Respondent 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160

Twelfth Respondent 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473

Thirteenth Respondent 23 Margaret Street Pty Ltd ACN 623 715 373

Fourteenth Respondent 1160 Glen Huntly Road Pty Ltd ACN 639 447 984

Fifteenth Respondent 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093

Sixteenth Respondent Canner Investments Pty Ltd ACN 624 176 049

Seventeenth Respondent 123 High Street Taradale Pty Ltd ACN 639 872 512

Eighteenth Respondent 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921

Nineteenth Respondent 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887

Twentieth Respondent 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352

Twenty-First Respondent 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912

Twenty-Second Respondent 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179

Twenty-Third Respondent 9 Gregory Street Ouyen Pty Ltd ACN 641 392 707

Twenty-Fourth Respondent 9 Main Street Derrinalum Pty Ltd ACN 639 872 736

Twenty-Fifth Respondent 286 Carlisle Street Pty Limited ACN 610 042 343

Twenty-Sixth Respondent 275 High Street Golden Square Pty Ltd ACN 639 870 545

Twenty-Seventh Respondent Mazcon Investments Hellas IKE

Twenty-Eighth Respondent Palante Pty Ltd ACN 135 344 151

Twenty-Ninth Respondent Anastasios Giamouridis

Thirtieth Respondent The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964  
626

Thirty-First Respondent Iugis Pty Ltd (in liquidation) ACN 632 882 243

Thirty-Second Respondent Iugis (UK) Limited

Thirty-Third Respondent Iugis Holdings Limited

Thirty-Fourth Respondent Iugis Global Financial Services Limited

Thirty-Fifth Respondent Iugis Finance Limited

Thirty-Sixth Respondent Spartan Consulting Group Pty Ltd (in liquidation) ACN 168  
989 544 ACN

Thirty-Seventh Respondent Intrashield Pty Ltd (in liquidation) ACN 133 426 534

Thirty-Eighth Respondent Tesoriero Investment Group Pty Ltd ACN 161 088 115

Thirty-Ninth Respondent Mangusta (Vic) Pty Ltd ACN 631 520 682

Fortieth Respondent 193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237

Forty-First Respondent 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626

Forty-Second Respondent Iugis Hellas IKE

Forty-Third Respondent Iugis Energy SA

Forty-Fourth Respondent Eric Constantinidis

Forty-Fifth Respondent Giovanni (John) Tesoriero

Forty-Sixth Respondent Moussa (Tony) Bouchahine

Forty-Seventh Respondent Louisa Maria Agostino

Forty-Eighth Respondent D&D Group O.E

Forty-Ninth Respondent Aromatika Fyta Tsai Olympou Theion Ike



# Exhibit certificate

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 616 of 2021

**Westpac Banking Corporations ABN 33 007 457 141**

Applicant

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others according to the  
Schedule

Respondents

This is the exhibit marked “**SN-5**” now produced and shown to Sazz (Sarwar) Nasimi at the time of swearing his affidavit on 28 June 2022 before me:



Solicitor

<p><b>MELISSA PASSARELLI</b> Level 6, 140 William Street Melbourne VIC 3000 Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria)</p>
---

## Candy Nelson

---

**From:** Melissa Passarelli  
**Sent:** Wednesday, 9 March 2022 6:18 PM  
**To:** Caitlin Murray; Andrew Clarke  
**Cc:** Sazz Nasimi; Alexandra Lawrence; Candy Nelson; Mackenzie Preston; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn  
**Subject:** Controlled Monies Accounts [MADG-CURRENT\_MATTERS.18091.047678]  
**Attachments:** Westpac Bank Form.pdf

Dear All

We refer to the orders dated 9 February 2022 stating that the proceeds from the sale of 23 Margaret Street are to be paid into a controlled trust account operated by our respective clients. We confirm that, with your consent, the proceeds are presently sitting as protected funds in the Madgwicks Trust Account pending the establishment of a controlled monies account.

After extensive discussion with Westpac Banking Corporation (in their capacity as the bankers for the Madgwicks Trust Account), we have been provided with the **attached** Notice of Authority in order to set up a controlled monies account. This account will only be able to be controlled with the consent of **all** of the signatories listed on pages 2 and 3. We propose that two partners from each of our respective offices complete this form in order to control the account. We have taken the liberty of having the form signed by two of our partner already.

Unfortunately, Westpac does not accept electronically signed documents or documents in counterpart. As such, we intend to deliver the hard copy of the **attached** document to your office to arrange signing. Could you please confirm if this should be delivered to your Melbourne or Sydney office.

We note that all of the signatories will need to be verified by Westpac. If the signing partners from your office do not have verification set up with Westpac already they may attend to this at any Westpac branch.

Once the form is signed and identities verified please arrange for the original copy to be returned to our office and we will finalise the setting up of the controlled monies account.

Please do not hesitate to contact us if you have any queries.

Regards

**Melissa Passarelli**  
Associate

**MADGWICKS**  
**LAWYERS**

[Visit our COVID-19 Resources Hub for practical information to assist you through this time](#)

T: +61 3 9242 4780 E: [Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)

Level 6, 140 William Street, Melbourne VIC 3000  
[www.madgwicks.com.au](http://www.madgwicks.com.au)

 MERITAS® LAW FIRMS WORLDWIDE

This email and attachments may be confidential and subject to legal professional privilege. If you are not the intended recipient please inform the sender immediately and delete the email. Madgwicks manages personal information in accordance with Australian privacy laws. Our privacy policy can be viewed at <https://www.madgwicks.com.au/privacy-policy/>

Liability limited by a scheme approved under Professional Standards Legislation.

**Security Warning: We take cyber security risks seriously. Please confirm any bank transfer details by phone directly before making a payment.**

## Notice of Authority - New/Replacement

- Complete in black or blue pen

Use this form to:

Establish new signatories to <b>all</b> accounts	Complete Sections A, B, D, E, G or H Read Section F
--	--

OR

Establish new signatories to <b>one or more</b> accounts	Complete Sections A, B, D, E, G or H Read Section F
--	--

OR

Establish the same signatories from an <b>existing</b> account to <b>one or more new</b> accounts	Complete Sections A, C, G or H Read Section F
---	--

**NOTE: THE PERSONS AUTHORISED ON THIS FORM WILL REPLACE ANY EXISTING PERSONS AUTHORISED ON THE ACCOUNT(S) LISTED BELOW**

### Section A: Account holder name (s)

Account holder name (provide the full names of the individuals, trustees, business proprietors or organisations (company, society, club or association) and ABN, ACN, ARSN or ARBN (if applicable))

Full name

MADGWICKS

Trading Name OR Account Designator (if applicable)

and MinterEllison ATF Vincenzo Tesoriero CMA

- If more space is required, complete another Notice of Authority and write 'This is Annexure A to Notice of Authority dated ...../...../.....' at the top of **that** authority.
- At the top of **this** authority write 'See Annexure A dated ...../...../.....'

### Section B: Select account(s)

- Add the authorised person(s) as signatory(ies) to the account(s) listed below

BSB number      Account number

033003

667565

– OR –

### Section C: Copy existing account

For new account(s) below, apply the same list of authorised person(s) and the operating rule that applies on the existing account at the time this request is actioned by the Bank.

#### Existing Account

BSB number      Account number

--	--

#### New Account(s)

BSB number      Account number


BSB number      Account number


**NOTE: The existing account authority will be applied at a point in time. To change the authority for the new account(s) above, the relevant authority form will need to be received by the Bank.**

**IF SECTION C IS COMPLETED, THEN GO TO ►► SECTION G OR H**

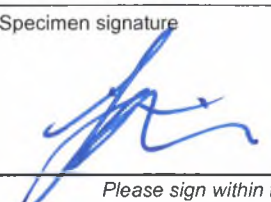
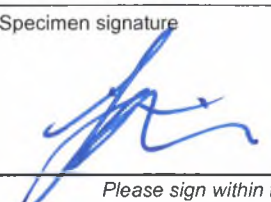
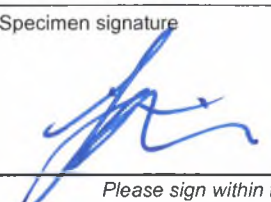
**Section D: Add authorised person(s) details and signature(s)**




**BEFORE COMPLETING READ THE PRIVACY STATEMENT**

**Details of Authorised Person(s)**

Provide the details of each authorised person to operate and sign on behalf of the Account holder in accordance with the Operating Rule in Section E and Authorisation in Section F:

- Full name
- 8 digit customer number
- Residential address
- For organisational customers, the office held of that person (eg Director, Company Secretary or Treasurer)
- Any other name by which that person is commonly known
- Specimen signature

<b>Given name</b> SARWAR (SAR)	<b>Middle name (if applicable)</b>	<b>Surname</b> NASIMI		
<b>Residential address</b> 6/140 William Street Melbourne Vic 3000		<table border="1"> <tr> <td>8 digit customer no.</td> </tr> <tr> <td>Specimen signature </td> </tr> </table> <p>Please sign within the box</p>	8 digit customer no.	Specimen signature 
8 digit customer no.				
Specimen signature 				
<b>Office held (if applicable)</b>	Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)			
<b>IDV No. (Bank Use)</b>				

<b>Given name</b> MARIQ	<b>Middle name (if applicable)</b> LUIA	<b>Surname</b> G012099		
<b>Residential address</b> 6/140 William Street Melbourne Vic 3000		<table border="1"> <tr> <td>8 digit customer no.</td> </tr> <tr> <td>Specimen signature </td> </tr> </table> <p>Please sign within the box</p>	8 digit customer no.	Specimen signature 
8 digit customer no.				
Specimen signature 				
<b>Office held (if applicable)</b>	Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)			
<b>IDV No. (Bank Use)</b>				

<b>Given name</b>	<b>Middle name (if applicable)</b>	<b>Surname</b>		
<b>Residential address</b>		<table border="1"> <tr> <td>8 digit customer no.</td> </tr> <tr> <td>Specimen signature</td> </tr> </table> <p>Please sign within the box</p>	8 digit customer no.	Specimen signature
8 digit customer no.				
Specimen signature				
<b>Office held (if applicable)</b>	Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)			
<b>IDV No. (Bank Use)</b>				

- If additional persons are authorised, complete another Notice of Authority and write 'This is Annexure A to Notice of Authority dated .../.../... ' at the **top** of that authority.
- At the top of **this** authority write 'See Annexure A dated .../.../... '.



**Section D: Add authorised person(s) details and signature(s)**

**BEFORE COMPLETING READ THE PRIVACY STATEMENT**

**Details of Authorised Person(s)**

Provide the details of each authorised person to operate and sign on behalf of the Account holder in accordance with the Operating Rule in Section E and Authorisation in Section F:

- Full name
- 8 digit customer number
- Residential address
- For organisational customers, the office held of that person (eg Director, Company Secretary or Treasurer)
- Any other name by which that person is commonly known
- Specimen signature

<b>Given name</b>		<b>Middle name (if applicable)</b>	<b>Surname</b>		
<b>Residential address</b>		<table border="1"> <tr> <td>8 digit customer no.</td> </tr> <tr> <td>Specimen signature</td> </tr> </table>		8 digit customer no.	Specimen signature
8 digit customer no.					
Specimen signature					
<b>Office held (if applicable)</b>	Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)				
<b>IDV No. (Bank Use)</b>					

*Please sign within the box*

<b>Given name</b>		<b>Middle name (if applicable)</b>	<b>Surname</b>		
<b>Residential address</b>		<table border="1"> <tr> <td>8 digit customer no.</td> </tr> <tr> <td>Specimen signature</td> </tr> </table>		8 digit customer no.	Specimen signature
8 digit customer no.					
Specimen signature					
<b>Office held (if applicable)</b>	Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)				
<b>IDV No. (Bank Use)</b>					

*Please sign within the box*

<b>Given name</b>		<b>Middle name (if applicable)</b>	<b>Surname</b>		
<b>Residential address</b>		<table border="1"> <tr> <td>8 digit customer no.</td> </tr> <tr> <td>Specimen signature</td> </tr> </table>		8 digit customer no.	Specimen signature
8 digit customer no.					
Specimen signature					
<b>Office held (if applicable)</b>	Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)				
<b>IDV No. (Bank Use)</b>					

*Please sign within the box*

- If additional persons are authorised, complete another Notice of Authority and write 'This is Annexure A to Notice of Authority dated ..../..../....' at the **top** of that authority.
- At the top of **this** authority write 'See Annexure A dated ..../..../....'

## Section E: Number of person(s) authorised

### Select (✓) one option

Apply the Operating Rule for the authorised persons in Section D

If more than one person has been authorised, they will act in the following manner

- Any authorised person can operate and sign independently
- All authorised persons must operate and sign together
- At least  authorised persons are required to operate and sign jointly
- Other (eg 'any two directors', or 'a director and company secretary') provide details below

## Section F: Authorisation to the Bank

Authorised persons may operate on the Account holder's account(s) on their behalf as follows, subject to the relevant operating rule and the terms and conditions of the relevant account:

1. To draw cheques and other instruments.
2. To stop any cheque or other instrument drawn on the account(s).
3. To overdraw an account to any approved limit, and to the extent permitted by the Bank.
4. To authorise periodical payments or direct debits and debit that account with any charges or costs relating to such payments.
5. To operate and enter into agreements to operate on the account(s) in any way permitted by the Bank including transactions by electronic, mechanical and other means including methods of access which may be introduced in the future.
6. When an account is a Westpac Term Deposit or Farm Management Deposit account or Westpac Notice Saver Account:
  - fund an existing account;
  - receive payment of deposit moneys and interest;
  - give instructions on the payment (whether at maturity or otherwise) or renewal of that deposit.
  - Issue and cancel notices of withdrawal and issue reinvestment instructions in respect of funds in a Westpac Notice Saver Account.
7. To transfer accounts between branches (this may not be allowed for accounts held in Victoria).
8. To close all or any of the accounts.
9. To make, accept, endorse or discount cheques and other instruments made payable to, or to the order of, the Account holder or, where the Account holder is a trustee, to the estate or trust.
10. To make enquiries, to give instructions and generally to request and receive information in relation to the accounts.

Authorised persons may also act on the Account holder's behalf as follows:

1. In relation to property held by the Bank on the Account holder's behalf (including any property held in joint names or on behalf of the organisation):
  - to have access to, and receive from the Bank such property; and
  - to give the Bank instructions regarding such property
2. To arrange the issue and negotiation of letters of credit.
3. To give or sign any documents given by the Bank, including guarantees and indemnities relating to:
  - missing documents;
  - guarantees or undertakings given or to be given by the Bank in the Account holder's favour or on the Account holder's behalf at their request;
  - letters of credit issued or to be issued by the Bank on the Account holder's behalf or at their request, or in favour of any of their officers or agents.
4. To pledge, assign, give security over or make arrangements with the Bank regarding the Account holder's property and to receive any such property from the Bank.

## PRIVACY STATEMENT

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### Personal information

We collect personal information from you to process your application, provide you with your product or service, and manage your product or service. We may also use your information to comply with legislative or regulatory requirements in any jurisdiction, prevent fraud, crime or other activity that may cause harm in relation to our products or services and help us run our business. We may also use your information to tell you about products or services we think may interest you.

If you do not provide all the information we request, we may need to reject your application or we may no longer be able to provide a product or service to you.

We may disclose your personal information to other members of the Westpac Group, anyone we engage to do something on our behalf, rewards program administrators and other organisations that assist us with our business.

We may disclose your personal information to an entity which is located outside Australia. Details of the countries where the overseas recipients are likely to be located are in our privacy policy.

As a provider of financial services, we have obligations to disclose some personal information to government agencies and regulators in Australia, and in some cases offshore. We are not able to ensure that foreign government agencies or regulators will comply with Australian privacy laws, although they may have their own privacy laws. By using our products or services, you consent to these disclosures.

We are required or authorised to collect personal information from you by certain laws. Details of these laws are in our privacy policy.

Our privacy policy is available at [westpac.com.au](https://www.westpac.com.au) or by calling 132 032. It covers:

- how you can access the personal information we hold about you and ask for it to be corrected;
- how you may complain about a breach of the Australian Privacy Principles or a registered privacy code and how we will deal with your complaint;
- how we collect, hold, use and disclose your personal information in more detail.

We will update our privacy policy from time to time.

### For our customers located in the European Union

The General Data Protection Regulation (**GDPR**) regulates the collection, use, disclosure or other processing of personal data under European Union (**EU**) law. Personal data means any information relating to you from which you are either identified or may be identifiable. Our collection, use, disclosure and other processing of your personal data may also be regulated by the GDPR.

Please refer to our EU Data Protection Policy on our website at <https://www.westpac.com.au/privacy/eu-data-protection-policy/> for information about how we manage your personal data under the GDPR. The EU Data Protection Policy also forms part of this Privacy Statement.

We will use your personal information to contact you or send you information about other products and services offered by the Westpac Group or its preferred suppliers. Please call us on 132 032 or visit any of our branches if you do not wish to receive marketing communications from us.

### OTHER ACKNOWLEDGMENTS AND CONSENTS

- We may confirm the details of the information provided in this application which includes contacting your employer to confirm salary, address or other personal details.
- Where you have provided information about another individual, you must make them aware of that fact and the contents of the Privacy Statement.
- This application form is not an offer or acceptance of credit.

### DEFINITIONS

"We", "our", "us" means Westpac Banking Corporation ABN 33 007 457 141. "Westpac Group" means Westpac Banking Corporation and its related bodies corporate.

## Authority Agreement

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This authority continues to apply to the accounts listed in Section B or Section C (as applicable) and the authorised persons until the Bank receives written notice in a form satisfactory to the Bank from me, or any one or more of us, or the organisation ("the Account holder") that it has been cancelled or amended.

This authority cancels any previous authority the Account holder has given to the Bank regarding the persons authorised to act except in relation to:

- instruments dated before the date of this authority and presented for payment after you receive this authority, and
- any act done under the previous authority.

### Joint Accounts

- Each Account holder acknowledges if any one or more of us dies,
  - any credit balance in any account held in our joint names will be payable to the surviving Account holder(s);
  - any property held by the Bank on our joint behalf will be deliverable to the survivor(s), and the Bank shall be free from all responsibility in paying or delivering any money or property to the survivor(s).
- Our liability is joint and several if any of our accounts is or becomes overdrawn.
- The Bank may accept for the credit of any of our accounts any instruments payable to any one or more of us.

### Business Accounts

- There is no other person or organisation interested as proprietor of the business. I/We will write to the Bank immediately if there is a change of ownership of the business.
- If there is more than one proprietor of the business:
  - our liability is joint and several if any of our accounts is or becomes overdrawn; and
  - the Bank may credit any of our accounts with any instruments payable to any one or more of us.

### Organisational Accounts

- For any type of organisation other than a company – we have given the Bank an up-to-date copy of the rules, by-laws, constitution or other document (if any) constituting the body named on this authority and authorising the signatory(ies) to act.
- For a company – on request from the Bank, we have provided an up-to-date copy of the certificate of registration (if any) or any other document requested to verify the company's registration.

### Interpretation

In this authority:

- account includes a deposit account.
- except in the Privacy Statement, I, me, my, we, our and similar words refer to the organisation, persons or proprietors of the business named above as the Account holder.
- 'instruments' means cheques, drafts, bills of exchange, promissory notes and other instruments.
- 'joint account' means an account held by two or more natural persons but does not include an account held by the trustees of a trust or the proprietor(s) of a business.
- 'letters of credit' includes documentary letters of credit and stand-by letters of credit.
- 'organisation' refers to the company, society, club, institution or other association named above as the Account holder.
- 'property' includes packets, boxes, deeds, securities, bills of exchange, promissory notes, drafts, bills of lading, warehouse certificates, insurance policies, insurance bonds, deferred annuity policies, and any other documents or property of any kind.
- 'trustee account' means an account in the name of the trustees of a trust or the executors or administrators of a deceased estate.



AUTHORISED BY: COMPLETE SECTION G OR H (COMPLETE ONE SECTION ONLY, WHICHEVER IS APPLICABLE)

**Section G**

Complete this section if the authority is for an **organisation**.

By a legally constituted meeting of the organisation or directors of the company, as the case may be authority was given to the person(s) named to act in accordance with the terms of this authority.

This authority is signed for and on behalf of (*name of organisation*):

by (*signature*)

Full name

Office held (*eg. director*)

Date

and (*signature*)

Full name

Office held (*eg. director*)

Date

—OR—

**Section H**

Complete this section for any **personal, joint, trustee or business** (but not for an organisation) account. All persons named as the 'Account Holder' must sign.

Account Holder 1 - Full name

Signature

Date

Account Holder 2 - Full name

Signature

Date

Account Holder 3 - Full name

Signature

Date

Account Holder 4 - Full name

Signature

Date

**Bank Use Only**

Ensure that:

- Section G or H has been completed above
- ALL authorised persons have a valid IDV number. If there is no number held, perform the identification as detailed in the CAM, Chapter: Anti-Money Laundering
- The operating rule in Section E has been selected (*if applicable*)
- Date signatures scanned in SOL / /

Accepted by:

Full name

Salary no.

Date

## Candy Nelson

---

**From:** Caitlin Murray <Caitlin.Murray@minterellison.com>  
**Sent:** Monday, 14 March 2022 9:52 AM  
**To:** Melissa Passarelli; Andrew Clarke  
**Cc:** Sazz Nasimi; Alexandra Lawrence; Candy Nelson; Mackenzie Preston; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn; Caitlin Murray  
**Subject:** RE: Controlled Monies Accounts [MADG-CURRENT\_MATTERS.18091.047678]

Dear Melissa

Please arrange for the forms to me sent to me in our Sydney office and we will arrange for two partners to be the signatories.

Kind regards  
Caitlin

---

### Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com [Follow us on LinkedIn and Twitter](#)



## Candy Nelson

---

**From:** Andrew Clarke <Andrew.Clarke@minterellison.com>  
**Sent:** Wednesday, 23 March 2022 4:51 PM  
**To:** Melissa Passarelli  
**Cc:** Caitlin Murray; Sazz Nasimi; Alexandra Lawrence; Candy Nelson; Mackenzie Preston; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn  
**Subject:** RE: Controlled Monies Accounts [MADG-CURRENT\_MATTERS.18091.047678] [ME-ME.FID6264995]  
**Attachments:** Notice of Authority.PDF

Dear Ms Passarelli

We confirm receipt of the Notice of Authority with respect to the controlled monies account signed by two partners of your firm and **attach** a scanned copy of the form also signed by two partners of our firm.

We will send the original to your office marked to your attention by express post.

Regards  
Andrew

---

**Andrew Clarke**  
Associate  
T +61 2 9921 8514 M + 61 475 670 974  
andrew.clarke@minterellison.com  
**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000  
minterellison.com [Follow us on LinkedIn and Twitter](#)



## Candy Nelson

---

**From:** Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>  
**Sent:** Tuesday, 5 April 2022 3:34 PM  
**To:** Andrew Clarke  
**Cc:** Sazz Nasimi; Alexandra Lawrence; Caitlin Murray; Candy Nelson; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn  
**Subject:** FW: Controlled Monies Accounts [ME-ME.FID6264995] [MADG-CURRENT\_MATTERS.18091.047678]  
**Attachments:** Notice of Authority.PDF

Dear Mr Clarke

We have now received the original form and provided it to Westpac.

We are informed by Westpac that they require the 8 digit customer numbers of the signatories from your firm in order to assist in the relevant identification process. If the signatories do not have a CRN then Westpac requires their residential address.

Could you please provide this information by return email.

Regards

**Melissa Passarelli**  
Associate

MADGWICKS  
LAWYERS

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T: +61 3 9242 4780 E: [Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)

Level 6, 140 William Street, Melbourne VIC 3000  
[www.madgwicks.com.au](http://www.madgwicks.com.au)



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## Candy Nelson

---

**From:** Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>  
**Sent:** Wednesday, 20 April 2022 5:15 PM  
**To:** Andrew Clarke  
**Cc:** Sazz Nasimi; Alexandra Lawrence; Candy Nelson; Caitlin Murray; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn  
**Subject:** RE: Controlled Monies Accounts [ME-ME.FID6264995] [MADG-CURRENT\_MATTERS.18091.047678]

Dear Mr Clarke

We refer to our below email and not we have not received a response.

We request that you please provide the details requested as a matter of *urgency*.

Regards

**Melissa Passarelli**  
Associate

MADGWICKS  
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T: +61 3 9242 4780 E: [Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)

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## Candy Nelson

---

**From:** Caitlin Murray <Caitlin.Murray@minterellison.com>  
**Sent:** Thursday, 21 April 2022 4:56 PM  
**To:** Melissa Passarelli; Andrew Clarke  
**Cc:** Sazz Nasimi; Alexandra Lawrence; Candy Nelson; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn; Caitlin Murray  
**Subject:** RE: Controlled Monies Accounts [ME-ME.FID6264995] [MADG-CURRENT\_MATTERS.18091.047678]

Melissa

The MinterEllison partner verification process has been completed directly with Westpac and your firm's relationship partner.

In those circumstances, we are advised that there is no requirement for CRNs or residential addresses to be provided and that the words "Provided to banker" should be inserted in the 8 digit customer number field for each of Michael and James.

Please let me know if there is any issue regarding this.

Regards  
Caitlin

---

**Caitlin Murray**

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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## Candy Nelson

---

**From:** Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>  
**Sent:** Monday, 30 May 2022 10:38 AM  
**To:** Caitlin Murray; Melissa Passarelli; Andrew Clarke  
**Cc:** Sazz Nasimi; Candy Nelson; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn  
**Subject:** RE: Controlled Monies Accounts and Legal Fees [ME-ME.FID6264995] [MADG-CURRENT\_MATTERS.18091.047678]  
**Attachments:** Transaction Listing 667565.pdf

Dear Ms Murray,

We understand that on Friday our clients' respective counsel discussed the release of frozen funds for Mr Tesoriero's legal expenses.

Mr Tesoriero's actual and anticipated legal fees as discussed between counsel are outlined below:

### Legal costs

To end of March (actual):	\$476k
April (actual):	\$70k
<b>Total to date:</b>	<b>\$546k</b>
Reply, discovery, lay evidence (estimate):	\$467k
Experts (estimate):	\$370k
Trial prep (estimate—2 weeks, 2 counsel + solicitors):	\$155k
Trial (estimate—3 x 6 day weeks, 2 counsel + solicitors):	\$383k
<b>Total future:</b>	<b>\$1.32m</b>

We also confirm that, to date, only \$180k has been paid towards Mr Tesoriero's legal expenses.

Could you please confirm by no later than **4:00pm Tuesday 31 May 2022** that your client now agrees to:

- (a) the immediate release of \$270k from the controlled monies account (being the amount remaining in the existing cap);
- (b) a revised cap of \$1.86m in the freezing orders; and
- (c) a further release to cover the shortfall in actual costs once the cap is increased.

We would also like to reach an agreement on the process for the release of legal funds going forward.

We note for completeness that:

- the above figures do not include any allowance for Fortis Law's fees, which are the subject of an ongoing taxation. Once the amount of those fees is confirmed, we propose that the cap be increased, and funds be released, accordingly; and

- Mr Tesoriero intends to cover legal fees for related matters, such as resisting the winding up of his related entities and the management of the Fortis taxation process, from funds released in accordance with the freezing orders.

In the absence of agreement, we are instructed to make an application to the Court seeking:

- (a) a revised cap for legal fees under the freezing orders; and
- (b) the immediate release of funds to cover the actual costs to date,

and will rely on this correspondence on the question of costs.

In the meantime, please see **attached** the transaction listing showing that the proceeds from the sale of 23 Margaret Street have been paid into the controlled monies account.

Mr Tesoriero otherwise reserve all rights in this matter.

Please don't hesitate to contact us with any queries.

Kind regards,

**Alexandra Lawrence**

Lawyer

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T: +61 3 9242 4720 E: [Alexandra.Lawrence@madgwicks.com.au](mailto:Alexandra.Lawrence@madgwicks.com.au)

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Westpac Banking Corporation  
ABN 33 007 457 141

Printed:17/05/2022 09:47:56 EST

## BUSINESS ONE FLEXI 033003 667565

Branch Name: 520 COLLINS STREET  
Current Balance: \$ 1,340,866.65  
Available Funds: \$ 1,340,866.65

### Transactions

---

Date	Description	Withdrawals	Deposits	Running Balance
16/05/2022	DEPOSIT 3022104 COURT ORDER FUNDS		\$ 1,340,866.65	\$ 1,340,866.65

#### Things you should know

1. Running balance means the balance of a customer's account, based on the deposits and withdrawals we've recorded on the account at a particular point in time.
2. This page is current as at 17/05/2022 09:55:43 AEST. This is not an official statement and is subject to change.

## Candy Nelson

---

**From:** Michael Hughes <Michael.Hughes@minterellison.com>  
**Sent:** Monday, 30 May 2022 4:43 PM  
**To:** Alexandra Lawrence  
**Cc:** Sazz Nasimi; Candy Nelson; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn; Caitlin Murray; Melissa Passarelli; Andrew Clarke  
**Subject:** RE: Controlled Monies Accounts and Legal Fees [MADG-CURRENT\_MATTERS.18091.047678] [ME-ME.FID6264995]

Dear Ms Lawrence

We refer to the below email, and the discussion which we understand took place between counsel on Friday 27 May 2022.

We will provide you a response once our client has the benefit of our advice and they have given their instructions as soon as possible, but it will not be before the self-imposed deadline of 4 pm tomorrow, 31 May, noting especially the lengthy period in which you have had the opportunity to put forward your proposals.

At an initial level, there are obvious gaps in the information you have provided as to which we will write to you, separately.

Further our client which has suffered very substantial losses and is obviously concerned that property and assets over which it asserts proprietary claims should not be eroded, in the expenditure of legal costs, when your client has failed to demonstrate that he does not have access to his own and other funds from which they can be paid, all of which will need to be taken into account.

Best regards  
Michael

---

### Michael Hughes

Partner

T +61 2 9921 4647 M +61 411 263 387

michael.hughes@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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## Candy Nelson

---

**From:** Kate Cockburn <Kate.Cockburn@minterellison.com>  
**Sent:** Thursday, 2 June 2022 12:04 PM  
**To:** Alexandra Lawrence; Sazz Nasimi; Melissa Passarelli  
**Cc:** Caitlin Murray; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham  
**Subject:** RE: Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT\_MATTERS.18091.047678] [ME-ME.FID6264995]  
**Attachments:** L - Madgwicks 01.06.22.PDF

Dear Ms Lawrence

Please find attached our letter of today's date.

Kind regards

Kate

---

**Kate Cockburn**

Lawyer

T +61 2 9921 4304 M +61 421 169 706

kate.cockburn@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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2 June 2022

**BY EMAIL:** [Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)

Sazz Nasimi  
Partner  
Madgwicks Lawyers  
Level 6, 140 William Street  
Melbourne VIC 3000

Dear Mr Nasimi

**Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors  
Federal Court of Australia proceeding number NSD616/2021 (Proceedings)**

We refer to:

1. the email from Alexandra Lawrence in which your client seeks our clients' consent to:
  - (a) the immediate release of \$270k from the controlled monies account (being the amount remaining in the existing cap);
  - (b) a revised cap of \$1.86m in the freezing orders; and
  - (c) a further release from the controlled monies account to cover the shortfall in actual costs once the cap is increased; and
2. our email to you of 30 May 2022.

The freezing order made against Mr Tesoriero on 2 July 2021 (**Freezing Order**), as varied, including by order made on 12 November 2021, provides that your client is not prohibited from paying up to the sum of \$450,000 until 10 March 2022 for reasonable legal fees. We understand from your email that Mr Tesoriero has incurred the sum of \$546,000 in legal fees to date, which amount does not include any legal fees which Mr Tesoriero may be liable to pay his former firm, Fortis Law. We also understand that Mr Tesoriero has paid the sum of \$180,000 towards legal expenses incurred to date and has not paid amounts that may be owing to Fortis Law.

At the outset, we accept that a variation of the Freezing Orders will be required to address further legal expenses and note that whilst our clients are prepared to be reasonable in respect of Mr Tesoriero's request and to take a pragmatic approach to any proposed variation, they have suffered very substantial losses and, in those circumstances, are concerned that property and assets over which they assert proprietary claims should not be eroded in the expenditure of legal costs. To the extent that a proprietary interest is claimed over funds, our clients will oppose those funds being used for the payment of legal expenses. This is particularly so where Mr Tesoriero has failed to demonstrate that he does not have access to his own and other funds from which his legal expenses can be paid.

That said, we are instructed that our clients consent to the release of the sum of \$270,000 from the proceeds of the sale of property at 23 Margaret Street, Rozelle being the funds held in the controlled account with account number 033003 667565 (**CMA**) for the purpose of being applied to Mr Tesoriero's reasonable legal expenses, provided this is also consented to by SMBC who we understand also maintains a proprietary claim in connection with these monies, as outlined below. The release of this sum will not erode any funds over which our clients have a proprietary claim. For the avoidance of any doubt, payment of this amount by Mr Tesoriero will exhaust the current limit of legal fees under the Freezing Orders as varied by order made on 12 November 2021.

As to the balance of Mr Tesoriero's request, we make the following comments.

1. As to the estimate of legal fees provided, we note the following matters:
  - (a) no breakdown in relation to the funds incurred to date has been provided, including whether those fees relate to applications made in connection with sale of the Bulkara properties and the Mangusta "XOXO" or legal fees incurred in preparing the defence filed by other respondents in the proceeding for which your firm acts. Please provide us with a detailed breakdown in relation to the costs incurred to date, including as to whether they relate to costs incurred in the defence of these proceedings, the nature of the task (for example, preparing defences) and on behalf of which respondent they were incurred;
  - (b) without being provided with the basis upon which the estimate for future legal expenses has been calculated, our clients cannot properly consider whether they are prepared to consent to an increase in the cap in the quantum you have proposed. Please provide us with a detailed breakdown as to how the costs have been calculated for our clients' consideration;
  - (c) we do not see that there is any cause for expert evidence in this matter. To the extent that you consider that there will be such a need, then please let us know to what issue in the proceedings that expert evidence is anticipated to relate; and
  - (d) your estimate is on the basis that both counsel and solicitors will be working 6 days a week full time during the course of the hearing, a position we consider unlikely particularly given that part of our clients' case concerns other respondents whose interests entirely diverge from that of Mr Tesoriero. We invite you to revisit the quantum sought in connection with the costs of the hearing.
2. Mr Tesoriero has not provided any evidence that he does not have access to other funds from which to meet his legal expenses. In this regard, we note that in Mr Tesoriero's affidavit of 21 July 2021 (**July Affidavit**), he made reference to 16 bank accounts which he had "control over": see paragraph [4] and Annexure B, including accounts with "ANZ", "NAB" and "CBA". In his affidavit of 19 October 2021 (**October Affidavit**), he deposed (in paragraph 4) that he has "*visibility on 16 accounts which were for various business matters, though I believe that I may have up to 30 accounts with NAB*". At the time of swearing that affidavit in October, he said that there was \$255,055.06 in various accounts, and listed 18 accounts held with NAB and their account balances. That list included accounts not referred to in the July Affidavit. No information was set out in the October Affidavit as to the status of the accounts held with CBA or ANZ referred to in the July Affidavit.
3. Despite multiple requests, your client has not provided any additional information as to the other accounts nor has he otherwise established that there are insufficient funds within those accounts from which he can meet his ongoing obligations. Further, no explanation has been provided as to the \$255,055 in funds disclosed in the October Affidavit. If your client were to bring an application to the Court seeking the variations referred to in your email, he would necessarily need to satisfy the Court that he does not have access to any alternate sources of funds from which his legal expenses could be satisfied.
4. In those circumstances, to enable us to obtain instructions as to your request, please provide us:
  - (a) an updated statement of assets and liabilities for Mr Tesoriero and those entities controlled by him;
  - (b) statements of account for all relevant bank accounts including those in Mr Tesoriero's name and those that he controls (being at least those accounts identified in the July and October Affidavits). We presume that Mr Tesoriero will be able to liaise with the relevant bank to obtain a copy of the most recent statement for each account to the extent that he does not have a copy himself;
  - (c) confirmation as to whether it is proposed that the exception for legal fees will also relate to legal fees incurred and to be incurred by other respondents for which your firm acts in defence of the proceedings;
  - (d) confirmation as to what income is received by Mr Tesoriero and the entities he controls.

Finally, we note that to the extent that SMBC asserts that it has a proprietary claim in relation to funds, Mr Tesoriero will need to seek the consent of SMBC for the release of funds and consent on the part of our clients cannot be taken to be consent from SMBC. In this respect we note that SMBC has a claim against 23 Margaret Street Pty Limited and it may be necessary for Mr Tesoriero to seek consent from SMBC for the release of the funds in the CMA.

Once we receive the above information, we will seek our clients' instructions as to the balance of your client's requests.

All of our clients' rights are expressly reserved.

Yours faithfully  
**MinterEllison**



Caitlin Murray  
Partner

Contact: Caitlin Murray T: +61 2 9921 4279  
caitlin.murray@minterellison.com  
Partner: Caitlin Murray T: +61 2 9921 4279  
OUR REF: 1353397

## Candy Nelson

---

**From:** Melissa Passarelli  
**Sent:** Tuesday, 14 June 2022 3:04 PM  
**To:** Kate Cockburn; Caitlin Murray; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham  
**Cc:** Sazz Nasimi; Alexandra Lawrence  
**Subject:** Controlled Monies Account - Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT\_MATTERS.18091.047678]  
**Attachments:** Westpac (002).docx

Dear Colleagues

We refer to your letter of 2 June 2022 whereby you confirm that your clients consent to the withdrawal of the sum of \$270,000 from the proceeds of the sale of the property at 23 Margaret Street, Rozelle.

Westpac as the bank which holds the controlled monies account, has confirmed that the **attached** letter must be signed by the persons who signed the initial form from MinterEllison and Madgwicks in order for any monies to be withdrawn.

Accordingly, could you please have the attached letter signed by the relevant partners from MinterEllison and post the original letter to the below address by express post.

**Madgwicks Lawyers**  
**Attention: Melissa Passarelli**  
**Level 6**  
**140 William Street**  
**Melbourne VIC 3000**

We are otherwise in the process of responding to the balance of your letter of 2 June 2022.

Regards

**Melissa Passarelli**  
Senior Associate

**MADGWICKS**  
**LAWYERS**

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T: +61 3 9242 4780 E: [Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)

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Westpac  
Level 9  
150 Collins Street  
Melbourne  
VIC 3000

Date: 14 June 2022

Author: Stephen Doherty

Dear Sirs,

**Madgwicks & Minter Ellison ATF Vincenzo Tesoriero – Controlled Money Account - 667565**

Please withdraw funds in the amount of \$270,000.00 from account 667565, BSB 033 003 and disburse to Madgwicks Trust Account number 256 563 BSB 033 003

Yours faithfully  
**MINTERELLISON**

**PARTNER**

**PARTNER**

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**MADGWICKS**  
ABN 82 199 611 971

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140 William Street  
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W: [madgwicks.com.au](http://madgwicks.com.au)



Madgwicks



## Candy Nelson

---

**From:** Caitlin Murray <Caitlin.Murray@minterellison.com>  
**Sent:** Tuesday, 14 June 2022 3:24 PM  
**To:** Melissa Passarelli; Kate Cockburn; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham  
**Cc:** Sazz Nasimi; Alexandra Lawrence; Caitlin Murray  
**Subject:** RE: Controlled Monies Account - Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT\_MATTERS.18091.047678]

Dear Melissa

Our clients' consent to the withdrawal of the \$270,000 from the CMA account for the purpose of those funds being applied to Mr Tesoriero's reasonable legal expenses, was conditional upon the consent of SMBC Leasing and Finance Inc (SMBC), who we understand also maintains a proprietary claim in connection with the funds within the CMA, being obtained.

We understand that your firm is yet to contact the solicitors for SMBC to seek their client's consent.

Please let us have confirmation of the consent of SMBC to the proposed release and we will arrange to sign and return the letter.

Regards  
Caitlin

---

**Caitlin Murray**

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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## Candy Nelson

---

**From:** Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>  
**Sent:** Thursday, 16 June 2022 6:20 PM  
**To:** myiasemides@jonesday.com  
**Cc:** rdobson@jonesday.com; EXT-ForumGroupJD@groups.jonesday.com; Sazz Nasimi; Melissa Passarelli; 047678 Tesoriero \_ Dispute against Westpac Banking Corporation E\_Mail  
**Subject:** RE: SMBC Leasing & Finance Inc. v Forum Enviro (NSD681/2021) [IMAN-CURRENT\_MATTERS.FID668654]  
**Attachments:** L - Madgwicks 01.06.22.PDF

Dear Ms Yiasemides,

We refer to the freezing order dated 2 July 2021 made against our client, Mr Vincenzo Tesoriero (most recently varied as of 12 November 2021) in the Westpac proceeding.

Paragraph 10(b) of the freezing order states that '*This order does not prohibit... (b) paying up to the sum of \$450,000 until 10 March 2022 on your reasonable legal expenses*'.

We **attach** correspondence from MinterEllison confirming that despite the above order allowing the release of funds, Westpac requires your consent to the release of funds for our client's legal and personal expenses.

Whilst the orders do not require your consent, out of an abundance of caution we seek your consent.

Please do not hesitate to contact our office with any queries.

Kind regards,

**Alexandra Lawrence**  
Associate

**MADGWICKS**  
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T: +61 3 9242 4720 E: [Alexandra.Lawrence@madgwicks.com.au](mailto:Alexandra.Lawrence@madgwicks.com.au)

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2 June 2022

**BY EMAIL:** [Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)

Sazz Nasimi  
Partner  
Madgwicks Lawyers  
Level 6, 140 William Street  
Melbourne VIC 3000

Dear Mr Nasimi

**Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors  
Federal Court of Australia proceeding number NSD616/2021 (Proceedings)**

We refer to:

1. the email from Alexandra Lawrence in which your client seeks our clients' consent to:
  - (a) the immediate release of \$270k from the controlled monies account (being the amount remaining in the existing cap);
  - (b) a revised cap of \$1.86m in the freezing orders; and
  - (c) a further release from the controlled monies account to cover the shortfall in actual costs once the cap is increased; and
2. our email to you of 30 May 2022.

The freezing order made against Mr Tesoriero on 2 July 2021 (**Freezing Order**), as varied, including by order made on 12 November 2021, provides that your client is not prohibited from paying up to the sum of \$450,000 until 10 March 2022 for reasonable legal fees. We understand from your email that Mr Tesoriero has incurred the sum of \$546,000 in legal fees to date, which amount does not include any legal fees which Mr Tesoriero may be liable to pay his former firm, Fortis Law. We also understand that Mr Tesoriero has paid the sum of \$180,000 towards legal expenses incurred to date and has not paid amounts that may be owing to Fortis Law.

At the outset, we accept that a variation of the Freezing Orders will be required to address further legal expenses and note that whilst our clients are prepared to be reasonable in respect of Mr Tesoriero's request and to take a pragmatic approach to any proposed variation, they have suffered very substantial losses and, in those circumstances, are concerned that property and assets over which they assert proprietary claims should not be eroded in the expenditure of legal costs. To the extent that a proprietary interest is claimed over funds, our clients will oppose those funds being used for the payment of legal expenses. This is particularly so where Mr Tesoriero has failed to demonstrate that he does not have access to his own and other funds from which his legal expenses can be paid.

That said, we are instructed that our clients consent to the release of the sum of \$270,000 from the proceeds of the sale of property at 23 Margaret Street, Rozelle being the funds held in the controlled account with account number 033003 667565 (**CMA**) for the purpose of being applied to Mr Tesoriero's reasonable legal expenses, provided this is also consented to by SMBC who we understand also maintains a proprietary claim in connection with these monies, as outlined below. The release of this sum will not erode any funds over which our clients have a proprietary claim. For the avoidance of any doubt, payment of this amount by Mr Tesoriero will exhaust the current limit of legal fees under the Freezing Orders as varied by order made on 12 November 2021.

As to the balance of Mr Tesoriero's request, we make the following comments.

1. As to the estimate of legal fees provided, we note the following matters:
  - (a) no breakdown in relation to the funds incurred to date has been provided, including whether those fees relate to applications made in connection with sale of the Bulkara properties and the Mangusta "XOXO" or legal fees incurred in preparing the defence filed by other respondents in the proceeding for which your firm acts. Please provide us with a detailed breakdown in relation to the costs incurred to date, including as to whether they relate to costs incurred in the defence of these proceedings, the nature of the task (for example, preparing defences) and on behalf of which respondent they were incurred;
  - (b) without being provided with the basis upon which the estimate for future legal expenses has been calculated, our clients cannot properly consider whether they are prepared to consent to an increase in the cap in the quantum you have proposed. Please provide us with a detailed breakdown as to how the costs have been calculated for our clients' consideration;
  - (c) we do not see that there is any cause for expert evidence in this matter. To the extent that you consider that there will be such a need, then please let us know to what issue in the proceedings that expert evidence is anticipated to relate; and
  - (d) your estimate is on the basis that both counsel and solicitors will be working 6 days a week full time during the course of the hearing, a position we consider unlikely particularly given that part of our clients' case concerns other respondents whose interests entirely diverge from that of Mr Tesoriero. We invite you to revisit the quantum sought in connection with the costs of the hearing.
2. Mr Tesoriero has not provided any evidence that he does not have access to other funds from which to meet his legal expenses. In this regard, we note that in Mr Tesoriero's affidavit of 21 July 2021 (**July Affidavit**), he made reference to 16 bank accounts which he had "control over": see paragraph [4] and Annexure B, including accounts with "ANZ", "NAB" and "CBA". In his affidavit of 19 October 2021 (**October Affidavit**), he deposed (in paragraph 4) that he has "*visibility on 16 accounts which were for various business matters, though I believe that I may have up to 30 accounts with NAB*". At the time of swearing that affidavit in October, he said that there was \$255,055.06 in various accounts, and listed 18 accounts held with NAB and their account balances. That list included accounts not referred to in the July Affidavit. No information was set out in the October Affidavit as to the status of the accounts held with CBA or ANZ referred to in the July Affidavit.
3. Despite multiple requests, your client has not provided any additional information as to the other accounts nor has he otherwise established that there are insufficient funds within those accounts from which he can meet his ongoing obligations. Further, no explanation has been provided as to the \$255,055 in funds disclosed in the October Affidavit. If your client were to bring an application to the Court seeking the variations referred to in your email, he would necessarily need to satisfy the Court that he does not have access to any alternate sources of funds from which his legal expenses could be satisfied.
4. In those circumstances, to enable us to obtain instructions as to your request, please provide us:
  - (a) an updated statement of assets and liabilities for Mr Tesoriero and those entities controlled by him;
  - (b) statements of account for all relevant bank accounts including those in Mr Tesoriero's name and those that he controls (being at least those accounts identified in the July and October Affidavits). We presume that Mr Tesoriero will be able to liaise with the relevant bank to obtain a copy of the most recent statement for each account to the extent that he does not have a copy himself;
  - (c) confirmation as to whether it is proposed that the exception for legal fees will also relate to legal fees incurred and to be incurred by other respondents for which your firm acts in defence of the proceedings;
  - (d) confirmation as to what income is received by Mr Tesoriero and the entities he controls.

Finally, we note that to the extent that SMBC asserts that it has a proprietary claim in relation to funds, Mr Tesoriero will need to seek the consent of SMBC for the release of funds and consent on the part of our clients cannot be taken to be consent from SMBC. In this respect we note that SMBC has a claim against 23 Margaret Street Pty Limited and it may be necessary for Mr Tesoriero to seek consent from SMBC for the release of the funds in the CMA.

Once we receive the above information, we will seek our clients' instructions as to the balance of your client's requests.

All of our clients' rights are expressly reserved.

Yours faithfully  
**MinterEllison**



Caitlin Murray  
Partner

Contact: Caitlin Murray T: +61 2 9921 4279  
caitlin.murray@minterellison.com  
Partner: Caitlin Murray T: +61 2 9921 4279  
OUR REF: 1353397

## Candy Nelson

---

**From:** Shanahan, Lucy J. <lshanahan@jonesday.com>  
**Sent:** Wednesday, 22 June 2022 9:54 AM  
**To:** Alexandra Lawrence  
**Cc:** Sazz Nasimi; Melissa Passarelli; 047678 Tesoriero \_ Dispute against Westpac Banking Corporation E\_Mail; Caitlin Murray; Michael.Hughes@minterellison.com; PROJECT OLYMPUS; Dobson, Roger; Yiasemides, Maria; EXT ForumGroupJD  
**Subject:** RE: SMBC Leasing & Finance Inc. v Forum Enviro (NSD681/2021) [IMAN-CURRENT\_MATTERS.FID668654]  
**Attachments:** Interlocutory Application - 17 June 2022(4849547.2).pdf

Dear Ms Lawrence

As you are aware, SMBC L&F asserts a proprietary claim over the proceeds of sale of the property at 23 Margaret Street. Notwithstanding this, we are instructed that our client will consent to Order 2 of the orders sought in the interlocutory application dated 17 June 2022, to the extent that Order 2 relates to the release of funds from the proceeds of the Margaret Street sale in the amount of \$270,000, for the payment of your client's reasonable legal expenses as referred to in the freezing orders. Our client does not consent to the funds being used for Mr Tesoriero's personal expenses, as your email below suggests.

Our client does not agree to the release of any other funds held by the external administrators where it asserts a proprietary claim over those funds.

Kind regards  
Lucy

### Lucy Shanahan

Associate

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## Candy Nelson

---

**From:** Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>  
**Sent:** Wednesday, 22 June 2022 10:15 AM  
**To:** Caitlin Murray  
**Cc:** Sazz Nasimi; Alexandra Lawrence; Kate Cockburn; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham  
**Subject:** RE: Controlled Monies Account - Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT\_MATTERS.18091.047678]  
**Attachments:** RE: SMBC Leasing & Finance Inc. v Forum Enviro (NSD681/2021) [IMAN-CURRENT\_MATTERS.FID668654]; Westpac (002).docx

Dear Caitlin

We refer to the below correspondence and the **attached** correspondence received on behalf of SMBC which we note you were copied into.

In light of this correspondence, we ask that you organise the *urgent* execution and delivery of the letter provided to you on 14 June 2022 (attached again for convenience).

Regards

**Melissa Passarelli**  
Senior Associate

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## Candy Nelson

---

**From:** Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>  
**Sent:** Friday, 24 June 2022 12:21 PM  
**To:** Caitlin Murray  
**Cc:** Sazz Nasimi; Alexandra Lawrence; Kate Cockburn; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham  
**Subject:** Urgent - Controlled Monies Account - Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT\_MATTERS.18091.047678]  
**Attachments:** Westpac (002).docx  
**Importance:** High

Dear Caitlin

We refer to the below email.

Could you please confirm that the **attached** has been executed and is on its way to Madgwicks via express post.

We have numerous disbursements on Mr Teseriero's account, some which have exceeded 90 days. As a result, our firm has received final demands which, failing payment being made imminently, will result in the issuing of legal proceedings. Any delay in releasing the funds which have been agreed to be released to our office is therefore unacceptable.

We look forward to your urgent response.

Regards

**Melissa Passarelli**  
Senior Associate

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## Candy Nelson

---

**From:** Caitlin Murray <Caitlin.Murray@minterellison.com>  
**Sent:** Friday, 24 June 2022 12:55 PM  
**To:** Melissa Passarelli  
**Cc:** Sazz Nasimi; Alexandra Lawrence; Kate Cockburn; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham; Caitlin Murray  
**Subject:** RE: Urgent - Controlled Monies Account - Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT\_MATTERS.18091.047678]

Ms Passarelli

It is in the process of being signed and will be posted later today.

Regards  
Caitlin

---

### Caitlin Murray

Partner

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caitlin.murray@minterellison.com

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## Candy Nelson

---

**From:** Melissa Passarelli  
**Sent:** Tuesday, 28 June 2022 3:58 PM  
**To:** Shanahan, Lucy J.  
**Cc:** Sazz Nasimi; Alexandra Lawrence; 047678 Tesoriero \_ Dispute against Westpac Banking Corporation E\_Mail; Caitlin Murray; Michael.Hughes@minterellison.com; PROJECT OLYMPUS; Prestwich, Chris; kirsty.prinsloo@allens.com.au; Dobson, Roger; Yiasemides, Maria; EXT ForumGroupJD  
**Subject:** RE: SMBC Leasing & Finance Inc. v Forum Enviro (NSD681/2021) [IMAN-CURRENT\_MATTERS.FID668654]

Dear Ms Shanahan

We will be shortly filing submissions which will provide a response to your below query.

Regards

**Melissa Passarelli**  
Senior Associate

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T: +61 3 9242 4780 E: [Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)

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---

**From:** Shanahan, Lucy J. <lshanahan@jonesday.com>  
**Sent:** Tuesday, 28 June 2022 2:05 PM  
**To:** Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>  
**Cc:** Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>; Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>; 047678 Tesoriero \_ Dispute against Westpac Banking Corporation E\_Mail <{F668654}.Current\_Matters@madgwicks.imanagework-au.com>; Caitlin Murray <Caitlin.Murray@minterellison.com>; Michael.Hughes@minterellison.com; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>; Prestwich, Chris <Chris.Prestwich@allens.com.au>; kirsty.prinsloo@allens.com.au; Dobson, Roger <rdobson@jonesday.com>; Yiasemides, Maria <myiasemides@jonesday.com>; EXT ForumGroupJD <EXT-ForumGroupJD@groups.jonesday.com>  
**Subject:** RE: SMBC Leasing & Finance Inc. v Forum Enviro (NSD681/2021) [IMAN-CURRENT\_MATTERS.FID668654]

Dear Ms Lawrence

We refer to our email of 22 June 2022 below and to the interlocutory application and supporting affidavit filed by your client on 17 June 2022.

Order 2 of that application seeks access to funds paid into Court and/or the controlled monies account set up pursuant to Order 4 made by Lee J on 9 February 2022. As you are aware, the majority of those funds are the subject of proprietary claims made by SMBC L&F and others. As we noted in our email of 22 June 2022, our client objects to the release of any funds to your client to the extent they are the subject of a proprietary claim by our client.

In order that we may prepare for the hearing on Thursday, 30 June 2022, please let us know the basis on which your client asserts an entitlement to access funds that are the subject of a proprietary claim. Please note that any failure to respond will be noted to the Court on Thursday, including in relation to the question of our client's costs.

Kind regards  
Lucy

**Lucy Shanahan**

Associate

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Justin Kang  
Dentons  
77 Castlereagh Street  
Sydney NSW 2000

Date: 3 June 2022  
File No: 047678  
Author: Alexandra Lawrence  
Partner: Sazz Nasimi

By email: [Justin.kang@dentons.com](mailto:Justin.kang@dentons.com)

Dear Mr Kang

**5 Bulkara Street, Wagstaffe NSW 2257 (“the Property”)**

We refer to our previous correspondence confirming that our client no longer seeks to restrain the sale of the Property. That said, we write this letter seeking confirmation of a number of matters in respect of the imminent sale of the Property.

**Details of sale**

Please confirm the following details of the proposed sale:

- (a) the proposed sale price;
- (b) the identity of the purchaser; and
- (c) the settlement date.

**Application of proceeds**

Other than NAB, there are a number of entities that claim an interest in the proceeds from the sale of the Property, including Aksara Holdings Pty Ltd (**Aksara**) pursuant to an equitable mortgage, and Westpac Banking Corporation (**Westpac**) in respect of a proprietary claim, which our client disputes and which is the subject of Federal Court Proceeding NSD616/2021 (**Proceeding**).

Unlike, Westpac’s claim, we do not understand there to be any dispute as to the existence of Aksara’s equitable mortgage, which currently secures an amount of approximately \$5.5 million.

Once NAB’s registered mortgage has been discharged, our client considers that it is appropriate to apply the remaining proceeds from the sale of the Property to discharge Aksara’s equitable mortgage. To the extent that there are any remaining proceeds, our client considers that they should be paid into the existing controlled monies account controlled by our office and Westpac’s solicitors pending further Court orders.

We note that Westpac has asserted that its alleged proprietary interest takes priority over Aksara’s equitable mortgage. Aksara’s equitable mortgage is not in issue in the Proceeding, and Westpac



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has not articulated any basis for its asserted priority. We are not aware of any foundation for such a claim.

Please confirm that the proceeds of the sale of the Property will be applied as set out above.

The solicitors for Westpac, the solicitors for the liquidators of 5 Bulkara St Pty Ltd (in liquidation), and Mr Kabo of Aksara have been copied into this correspondence.

Should you have any queries, please do not hesitate to contact our office.

Yours faithfully

**MADGWICKS**



Sazz Nasimi  
**Partner**

**T:** 03 9242 4741  
**E:** Sazz.Nasimi@madgwicks.com.au



Alexandra Lawrence  
**Associate**

**T:** 03 9242 4720  
**E:** Alexandra.Lawrence@madgwicks.com.au

**Copy to:**

**McTaggart, Caitlin** Caitlin.McTaggart@allens.com.au;  
**Prinsloo, Kirsty** Kirsty.Prinsloo@allens.com.au;  
**Prestwich, Chris** Chris.Prestwich@allens.com.au ;  
**Murray, Caitlin** Caitlin.Murray@minterellison.com;  
**Clarke, Andrew** Andrew.Clarke@minterellison.com;  
**Kabo, Konfir** Konfir.kabo@gmail.com.

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8 June 2022

Sazz Nasimi  
Madgwicks Lawyers  
Level 6  
140 William Street  
Melbourne VIC 3000

Dear Colleagues

**5 Bulkara Street, Wagstaffe NSW 2257 (Property)**

We refer to your letter to Dentons dated 3 June 2022 in relation to the sale of the Property, to which we were copied.

Our clients do not agree with, or consent to, your client's proposal that, once NAB's registered mortgage over the Property has been discharged, the remaining proceeds (**Proceeds**) be applied to discharge the equitable interest asserted by Aksara Holdings Pty Limited (**Aksara**).

In this regard:

1. Aksara's claimed interest in the Property is an equitable interest only.
2. As pleaded by our clients in the Federal Court of Australia proceedings (**Proceedings**) commenced against Forum Finance Pty Limited (In Liquidation) (**Forum Finance**) and others, our clients contend that Forum Finance fraudulently received a significant sum of funds from our clients.
3. Our clients have identified that the proceeds stolen from it can be traced into the purchase of the Property and to repayments made with respect to the registered mortgage over the Property, thereby creating a proprietary interest in the Property.
4. Our clients have identified funds traced to the Property prior to the creation of Aksara's claimed equitable interest. Our clients contend that their proprietary interest in the Property pre-dates any equitable interest claimed by Aksara.
5. It is well established that, in the circumstances of two competing equitable interests, the first in time must prevail.

In those circumstances, our client does not agree that it is appropriate to apply the Proceeds to discharge Aksara's claimed equitable mortgage and does not consent to any such distribution. Our clients maintain that the Proceeds should be paid into Court (or into a controlled moneys account held by the Liquidators) pending the determination of our clients' claims in the Proceedings.

Our clients reserve their position on the question of costs of any need to seek a determination as to the priority position as between our clients and Aksara.

We have copied Konfir Kabo of Aksara and the solicitors for NAB and the liquidators of 5 Bulkara Street Pty Limited (in liquidation) to this correspondence.

Yours faithfully  
**MinterEllison**

*Minter Ellison*

Contact: Claire Latham  
claire.latham@minterellison.com  
Partner: Caitlin Murray  
OUR REF: 1353397

**Copy to:** Konfir Kabo [konfir.kabo@gmail.com](mailto:konfir.kabo@gmail.com)  
Justin Kang [justin.kang@dentons.com](mailto:justin.kang@dentons.com)  
Chris Prestwich [chris.prestwick@allens.com.au](mailto:chris.prestwick@allens.com.au)  
Kirsty Prinsloo [kirsty.prinsloo@allens.com.au](mailto:kirsty.prinsloo@allens.com.au)

## Candy Nelson

---

**From:** Kang, Justin <justin.kang@dentons.com>  
**Sent:** Wednesday, 8 June 2022 2:45 PM  
**To:** Claire Latham; Alexandra Lawrence; Sazz Nasimi; Melissa Passarelli; konfir.kabo@gmail.com; Prestwich, Chris; Prinsloo, Kirsty; caitlin.mctaggart@allens.com.au; forumallens@allens.com.au  
**Cc:** Caitlin Murray; PROJECT OLYMPUS; Strack, Tamara; Canny, Elizabeth; Sharpe, David; Daher, Liliane; Geary, Matthew  
**Subject:** 5 Bulkara Street, Wagstaffe NSW 2257 [DENTONS-Documents.FID10656073]  
**Attachments:** 220602 Letter from Madgwicks to Dentons(4827789.4).pdf; Letter to Madgwicks 8 Jun 2022.PDF

Dear Colleagues

We refer to the **attached** letters from Madgwicks dated 3 June 2022 and Minter Ellison dated 8 June 2022.

By way of response:

- our clients do not propose to provide details of any prospective sale and we will advise once any exchange of contracts has occurred;
- it is not incumbent on our clients to decide between competing claims to any surplus from the sale;
- therefore, absent agreement between all claimants to any surplus, our clients intend to pay any surplus into Court.

Regards

 大成 DENTONS

**Justin Kang**

Partner

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## Candy Nelson

---

**From:** Kang, Justin <justin.kang@dentons.com>  
**Sent:** Monday, 20 June 2022 10:33 PM  
**To:** Claire Latham; Alexandra Lawrence; Sazz Nasimi; Melissa Passarelli; konfir.kabo@gmail.com; Prestwich, Chris; Prinsloo, Kirsty; caitlin.mctaggart@allens.com.au; forumallens@allens.com.au  
**Cc:** Caitlin Murray; PROJECT OLYMPUS; Strack, Tamara; Sharpe, David; Daher, Liliane; Geary, Matthew  
**Subject:** RE: 5 Bulkara Street, Wagstaffe NSW 2257 [DENTONS-Documents.FID10656073]  
**Attachments:** 220602 Letter from Madgwicks to Dentons(4827789.4).pdf; Letter to Madgwicks 8 Jun 2022.PDF; RE: Urgent - Re: 5&6 Bulkara Street, Wagstaffe [Allens-File-DMS.FID2091065] [MADG-CURRENT\_MATTERS.18091.047678]

Dear Colleagues

We refer to the correspondence below and **attached**.

Our clients (**Agents**), as agents for National Australia Bank Ltd (**NAB**) as mortgagee, have now exchanged contracts for sale of 5 Bulkara Street, Wagstaffe, NSW.

Currently it is anticipated there will be a surplus remaining on settlement of that sale after payment of the amounts secured to NAB.

As previously indicated, the Agents propose to pay any surplus either as agreed between all claimants to that surplus, or otherwise into Court absent any such agreement.

It appears to our clients that the following parties assert (or might assert) a claim to any surplus:

- Aksara Holdings Pty Ltd (**Aksara**) - represented by Kabo Lawyers;
- Westpac Banking Corporation and Westpac New Zealand Limited (collectively **Westpac**) – represented by Minter Ellison;
- Jason Ireland & Jason Preston, McGrathNicol, as liquidators/receivers (**Receivers**) – represented by Allens.

While also noting Madgwicks' correspondence on behalf of Mr Vincenzo Frank Tesoriero (**Mr Tesoriero**), the Agents are not aware of any claim by Mr Tesoriero personally to any surplus to be realised from the sale of 5 Bulkara Street, Wagstaffe, NSW.

In that regard:

- Madgwicks' **attached** email of 27 May 2022 confirmed Mr Tesoriero would not be making any application to restrain the sale of 5 Bulkara Street, Wagstaffe, NSW;
- the assertion in Madgwicks' **attached** letter dated 2 June 2022 that Aksara should be paid after NAB (which we note is not agreed by Westpac), is a matter to be taken up by Aksara if it so decides – noting Aksara is separately represented by Kabo Lawyers;
- the various items of personal property referred to in the correspondence between Madgwicks and Allens are not included in the sale by the Agents (which pertains to the land at 5 Bulkara Street, Wagstaffe, NSW), and arrangements will need to be made to remove that personal property from 5 Bulkara Street, Wagstaffe, NSW before settlement of the Agents' sale;
- it is not apparent in any event what basis Mr Tesoriero would have to assert a claim to any surplus from the sale of 5 Bulkara Street, Wagstaffe, NSW.

If, however, Mr Tesoriero does assert a claim to any surplus from the sale of 5 Bulkara Street, Wagstaffe, NSW, then we ask that Madgwicks please confirm that to us by written reply **no later than 27 June 2022** (and in doing so that Madgwicks set out the nature and basis of any claim to the surplus asserted by Mr Tesoriero).

Unless we receive correspondence from Madgwicks on or before that date notifying any such claim by Mr Tesoriero, the Agents will assume and proceed on the basis that no such claim is made by Mr Tesoriero. In those circumstances, all further correspondence regarding disbursement of any surplus from 5 Bulkara Street, Wagstaffe, NSW will only be directed to Aksara, Westpac and the Receivers by their respective legal representatives.

Regards



Justin Kang

Partner

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[LuatViet > Fernanda Lopes & Associados > Guevara & Gutierrez > Paz Horowitz Abogados > Sirote > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > Eric Silwamba, Jalasi and Linyama > Durham Jones & Pinegar > LEAD Advogados > For more information on the firms that have come together to form Dentons, go to \[dentons.com/legacyfirms\]\(https://www.dentons.com/legacyfirms\)](#)

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### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172  
& ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 18/07/2022 6:40:54 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59  
Rule 29.02(1)

## Affidavit

No. NSD of 616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporations ABN 33 007 457 141** and another named in the Schedule  
Applicants

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others named in the  
Schedule  
Respondents

Sixth Affidavit of: **Sarwar (Sazz) Nasimi**  
Address: Level 6, 140 William Street, Melbourne 3000  
Occupation: Legal practitioner  
Date: 18 July 2022

### Contents

Document number	Details	Paragraph	Page
1.	Sixth Affidavit of Sarwar (Sazz) Nasimi sworn 18 July 2022	1-26	2-5
2	Exhibit SN-6 being a paginated bundle of documents		1-9

Filed on behalf of (name & role of party) Vincenzo Frank Tesoriero, Third Respondent  
Prepared by (name of person/lawyer) Sazz Nasimi  
Law firm (if applicable) Madgwicks Lawyers  
Tel 03 9242 4780 Fax 03 9242 4777  
Email Sazz.Nasimi@Madgwicks.com.au  
Address for service Level 6, 140 Williams Street, Melbourne 3000 VIC  
(include state and postcode)

[Version 3 form approved 02/05/2019]

 1085 

I, Sarwar (Sazz) Nasimi, of Level 6, 140 William Street Melbourne in the State of Victoria hereby make Oath and Say:

1. I am a legal practitioner and a partner within the law firm Madgwicks.
2. I make this affidavit from my own knowledge save where otherwise indicated. Where I depose to matters that I have been informed of by others, I believe those matters to be true and correct.
3. Madgwicks represents the Third Respondent (**Mr Tesoriero**) and his associated entities in the present proceeding, and I am the responsible partner within the firm with the ultimate care and conduct of the matter on their behalf.
4. Now produced and shown to me marked "**SN-6**" is a bundle of documents exhibited to this affidavit (**Exhibit Bundle**). In this affidavit, I refer to the documents in the Exhibit Bundle as SN-6 at pages [page number].
5. I swear this affidavit in order to provide an explanation for the delays referenced by Westpac at the hearing on 1 July 2022.

#### **Discovery**

6. Mr Tesoriero and his related entities were unable to provide discovery in this proceeding until 14 July 2022.

#### Volume of Documents

7. The majority of the documents to be discovered by Mr Tesoriero and his related entities are emails. The emails in Mr Tesoriero's possession have been backed-up to his laptop in a "mail" application. The emails can no longer be accessed by Mr Tesoriero on a normal mail server because the Receivers have taken possession of those servers and restricted Mr Tesoriero's access.
8. As a result, the emails can only be extracted from his computer in a specific format which must then be converted into a PDF. This process is both cumbersome and time consuming and has involved several rounds of trial and error before a solution was achieved.
9. Madgwicks has now been provided with over 32,000 emails by Mr Tesoriero. These emails are being reviewed in order to remove any spam or junk emails and to determine if they consist of any material which may be privileged. Thereafter converted to PDF, and then listed in a schedule for production.

#### Inability to Direct Resources

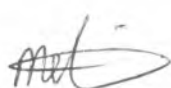
10. The inability to finalise discovery until recently has been largely due to, the issues concerning the software application and the volume of documents.
11. Further, we have been hampered by our inability to direct resources towards this task due to being without funds.
12. As stated at paragraph 35 of Mr Tesoriero's fifth affidavit sworn 17 June 2022, Madgwicks has only received the amount of \$48,430.19 in payment of its legal fees to date. Neither Madgwicks nor counsel have been paid for work undertaken in this




1086

matter since December 2021. Without funds, I am unable to direct the resources that I would otherwise prefer in attending to tasks such as discovery.

13. Conversely, if the funding was in place, I would be able to justify to the partnership the allocation of further resources to the present matter or I could retain additional people to assist. However, without funds I can do neither and this, in my view, does place Mr Tesoriero at a significant disadvantage with respect to his defence to the claims being made against him.
14. In my affidavit sworn on 9 November 2021, I deposed to MinterEllison having at least 6 practitioners working on this matter. I believe Allens have at least 4 practitioners working on this matter I am unsure of the fees that have been charged by MinterEllison or Allens but I would envisage that they have both received more than \$48,430.19.
15. Since the Court's orders of 10 March 2022 requiring discovery to be made, Madgwicks has received approximately 240 pieces of correspondence from MinterEllison and Allens alone. This correspondence has been received from 16 different practitioners collectively across both firms.
16. A large portion of this correspondence, in my view, has been in relation to issues which did not require such lengthy and drawn-out correspondence. By way of example, the Receivers took possession of the chattels which were stored at 14A James Street on 26 March 2022. These chattels belonged to Mr Tesoriero and or his family members and friends. The chattels were seized in circumstances where Mr Tesoriero was organising to remove the chattels so that they were not stored at the James Street property. Notwithstanding this, the Receivers still proceeded to seize the items and then refuse to return them. A plethora of correspondence was exchanged on this issue before the Receivers conceded the point and agreed to return the chattels.
17. Thereafter, in early May 2022, the Receivers agreed to return those chattels to Mr Tesoriero. The issue of delivery of those items has been the subject of approximately 17 separate pieces of communication between Madgwicks and Allens. This is in addition to Mr Tesoriero also corresponding with the Receivers' agents who have been tasked with delivering the chattels.
18. Often, resources have had to be directed to other aspects of the dispute due to some artificial urgency created by the other side. An example of this is the correspondence received by Madgwicks from Allens on 2 June 2022. In that email Allens stated that the Receivers were willing to organise delivery of the relevant chattels to Mr Tesoriero with no charge on the condition that the deliveries were made by 4pm on 10 June 2022. Despite the unilateral urgency imposed by the Receivers in that email, as at the date of swearing this affidavit, Mr Tesoriero has still not received all of the chattels. I understand from Mr Tesoriero that this is a result of the Receivers' agents not having the correct equipment to return the items.
19. Madgwicks currently has 3 practitioners (including myself) and 1 administrative assistant allocated to this matter.
20. As a result of the lack of funds, Madgwicks is unable to justify allocating its practitioners to this matter solely. We are therefore undertaking work on this matter in addition to other matters.



21. Despite the assertions made in Westpac's submissions filed on 1 July 2022, Madgwicks could not apply to vary the freezing order any earlier than it did. Further, the need for making the present application was always contemplated and this fact was made known to the solicitors for Westpac. Matters only became critical when, Westpac, despite existing Court orders and representations made to the Court, refused to consent to the release of further funds for Mr Tesoriero's legal fees. I also refer to paragraphs 8 to 25 of my affidavit sworn 28 June 2022 to further highlight Westpac's conduct.

**Further and better particulars**

22. On 17 and 25 May 2022 respectively, Madgwicks received letters from MinterEllison and Jones Day requesting further and better particulars from Mr Tesoriero and his related entities (**Requests**). The Requests are similar in nature as they both request details of investments made and returns received by Mr Tesoriero and his related entities.
23. Mr Tesoriero has responded to the Requests confirming that he is unable to provide the requested particulars at this time due to limited access to records.
24. In order to try and obtain the relevant information so Mr Tesoriero may respond to the Requests, Mr Tesoriero's legal team have been required to review the discovery provided by Westpac in this proceeding. This includes approximately 35,000 documents. For the reasons outlined at paragraphs 10 to 21 above, this review has been unable to be completed.
25. Notwithstanding the above, Mr Tesoriero has provided a table of particulars of the information he has been able to obtain from his accountant.
26. It has also become apparent that Mr Tesoriero may be required to issue subpoenas in order to obtain any further information.

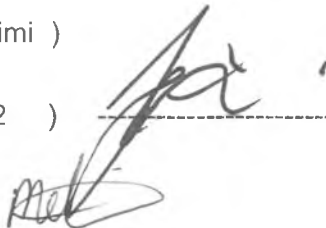
Now produced and shown to me marked "SN-6" at pages 2 to 9 are the letters to MinterEllison dated 12 July 2022 and Jones Day dated 18 July 2022.

**The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.**

Sworn by Sarwar (Sazz) Nasimi )

at Melbourne on 18 July 2022 )

Before me:



**Melissa Passarelli**  
6th Floor, 140 William St, Melbourne, Vic, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria).

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio-visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW).
2. I observed the deponent signing a copy of this affidavit in real-time.
3. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.

4. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.

5. I have known the person for at least 12 months.



## Schedule of Parties

No. NSD616 of 2021

Federal Court of Australia  
 District Registry: New South Wales  
 Division: General

### Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141  
 Second Applicant Westpac New Zealand Limited (company registration number company number 1763882)

### Respondents

First Respondent Forum Finance Pty Limited (in liquidation) ACN 153 301 172  
 Second Respondent Basile Papadimitriou  
 Third Respondent Vincenzo Frank Tesoriero  
 Fourth Respondent Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705  
 Fifth Respondent Forum Group Pty Ltd (Receivers Appointed) (in liquidation)  
 ACN 153 336 997  
 Sixth Respondent Forum Enviro Pty Ltd (provisional liquidators appointed)  
 ACN 168 709 840  
 Seventh Respondent Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364  
 Eighth Respondent 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662  
 Ninth Respondent 14 James Street Pty Ltd (in liquidation) ACN 638 449 206  
 Tenth Respondent 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129  
 Eleventh Respondent 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160  
 Twelfth Respondent 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473  
 Thirteenth Respondent 23 Margaret Street Pty Ltd ACN 623 715 373  
 Fourteenth Respondent 1160 Glen Huntly Road Pty Ltd ACN 639 447 984  
 Fifteenth Respondent 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093  
 Sixteenth Respondent Canner Investments Pty Ltd ACN 624 176 049  
 Seventeenth Respondent 123 High Street Taradale Pty Ltd ACN 639 872 512  
 Eighteenth Respondent 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921  
 Nineteenth Respondent 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887

Twentieth Respondent	4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352
Twenty-First Respondent	55 Nolan Street Maryborough Pty Ltd ACN 641 392 912
Twenty-Second Respondent	89 Betka Road Mallacoota Pty Ltd ACN 641 393 179
Twenty-Third Respondent	9 Gregory Street Ouyen Pty Ltd ACN 641 392 707
Twenty-Fourth Respondent	9 Main Street Derrinallum Pty Ltd ACN 639 872 736
Twenty-Fifth Respondent	286 Carlisle Street Pty Limited ACN 610 042 343
Twenty-Sixth Respondent	275 High Street Golden Square Pty Ltd ACN 639 870 545
Twenty-Seventh Respondent	Mazcon Investments Hellas IKE
Twenty-Eighth Respondent	Palante Pty Ltd ACN 135 344 151
Twenty-Ninth Respondent	Anastasios Giamouridis
Thirtieth Respondent	The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626
Thirty-First Respondent	Iugis Pty Ltd (in liquidation) ACN 632 882 243
Thirty-Second Respondent	Iugis (UK) Limited
Thirty-Third Respondent	Iugis Holdings Limited
Thirty-Fourth Respondent	Iugis Global Financial Services Limited
Thirty-Fifth Respondent	Iugis Finance Limited
Thirty-Sixth Respondent 168	Spartan Consulting Group Pty Ltd (in liquidation) ACN 989 544 ACN
Thirty-Seventh Respondent	Intrashield Pty Ltd (in liquidation) ACN 133 426 534
Thirty-Eighth Respondent	Tesoriero Investment Group Pty Ltd ACN 161 088 115
Thirty-Ninth Respondent	Mangusta (Vic) Pty Ltd ACN 631 520 682
Fortieth Respondent	193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237
Forty-First Respondent	8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626
Forty-Second Respondent	Iugis Hellas IKE
Forty-Third Respondent	Iugis Energy SA
Forty-Fourth Respondent	Eric Constantinidis
Forty-Fifth Respondent	Giovanni (John) Tesoriero
Forty-Sixth Respondent	Moussa (Tony) Bouchahine
Forty-Seventh Respondent	Louisa Maria Agostino
Forty-Eighth Respondent	D&D Group O.E
Forty-Ninth Respondent	Aromatika Fyta Tsai Olympou Theion Ike

## Exhibit certificate

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD 616 of 2021

**Westpac Banking Corporations ABN 33 007 457 141**

Applicant

**Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation)** and others according to the  
Schedule

Respondents

This is the exhibit marked "**SN-6**" now produced and shown to Sazz (Sarwar) Nasimi at the time of swearing his affidavit on 18 July 2022 before me:



\_\_\_\_\_  
Solicitor

**Melissa Passarelli**  
6th Floor, 140 William St, Melbourne, Vic, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria).

Caitlin Murray  
Partner  
Minter Ellison  
Level 40 Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Date: 12 July 2022  
File No: 047678  
Partner: Sazz Nasimi  
Your Ref: 1353397

By email: [caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com)

Dear Ms Murray

**Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors  
Federal Court of Australia proceeding number NSD616/2021 (Proceedings)**

We refer to your letter dated 17 May 2022 seeking further and better particulars of paragraph 1900(l) of the defence filed by Mr Tesoriero on 20 April 2022 (**Defence**).

Mr Tesoriero is not yet in a position to provide the requested particulars.

As stated in paragraph 23 of Mr Tesoriero's affidavit sworn on 8 November 2021, Mr Tesoriero does not have access to records relating to the Tesoriero Investment or the Tesoriero Return. Mr Tesoriero expects to receive access to those records as part of the discovery and by extension subpoena processes in the Proceedings. This is why the existing particulars to paragraph 1900(l) state that further particulars may be provided after discovery. As you would appreciate the discovery provided by Westpac is voluminous and we are presently working our way through that material. Thus far we have not located the documents required by our client in order to enable it to respond to your request for particulars. We will inform you if that position changes otherwise we will proceed to issue subpoenas in order to obtain the required records.

In addition to the above we have some concern with respect to some of the particulars that you are seeking as they do not appear to be a proper request for particulars. We are still considering this issue and reserve our clients' position to object to your request or portions of it, should the need arise.

Under cover of that general position, in the Annexure to this letter we have provided particulars of the payments relied on in support of the allegations made in paragraph 1900(l), based on the information available to date. In relation to those payments, we note the following matters which have become apparent upon receipt of further information:

- the amount of \$1,000,000 referred to in paragraph (i) of the particulars was in fact two payments, being payments 1 and 2 in the Annexure;

- we have identified a further payment, being payment 6 in the Annexure;
- we have identified that the payment in paragraph (v) of the particulars was related to the payment in paragraph (vi), and not a separate payment.

As a result of these matters, the payments we have identified to date as forming part of the Tesoriero Investment total \$4,860,000, rather than \$6,869,755 as particularised in the existing pleading. Our clients reserve the right to provide particulars of further payments after our review of the discovered documents and any documents produced pursuant to subpoenas.

Once discovery has been completed, and Mr Tesoriero has had an opportunity to review it, we will respond further to your request.

Yours faithfully  
**MADGWICKS**



Sazz Nasimi  
**Partner**

T: 03 9242 4741  
E: [Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)



Melissa Passarelli  
**Senior Associate**

T: 03 9242 4780  
E: [Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)

**Copy to: [Andrew.Clarke@minterellison.com](mailto:Andrew.Clarke@minterellison.com); [Anthony.Sommer@minterellison.com](mailto:Anthony.Sommer@minterellison.com);  
[Michael.Hughes@minterellison.com](mailto:Michael.Hughes@minterellison.com); [Claire.Latham@minterellison.com](mailto:Claire.Latham@minterellison.com) and  
[projectolympus@minterellison.com](mailto:projectolympus@minterellison.com)**

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**ANNEXURE**  
**Payments forming part of the Tesoriero Investment**

#	Date	Amount	Means	Payer details	Payee
1	20 November 2012	\$100,000	EFT	Name: Giovanni Tesoriero & Teresa Tesoriero  BSB: 037-146 A/c: 79-1967 Bank: Westpac	The Forum Group of Companies Pty Ltd
2	5 February 2013	\$900,000	EFT	Name: Giovanni Tesoriero & Teresa Tesoriero  BSB: 037-146 A/c: 79-1967 Bank: Westpac	The Forum Group of Companies Pty Ltd
3	4 October 2013	\$200,000	Cheque	Name: Tesoriero Investment Group Pty Ltd as trustee for the Tesoriero Investment Trust  BSB: 033-002 A/c: 67-1917 Bank: Westpac	The Forum Group of Companies Pty Ltd

#	Date	Amount	Means	Payer details	Payee
4	4 October 2013	\$60,000	Cheque	Name: Giovanni Tesoriero & Teresa Tesoriero BSB: 037-146 A/c: 79-1967 Bank: Westpac	The Forum Group of Companies Pty Ltd
5	2 June 2014	\$1,500,000	EFT	Name: Giovanni Tesoriero & Teresa Tesoriero BSB: 082-356 A/c: 83-744-3719 Bank: NAB	Name: The Forum Group of Companies Pty Ltd BSB: 082-080 A/c: 11-509-4529 Bank: NAB
6	5 September 2014	\$100,000	Telegraphic Transfer	Name: Giovanni Tesoriero & Teresa Tesoriero BSB: 082-356 A/c: 83-744-3719 Bank: NAB	Name: The Forum Group of Companies Pty Ltd BSB: 082-080 A/c: 11-509-4529 Bank: NAB
7	2 May 2017	\$2,000,000	Telegraphic Transfer	Name: Giovanni Tesoriero & Teresa Tesoriero BSB: 733-349 A/c: 78-0597 Bank: Westpac	Name: The Forum Group of Companies Pty Ltd BSB: 082-080 A/c: 11-509-4529 Bank: NAB

Maria Yiasemides and Roger Dobson  
Jones Day  
Level 41, 85 Phillip Street  
SYDNEY NSW 2000

Date: 18 July 2022  
File No: 047678  
Author: Melissa Passarelli  
Partner: Sazz Nasimi  
Your Ref: AUI-932195405v1

By email: [myiasemides@jonesday.com](mailto:myiasemides@jonesday.com)  
[rdobson@jonesday.com](mailto:rdobson@jonesday.com)

Dear Ms Yiasemides and Mr Dobson

**SMBC Leasing & Finance v Forum Enviro (Aust) Pty Ltd (Voluntary Administrators Appointed) & Ors - NSD681/2021 (the Proceedings)**

We refer to your letter dated 25 May 2022 seeking further and better particulars of paragraph 525(d) of the defence filed by 23 Margaret Street and paragraph 535(c) on 20 April 2022 of the defence filed by 64-66 Berkeley Street (**Defences**).

We have some concerns with respect to some of the particulars that you are seeking as they do not appear to be a proper request for particulars. We are still considering this issue and reserve our clients' position to object to your request or portions of it, should the need arise.

Our clients are otherwise not yet in a position to provide the requested particulars.

As stated in paragraph 23 of Mr Tesoriero's affidavit sworn on 8 November 2021, Mr Tesoriero does not have access to records relating to the Tesoriero Investment or the Tesoriero Return. Mr Tesoriero expects to receive access to those records as part of the discovery and by extension subpoena processes in the other related proceedings. This is why the existing particulars in paragraphs 525(d) and 535(c) respectively, state that further particulars may be provided after discovery. As you would appreciate the discovery provided by Westpac is voluminous and we are presently working our way through that material. Thus far we have not located the documents required by our clients in order to enable them to respond to your request for particulars. We will inform you if that position changes otherwise we will proceed to issue subpoenas in order to obtain the required records.

Under cover of that general position, in the Annexure to this letter we have provided particulars of the payments relied on in support of the allegations made in paragraphs 525(d) and 535(c) respectively, based on the information available to date. In relation to those payments, we note the following matters which have become apparent upon receipt of further information:

- the amount of \$1,000,000 referred to in paragraph (i) of the particulars was in fact two payments, being payments 1 and 2 in the Annexure;
- we have identified a further payment, being payment 6 in the Annexure;

MADGWICKS  
ABN 82 199 611 971

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MERITAS

047678:4877358\_1



- we have identified that the payment in paragraph (v) of the particulars was related to the payment in paragraph (vi), and not a separate payment.

As a result of these matters, the payments we have identified to date as forming part of the Tesoriero Investment total \$4,860,000, rather than \$6,869,755 as particularised in the existing pleading. Our clients reserve the right to provide particulars of further payments after our review of the discovered documents and any documents produced pursuant to subpoenas.

Once discovery has been completed, and Mr Tesoriero has had an opportunity to review it, we will respond further to your request.

Yours faithfully

**MADGWICKS**



Sazz Nasimi  
**Partner**



Melissa Passarelli  
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**Ordered by:** Candy Nelson

**For:** Madgwicks Lawyers

**Email:** [candy.nelson@madgwicks.com.au](mailto:candy.nelson@madgwicks.com.au)

## TRANSCRIPT OF PROCEEDINGS

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O/N H-1748224

**FEDERAL COURT OF AUSTRALIA**

**NEW SOUTH WALES REGISTRY**

**LEE J**

**No. NSD 616, 642, 681 and 747 of 2021**

**WESTPAC BANKING CORPORATION and OTHERS**

**and**

**FORUM FINANCE PTY LIMITED (IN LIQUIDATION) AND OTHERS**

**IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED  
(ADMINISTRATORS APPOINTED) & OTHERS**

**SYDNEY**

**9.29 AM, FRIDAY, 1 JULY 2022**

**MR J.C. GILES SC appears with MS C.A. HAMILTON-JEWELL for Westpac**

**MS E.L. BEECHEY appears for SMBC**

**MR R.K. JAMESON appears for the liquidators and receivers**

**MR P. HAYES QC appears with DR TURNER for Mr Tesoriero**

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**THIS PROCEEDING WAS CONDUCTED BY VIDEO CONFERENCE**

MR J. GILES: May it please, your Honour. I appear with my learned friend, MS  
5 HAMILTON JEWEL for the Westpac parties.

HIS HONOUR: Yes.

MS E.L. BEECHEY: May it please the court. I appear for SMBC.  
10

HIS HONOUR: Yes.

MR R.K. JAMESON: May it please the court, Jameson, I appear for the liquidators  
and receivers.  
15

HIS HONOUR: Yes. You're muted, Mr Hayes. I can't hear you, Mr Hayes. Now  
I can.

MR P. HAYES: Thank you, your Honour.  
20

HIS HONOUR: Now I can.

MR HAYES: Your Honour – thank you, your Honour. I appear with DR TURNER  
for the third respondent, Mr Tesoriero.  
25

HIS HONOUR: Yes. Yes. I think it's probably worthwhile me just identifying –  
asking people identify the evidence that they rely upon initially. Mr Hayes.

MR HAYES: Yes, your Honour. Your Honour, I read, firstly, the affidavit of Mr  
30 Tesoriero sworn 21 July 2021.

HIS HONOUR: Yes. Yes.

MR HAYES: The affidavit of 19 October 2021.  
35

HIS HONOUR: Yes.

MR HAYES: Your Honour, I'm not going to read the affidavit of 8 November  
2021. There has been some correspondence between the parties. We won't both  
40 your Honour about that today. We will take your Honour to the matters - - -

HIS HONOUR: Nor the affidavit of 3 September.

MR HAYES: That's right, your Honour. Yes. It's not relative to today. And the  
45 affidavit of Mr Tesoriero sworn 17 June 2022.

HIS HONOUR: Yes.

MR HAYES: And I also read the affidavits of Mr Nasimi sworn on 9 November 2021 and the affidavit of Mr Nasimi on 28 June 2022.

5

HIS HONOUR: Yes. Yes. All right. So it seems to me then the – referring to the index of the court book, you’re reading the affidavits in six, eight, 10, 12 and 13 and not reading the balance of the affidavits. All right.

10 MR HAYES: That’s right. That’s right, your Honour.

HIS HONOUR: I will – any objections to those affidavits?

15 MR GILES: Only to the document which is at court book page 555. It’s the accountant’s letter obviously prepared for the purpose of the litigation.

HIS HONOUR: 555.

MR GILES: 555.

20

HIS HONOUR: Well, I’m at a disadvantage because mine only goes up to 300. There’s a second volume. All right.

25 MR GILES: Because I don’t know why your Honour was told this was a half hour hearing by our learned friend’s instructors. Obviously it never was.

HIS HONOUR: No. I was going to come to that.

MR GILES: Well, quite.

30

HIS HONOUR: So - - -

MR GILES: Maybe your Honour just simply takes it for what it’s - - -

35 HIS HONOUR: Yes. Well, I reject the tender of the document which is at page 555.

MR GILES: Grateful.

40 MR HAYES: Your Honour, I’ve had no notice of the objection. I don’t understand why my friends are being heard on it and I - - -

45 HIS HONOUR: Well, it’s just so self-evidently inadmissible that I didn’t think that you would wish to be heard on it but if there’s anything you wish to say about it. It’s a series of representations made by his accountant, not on oath. I just thought it was just self-evidently inadmissible but I will vacate that ruling if there’s anything you wish to say about it, then by all means do so.

MR HAYES: Well, if that's the basis upon which – I haven't had the courtesy of being notified as to any objection, your Honour, but if that's the basis upon which Mr Giles is objecting to it, I don't – I won't trouble your Honour any further – trouble your Honour with it any further.

5

HIS HONOUR: All right. Thank you. All right. Well, I confirm that ruling. Now, so that's the evidence by the applicants. Did you want to cross-examine any of those witnesses?

10 MR GILES: No, your Honour.

HIS HONOUR: All right. So going back to the court book index, can I take it that you read the affidavits behind four and five.

15 MR GILES: Four and five.

HIS HONOUR: Sorry. Read the affidavit at four with the – and tender the exhibit behind 5.

20 MR GILES: Yes, your Honour.

HIS HONOUR: And the receiver, I take it, reads the affidavit of two and 10. This is documents behind three, is that right? So that's the affidavit of Caitlin Murray sworn 28 March 2022 which I will take as read, and the affidavit of Jason Ireland  
25 sworn 28 June 2022 and take as read. And I will also accept those bundles of documents subject to any objections you have, Mr Hayes.

MR HAYES: No, your Honour.

30 HIS HONOUR: All right. Well, that material – that seems to – there's additional bundles of documents, apparently.

MR GILES: There are two things from my side. There's the further documents behind tab 14 which just proves something your Honour has seen many times before.  
35

HIS HONOUR: Yes. Well, subject to anything Mr Hayes wishes to say, I will accept those and mark them as exhibit A on the application.

40 MR GILES: And I also read the affidavit of Caitlin Maria Murray sworn 30 June 2022.

HIS HONOUR: I don't think I've got that. I don't think I've got that one.

45 MR GILES: Could I hand a copy to your Honour. I should also explain it's - - -

HIS HONOUR: I've also got an affidavit by Christopher Michael Prestwich of 1 July 2022; do you read that one as well?

MR JAMESON: I do and I seek leave to file it in court, your Honour.

5 HIS HONOUR: I will make that the affidavit of Christopher Michael Prestwich,  
P-r-e-s-t-w-i-c-h, affidavit sworn 1 July 2022 is read subject to anything you wish to  
say, Mr Hayes.

MR HAYES: I've never seen it, your Honour.

10 HIS HONOUR: Well - - -

MR JAMESON: My instructing solicitors did send it to Mr Hayes' instructing  
solicitors but I can make arrangements - - -

15 HIS HONOUR: Well, I will defer that material going into evidence until Mr Hayes  
has had the opportunity of seeing it.

MR JAMESON: I'm grateful.

20 HIS HONOUR: Apparently it has gone to your solicitors, Mr Hayes.

MR HAYES: Thank you, your Honour. Perhaps Dr Turner can review it while I'm  
dealing with the application if your Honour pleases.

25 HIS HONOUR: Yes. Yes.

MR GILES: And Ms Murray's affidavit of 30 June 2022 I should explain, your  
Honour.

30 HIS HONOUR: Can I just check whether Mr Hayes has that one. 30 June 2022.

MR HAYES: I do, your Honour. Yes.

35 MR GILES: I read that. It hasn't yet been filed because apparently the registry's  
down so I don't know whether I seek leave to file it in court.

HIS HONOUR: No. No.

MR GILES: Or I just tell your Honour it will be filed in due course.

40 HIS HONOUR: No. You can just file it in the electronic court book when it's - - -

MR GILES: I'm grateful, your Honour.

45 HIS HONOUR: Well, I note the affidavit of Caitlin Maria Murray sworn 30 June  
2022 is also read.



MR GILES: Grateful, your Honour. The reason it has just come in, so to speak, is that it proves some documents. Your Honour may have seen that we served a notice to produce the bank records on Mr Tesoriero. He has just not responded to that and hasn't – it was called on the other day before the registrar with nothing produced.

5

HIS HONOUR: Was the notice to produce stood over to today?

MR GILES: I will get some instructions.

10 HIS HONOUR: Yes.

MR GILES: In the meantime, we served subpoenas on some of the banks and this is not the universe of documents produced. It is the documents produced by the ANZ and a financier, I think is the right word, Judo Bank. I'm told that the notice to produce was not stood over. I don't know why.

15

HIS HONOUR: All right. All right. Well, thank you. Well, that's the material. Then I should perhaps turn to Mr Hayes' application so I should perhaps turn to him.

20 MR HAYES: Thank you, your Honour. Has your Honour seen a copy of the third respondent's outline of submissions?

HIS HONOUR: I have and I can say to the parties that I've had the opportunity, for which I'm grateful, of reviewing the detailed submissions not only on behalf of the third respondent for the variation of freezing orders but also the outline of submissions filed on behalf of Westpac and also the liquidator and receiver's submissions. So you can assume familiarity with those documents.

25

MR HAYES: Thank you, your Honour. Well, I might have been a little ambitious to say half an hour. We, nonetheless, think this can be dealt with in relatively short compass given the level of preparation with the submissions. Your Honour, it shouldn't be an overly onerous imposition on your Honour's time this morning. Your Honour, I will just very briefly speak to the applicant's submissions. In a nutshell, your Honour, what – sorry, the third respondent's submissions. In a nutshell, what the third respondent is seeking is, firstly, a variation of the freezing order to allow for his reasonable legal expenses up to and including the trial, estimated in the amount of about 1.866 million.

30

35

I will turn to the amount in due course, your Honour, and, secondly, he would seek a release of funds for his reasonable living expenses. Your Honour had previously made orders to allow for that but there has been some difficulty on the part of Mr Tesoriero being able to access those moneys and he hasn't been able to do so since about September, your Honour, and has not been able to drawdown upon that. He has been relying upon the greatest and goodwill of friends and family to sustain him until this point of the proceedings. Your Honour, firstly - - -

45

HIS HONOUR: Is that because, Mr Hayes, he has attempted to withdraw moneys from a particular account and he has been told he can't or what's the difficulty?

MR HAYES: Yes, your Honour. Yes.

5

HIS HONOUR: That's the difficulty, is it.

MR HAYES: That's the difficulty. Yes.

10 HIS HONOUR: All right.

MR HAYES: And, your Honour, the – turning to the question of his legal expenses, your Honour. My instructing solicitors and his present team have been in the matter now for seven months and, your Honour, suffice to say, this is certainly a factually  
15 complex and legally complex hearing, or claim that he's facing. Your Honour - - -

HIS HONOUR: Is it really, Mr Hayes? Is it really?

MR HAYES: Yes, it is - - -

20

HIS HONOUR: I mean, I know there's a lot of things pleaded, but as you correctly identified at paragraph 34 of your submission, the case stands or falls by reference to whether or not Mr Tesoriero knew about the scheme. If he knew about the scheme, he loses. If he didn't know about the scheme then he likely wins.

25

MR HAYES: That's right. But it doesn't mean to say, your Honour, he can ignore everything else that is wrapped up in the claim against him. How the claim is being brought against him, your Honour, it essentially falls into three sections of statement of claim, which runs over 600 pages, and also the defence in part C, part H and part  
30 F, which he – your Honour will have seen from the pleadings, he very squarely joins with and puts into issue, firstly, his knowledge of the scheme, which goes to the very heart of the contention of Westpac's asserted property interest in those monies. Your Honour - - -

35 HIS HONOUR: Quite. So all the aspects of the case pleaded against him, be it the unlawful means conspiracy, the knowing receipt case - - -

MR HAYES: Yes.

40 HIS HONOUR: The knowing assistance case and the misleading deceptive case, all have at their kernel, this notion of the scheme and the notion of his knowledge of the scheme.

MR HAYES: That's right.

45

HIS HONOUR: And subject to any correction that Mr Giles says, but it does seem to me from my relatively cursory review of the pleading, is that what you say about

that is clearly correct. the other things you seem to say is that the paragraph 48, as a result of this evidence, would suggest that the applicants haven't established a prima facie entitlement. I wanted to ask you a bit about this, that – about the scope of the trial, so I can understand this application a bit better, I haven't got the orders in front  
5 of me in the court book, I don't think, but my recollection is the time has now passed for Mr Tesoriero to file any further affidavit material of the trial, so I'm assuming that you're essentially running this case on the basis of – indistinguishable, in a sense, from a no case submission, so you don't propose to go into evidence by Mr Tesoriero at the trial.

10

MR HAYES: Yes.

HIS HONOUR: Does that - - -

15 MR HAYES: Your Honour should not make that assumption. Your Honour, discovery was only recently completed. Over 35,000 documents have been discovered by Westpac and this is a case where the case against Mr Tesoriero is a circumstantial one, and inferences will be asked to be drawn from various documents. Now, what has happened, your Honour, is that my instructing solicitors  
20 have written to the applicant's solicitors inviting them to identify which particular documents of those 35,000 documents they might be relying upon at trial, so at the very least, Mr Tesoriero will be able to have a deeper appreciation of the case against him at trial, and what is the likely evidence from which Mr Giles will be inviting your Honour to draw inferences of knowledge.

25

It would seem, your Honour, that some week ago, when that email was sent, it would seem that it didn't actually reach MinterEllison. It's in the material, your Honour, that an email for that effect was sent, but we've since – it has since been revealed that it actually, for whatever reason, it didn't get through the server, and didn't get to  
30 MinterEllison. But nonetheless, your Honour, it highlights the difficulty that Mr Tesoriero faces. If your Honour looks at the way in which the case has been pleaded, and I won't rehearse that, but then your Honour will see that on 31 January, if your Honour goes to page 467 of the court book, and what your Honour will see at 467 until - - -

35

HIS HONOUR: But, sorry, before we get to that date, I – I will go to that document in a moment, Mr Hayes, I just want to understand something a bit better than I do now.

40 MR HAYES: Yes. Certainly, your Honour.

HIS HONOUR: There wasn't – there was an order – had understood, but maybe I'm incorrect about this, but I had understood that the applicants had served all the material upon which they propose to rely at the hearing, in chief. Is that right?

45

MR GILES: Affidavit evidence, yes. Not their whole documentary tender.

HIS HONOUR: Sorry?

MR GILES: Not the whole documentary tender.

5 HIS HONOUR: I don't know why Siri has submissions.

MR GILES: If only I had that effect usually.

10 HIS HONOUR: I don't know how to turn her ability to make submissions off, but the last thing was it's all good. I'm not sure if that's a reference to Mr Hayes' submissions or yours, Mr Giles, but getting to the point, so you haven't identified the metes and bounds of your documentary tender? Right.

MR GILES: I have done what I've been ordered to do.

15

HIS HONOUR: No, I no, I'm just trying to work out – that wasn't something which was built into the timetable. What was ordered was that by 4 pm on 22 May that Mr Tesoriero, relevantly, filed and serve any affidavit evidence upon which you propose to rely?

20

MR GILES: That's right. And by the 15<sup>th</sup> – I know this isn't quite your Honour's point - - -

HIS HONOUR: No.

25

MR GILES: But by 15 July I have the - - -

30 HIS HONOUR: 15<sup>th</sup> you will serve a section 50 summary and that was the reason why it was structured that way, because I'm hoping that we don't have to have such a large documentary tender.

MR GILES: Yes. That's right. That's right.

HIS HONOUR: Yes.

35

MR GILES: So the problem is, Mr Hayes' client has not complied with the order.

HIS HONOUR: Yes, I know. I just wanted to work that out.

40 MR HAYES: No. No, your Honour.

MR GILES: Yes.

45 HIS HONOUR: So I can assume, Mr Hayes, I must say, before coming on, given that you hadn't served the affidavit material by 4 pm on 27 May, that you didn't propose to rely on anything at the trial?

MR HAYES: No, your Honour, that would be wrong to make that assumption. There was some correspondence between the parties which I think were extensions were sought because discovery hadn't been completed, and it's well understandable, your Honour, while he hasn't put on evidence, in a case which involves serious  
5 allegations against him in what is a circumstantial case against him, for him to make that forensic decision as to whether or not or not he goes into evidence, discovery was only completed a matter of a week or two ago, as I understand it, your Honour, and Mr Giles has made mention of a tender bundle. He can find himself facing a whole series of documents to be tendered against – Mr Giles will be inviting your  
10 Honour to draw inferences and he will not have had an opportunity to consider whether or not, firstly whether or not the inferences arise, secondly, whether he responds to them and thirdly, if he does, what his response will be. He's not in a position - - -

15 HIS HONOUR: Well, if you say he's just going to ignore the orders of the court until different orders are made, that is, I require the applicants to serve every document they propose to tender in the trial, that's one thing. And this appears to be what you're saying. He's not going to - - -

20 MR HAYES: No, it isn't, your Honour.

HIS HONOUR: Well, when are you going to file your affidavit?

MR HAYES: Your Honour, I'm not saying he has chosen to ignore your Honour's  
25 orders at all. It's a matter which has been sought to be agitated between the parties without troubling your Honour at this point, and we're here today, but it certainly – there was certainly correspondence between the parties endeavouring to sort it out between themselves, without needing to prevail upon your Honour to do so, and we're now at this point, your Honour. So - - -

30 HIS HONOUR: Well, Mr Hayes, I'm sure – please, just let me finish this, because whatever the attitude taken by other judges in relation to things, I don't expect an order which expired well over a month ago to be ignored and only being brought to my attention the next time one comes to court, because I made those orders and I  
35 made them after hearing argument in a particular way, and what effectively is being told to me this morning is your client is not in a position to make a forensic decision as to whether it puts on affidavit material until he acquires further information from the applicant. Well, I should have been told that at the time the orders were made, and if what you're saying is that given the nature of the allegations made against him,  
40 that you believe that the order should be changed to extend the time for you to do it until after the applicants have identified with precision what their documentary case is in chief, then that seems to me, the logical starting point.

MR HAYES: Well, two – three things arise from that, your Honour. Firstly, we  
45 apologise that – and we certainly don't wish to convey any disrespect to your Honour for not having - - -

HIS HONOUR: No, no, no.

MR HAYES: - - - followed your Honour's order to the letter, but as I've addressed your Honour that that matter was ..... sorted out between the parties. Secondly, your Honour, there's an additional matter where Mr Tesoriero has also been encumbered by – which is the purpose of this application – a lack of resources. He has been handicapped by a lack of resources to this point, your Honour. So it's - - -

HIS HONOUR: Well, I must say – I must say to you, Mr Hayes - - -

MR HAYES: - - - he's running on the smell of an oily rag legally, your Honour, if I – I'm sorry, your Honour, there's a bit of a delay.

HIS HONOUR: No, no, it's the delay. I don't mean to interrupt you and I'm sure you don't mean to interrupt me, it's just – it's just the inevitability of the remote hearing, Mr Hayes.

MR HAYES: Your Honour pleases.

HIS HONOUR: So I'm sorry, I didn't mean to speak across you. I must say – I must say, my preliminary view is that – and you can try to suggest to me why I shouldn't have this, but – this preliminary view, but he – as I understand it, thus far in relation to these proceedings, Mr Tesoriero, including when one has regard to the fees that he incurred with his previous solicitors, has expended in relation to these proceedings – well, from at least the time that he was served until 10 April, an amount of \$780,000.

MR HAYES: No, your Honour. In paragraph 34 – sorry, including the sum of Fortis - - -

HIS HONOUR: Yes.

MR HAYES: - - - is that what your Honour was – yes. Well, look, the sum of Fortis is well in dispute, your Honour, and that's the subject of a matter on taxation at the moment. But – so it may be less than that. But certainly, with his current representation, it's just over half a million dollars for seven months' work. And I should – this is complex litigation in a superior court, and relative – it's a relatively modest amount, if I might respectfully suggest to our Honour, compared to what the applicant and the first respondent have no doubt been spending in fees up until this period in time. So while I have to persuade your Honour at trial that it's really – his defence is relatively simple, and we can drill it down to the very essence as to his question of knowledge, it would be foolish to ignore everything else on the periphery from which Mr Giles will no doubt be inviting your Honour to draw inferences from everything left, right and centre, which is no doubt the way in which the applicants are bringing their case.

And nowhere is that more apparent in the document I was about to before, and your Honour doesn't need to read it in detail, but your Honour will see the letter from Minter Ellison to Madgwicks dated 31 January 2021 at page 467 to 491 of the court book.

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HIS HONOUR: Just let me grab that, Mr Hayes.

MR HAYES: Certainly, your Honour. This was a document, your Honour, in response to a request for further and better particulars of the second amended – second further amended statement of claim. And your Honour doesn't need to go into this document in detail, but just a cursory review of this document will show your Honour - - -

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HIS HONOUR: Sorry, I think we may be at cross purposes. Page 491 of the court book I've got is just a - - -

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MR HAYES: That's the last page, your Honour. Page 467 is the first page.

HIS HONOUR: I see.

20

MR HAYES: And 491 is the last one.

HIS HONOUR: Yes, yes. I've got that, yes.

MR HAYES: And just a cursory review of that, your Honour, will – it just brings to the fore numerous facts, documents and the like from which – what is essentially a circumstantial case against Mr Tesoriero, your Honour. They're all matters which no doubt need to be carefully – especially of a circumstantial case as to what the documents are, what they mean, what each document – flows from each particular document, looking at them together – what do they mean when – the combined effect of a series of documents, or how it is the case is to be put. So it's – while we say it's a weak case, your Honour, and I hope to persuade your Honour that ultimately we get to the point that it's a relatively simple defence, he just had no knowledge. And that hasn't been established on the documents. A lot – one needs to wade through a lot of material to push to one side, to dismiss that material to get to that very simple point. So that's what Mr Tesoriero is up against, and we say the point is – sorry, your Honour.

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HIS HONOUR: No, I think that was some interference from somewhere, Mr Hayes.

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MR HAYES: Thank you, your Honour. And so we say that the burden upon Mr Tesoriero is to push to one side a very large amount of evidentiary material which we say amounts to very little. And – if anything at all. And to be able to make the submission that there is still no case on the question of knowledge, and central to the case is really what he knew about the scheme and in particular the 137 transactions requires me to address everything that the applicant has thrown at Mr Tesoriero in terms of discrete factual allegation and, ultimately, documents. And that's the case

45

against him. And we say, at the moment, it doesn't amount to anything, but it doesn't in any way alleviate the burden on his defence having to deal with all of that material and push it to one side, which is central to the submission, your Honour, that it effectively means nothing.

5

So when your Honour looks at that in the context of the case that he has to respond to, your Honour, there will be – it's – there's a fair bit of work involved. And that's – your Honour can see that certainly in the seven months, spending a little over half a million dollars, and Mr Nasimi refers to it, I don't need to take your Honour to the specific passages, but there is an awful lot of correspondence going back and forward between the liquidator and Westpac and the parties in this matter, your Honour. There is a lot going on behind the scenes, and Mr Nasimi has actually sworn up to that in his affidavit. There is the fact that this interlocutory application, regrettable as it is that it has to be made, one would have thought that – or one could be forgiven for thinking the parties should have been able to sort this out between themselves. And, your Honour, if you look at the way in which the – certainly the nature of the proceeding, the scale of the proceeding, and the manner in which the litigation is being conducted, the amount of just over half a million dollars on the part of Mr Tesoriero relative to the resources that are being thrown at this matter by Westpac represented by Minter Ellison, and also the liquidators represented by Allens, your Honour, is – it looks very modest indeed, I should have thought.

So if – in terms of the – if your Honour goes back to Mr Tesoriero's affidavit, and I imagine that your Honour was referring to paragraph 34 of that affidavit, which is at 498 of the court book, we say that relative to the resources put to this case by our opponents, your Honour, it's a modest amount. And this picks up, your Honour, on what's referred to in the third respondent's submissions, and in particular the quality of arms point, your Honour, which is developed in paragraph 12 and 13 of our submissions. And subject to ensuring the trial runs fairly, your Honour, while your Honour is quite right to expect the resources allocated to Mr Tesoriero's defence be carefully managed and prudently managed, there can be certainly no suggestion that they're being extravagantly managed or anything of that nature, your Honour. The whole point about balancing those interests between – with the careful and anxious examination that the authorities require between what is alleged to be a proprietary claim and the very essence of that proprietary claim is hotly in dispute. That's what the case is about.

The applicant is a long way from establishing a prima facie – or certainly an entitlement to that money. That's a matter for adjudication before your Honour. They've certainly brought up a prima facie entitlement to it but that entitlement is very much in the balance because Mr Tesoriero is hotly in dispute about it and he goes, "The pleadings make that very clear where he puts that in issue in his defence." So, your Honour, in terms of the equality of arm's principle, he has to be afforded at least a reasonable opportunity to present his case in a manner that doesn't place him in a position of disadvantage compared to Westpac or the liquidators. Now, this is not suggesting that he's after a free for all and wants to stack a team with being able to run the case extravagantly. Far from it.



But to meet the sort of case - and if your Honour can gain a deeper appreciation from the way in which there has been a request for particulars and also the way in which Mr Nasimi refers to it, the way in which the case is being run, almost daily there's correspondence going back and forth between the parties. He's at a grave  
5 disadvantage unless he can properly fund that that defence and at least have – he's not asking for the exact same resources as Allens or Minters are. I think that Mr Nasimi, in one of his earlier affidavits, indicated that there were nine fee earners at one stage working on the Westpac brief for the solicitors for Westpac but no doubt a few solicitors and two or three counsel in responding to these contentions and the  
10 case against him, which are serious matters, is by no means extravagant. Indeed, it's necessary and what's necessary in this instance is what we say is reasonable in terms of equality of arm's, your Honour.

HIS HONOUR: Well, can I just work out where we're up to so I can form a view  
15 about what is necessary in order to ensure this equality of arm's which, as you correctly point out, is a very important aspect of this application. How far aware are you from completing the material in order to comply with order 7 that was made by the court on - - -

20 MR HAYES: In was in March, your Honour.

HIS HONOUR: - - - 10 March.

MR HAYES: On 10 March, I think.  
25

HIS HONOUR: 10 March. So how far aware are you from that?

MR HAYES: Yes, your Honour. I expect to be able to – if within a week the  
30 applicants could indicate what their documents are that they propose to tender at trial, I should have thought within two to three weeks of the applicant's – or if the applicants could indicate maybe by the middle of July, he should be able to do so by no later than the first week of August as to whether or not he goes into evidence.

HIS HONOUR: Well, can I – there's no difficulty, as I understand or no subsisting  
35 difficulty with the particulars that have been provided of the claim.

MR HAYES: No.

HIS HONOUR: So you have a particularised claim. One of the features of the  
40 orders made on 10 March is reflected in order 9 and that is I don't want the applicants to tender documents unless a matter is bona fide in dispute. What I asked them to do by 15 July, that is a fortnight from today, was to serve a summary for the purposes of section 52 of any documentary evidence to be relied upon by the hearing. That is, I wanted them to go through the bank statements they rely upon and have a  
45 summary what the bank statements say. I want them to go through the other transactional documents and have a summary of what the transactions say. I don't

want those documents to be tendered into evidence. It's completely contrary to the overarching purpose.

MR HAYES: Yes, your Honour.

5

HIS HONOUR: And that's the regime I wanted to put in place. And in respect of a properly joined defence, which has been properly particularised, I don't understand why you need – if what you say to me is that you can't – and I understand the seriousness of the allegations made and you're highly experienced counsel so if you say to me – and you know a lot more about the case than I do. If what you're saying to me now, and I hadn't appreciated this when I made the orders on 10 March, is that you're not going to make a forensic decision about whether or not you call your client until Westpac close their case, then we will proceed on that basis but that's not what I understood your position was to be. I didn't think there was an opposition to you filing affidavit material along the lines of the timetable that I set out.

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MR HAYES: That's fair, your Honour, and I will take full responsibility for that but that's my position now. Yes.

20

HIS HONOUR: Well, then why wouldn't we proceed on the basis that you don't file an affidavit now. You wait till the conclusion of Westpac's case and if you wish to call your client, you can call him orally.

25

MR HAYES: I'm attracted to that position, your Honour, but I would like to get some instructions on that and – but I'm attracted to that proposition.

30  
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HIS HONOUR: And you will save an enormous amount of money that way, it seems, because if all you were going to do was effectively take a passive – I'm not being critical. It's a perfectly legitimate way given a fraud case. If what you're going to do is effectively say, well, you may decide this is a weak case. You don't propose to go into evidence at the close of Westpac's case and I express no view one way or the other and one of the dangers on these applications is judges expressing views on the strength of otherwise of prima facie cases and it's one of the reasons why I think the course adopted to standing over that summary charge decision until the trial was a sound one from a case management point of view in a case of this type.

40

If you want to run the case that way, it seems to me you're perfectly entitled to do so but, really, I don't understand, in those circumstances, why there would be a need for – I don't know why there would be a need for an expert, which is \$370,000 the estimate. If there is – what's the expert evidence going to go to?

45

MR HAYES: Your Honour, it was essentially as to the money that was to – effectively a reconstruction of his accounts as to the money he invested into the business but it's - - -

HIS HONOUR: But that's not – I don't think it's in dispute about what money that Mr Tesoriero provided to what I will describe generally as the Papas interest.

5 MR HAYES: Your Honour, I hear exactly what your Honour is saying about the expert. I'm not going to agitate that in front of your Honour for now.

HIS HONOUR: All right.

10 MR HAYES: If your Honour – that can be put to one side for the moment.

HIS HONOUR: So it seems we can draw a line through that 370,000 then and we can draw a line through a significant part of the lay evidence - - -

15 MR HAYES: Well, I'm not abandoning it, your Honour, at this point but I'm not asking for it now. And it's possible I might not ask for it at all.

20 HIS HONOUR: Well, I can tell you though I don't want there to be any misunderstanding. You're not putting on expert evidence unless I give leave because I don't understand why it's consistent with the overarching purpose to put on expert evidence.

MR HAYES: That's right.

25 HIS HONOUR: If there are any genuine opinion evidence questions that arise in the case and at the present I don't see them, then I would expect that probably to be something that I would refer out not to have contested expert evidence.

MR HAYES: Yes.

30 HIS HONOUR: Now, I don't think - - -

MR HAYES: Well, we don't ask for it now, your Honour.

35 HIS HONOUR: To be perfectly frank, I don't see your trial preparation is excessive. I don't see the trial estimate as excessive and it seems to me that I have little visibility on what has been done for the 546 and how that relates to the so-called discovery and reply work but at present it seems to me that – and these are just tentative views without hearing from Mr Giles, that I would have thought that the amount conceded to by Westpac is a little on the shy side and the amount that you  
40 seek is a little on the excessive side and I think – I would have thought, on those figures, an amount of around 1.25 for the past work to your firm. I'm leaving to one side, at the moment, the – to your instructing solicitor's firm. I'm leaving to one side now the Fortis Law material together with an amount to – for the trial would be something which would be fair in all the circumstances.

45 MR HAYES: Something at 1.25 to – in that ballpark, your Honour. Yes. Maybe that would be getting close to the amount I should think.

HIS HONOUR: Mr Giles.

MR HAYES: It might be the absolute bare minimum, your Honour, I hate to sound like Oliver in the West End, I don't want to come back begging for any more, your Honour.

HIS HONOUR: Then you might get the same reaction that Oliver got.

MR HAYES: That's why I'm asking for it now, your Honour.

HIS HONOUR: It's a hard knock life. It is a hard knock life. In any event, yes.

MR HAYES: We would say, perhaps, and we're not suggesting at all that your Honour is – we suggest that perhaps we would – perhaps maybe another hundred thousand might be appropriate. 1.35 might be appropriate, in this instance.

HIS HONOUR: Mr Giles. I mean, for a case of this magnitude, it seems to me that from starting at scratch, because it doesn't appear that there is a huge amount of – I'm leaving aside the previous material, I'm just focusing on the people who had to run this case and are running it through to a hearing. I would have thought for a case of this length, with Senior Counsel involved, and given the scope of the case, that I think anything less than that is a bit skinny.

MR GILES: 1.25, your Honour. I'm the last person who would stand up and coherently argue to the contrary.

HIS HONOUR: Mr Giles, you probably spill more than that.

MR GILES: I don't want to quibble, but there's an anterior point, and I'm not making the point that your Honour understood that we've got proprietary relief, that's now said to be prima facie, and I know – could I ask your Honour to take up Ms Murray's affidavit.

HIS HONOUR: Yes.

MR GILES: Of yesterday. And most importantly, the exhibit to it. Would your Honour go to page 1 of the exhibit.

HIS HONOUR: Yes.

MR GILES: So this is a bank account with the ANZ. It is an account that was actually previously disclosed. That's how we've lucked into it, if I might put it that way.

HIS HONOUR: I see.

MR GILES: So it's misdescribed, as it happens, as described as being held by a different company, but the account number was disclosed by Mr Tesoriero in one of his earlier affidavits. One finds when one receives it, that it's an account for a company called 14 Kirwin Road, Morwell as trustee for the 14 Kirwin Road Morwell Unit Trust, a party to these proceedings. What one has, though, very curiously, is most of the rent, it looks like it's rent, being earned by Mr Tesoriero's companies, those still in his control, go into this account. Curious. It's not all of it, because there are two properties in Balaclava in - - -

10 HIS HONOUR: So this is a – sorry, hadn't looked at this affidavit.

MR GILES: No, I understand.

15 HIS HONOUR: So this is an affidavit – and this is material which has been disclosed recently on subpoena.

MR GILES: And when one says “disclosed”, yes, obtained on subpoena, but - - -

20 HIS HONOUR: Well, sorry - - -

MR GILES: We have sought - - -

25 HIS HONOUR: You're quite right. I didn't mean disclosed by Mr Tesoriero, but just so I understand, so 14 Kirwin Road Morwell Proprietary Limited as trustee for the 14 Kirwin Road Morwell Unit Trust, just remind me, 14 Unit Road Morwell is a company owned by what entity?

30 MR GILES: It's ultimately one that Mr Tesoriero has the ultimate interest in, if I – sorry. The company he has the ultimate interest in, I can't tell your Honour whether it's through other corporate entities, but I don't know - - -

HIS HONOUR: Well, anyway, 14 Kirwin Road Morwell is that a commercial premises, or a residential premises?

35 MR GILES: Tesoriero. It's a country petrol station.

40 HIS HONOUR: Country petrol station. And there appears to be quite considerable credits coming into this account from not only 14 Kirwin Road Morwell Proprietary Limited from other properties at Oakleigh, is that what I would - - -

MR HAYES: Yes.

45 HIS HONOUR: It says from Buxton Oakleigh, 14 Kirwin, or – but it has also got Oakleigh 4 Cowslip, which I presume is another property or Oakleigh 274 High Street, etcetera.

MR GILES: Each of those are properties owned by one of the defendant – one or other of the defendant companies.

HIS HONOUR: Associated with Mr Tesoriero?

5

MR GILES: Associated with Mr Tesoriero.

HIS HONOUR: And this is an account, an ANZ account where credits have been paid, including over the last few months?

10

MR GILES: Quite.

HIS HONOUR: And was this disclosed in the – this was not disclosed in the affidavit material?

15

MR GILES: All one receives in the affidavit is volume 1, page 186, item 10, your Honour sees the point which I made a moment ago, item 10 is, in fact, the correct ..... account number, but it's described as something called the 31 Hallinan Street Trust, which I might say, it's not.

20

HIS HONOUR: So these – this was the document – is this the first freezing order affidavit?

MR GILES: Yes.

25

HIS HONOUR: Or there was a subsequent disclosure of assets. There's two affidavits which disclose assets, and you both say they're materially deficient.

MR GILES: That's right. So what we did have, and there's a summary of this at page 151. 151 of the book, your Honour, is a summary document prepared by our solicitors, summarising the property then the third column, what Mr Tesoriero disclosed as the monthly interest expense, I will come back to that in a moment, because it's just not consistent with what I'm about to show your Honour. And then the monthly mental income. So what first of all, your Honour sees, is that the two properties, from their numbers, one would infer, because I'm in the world of inference, because I don't get told these things, infer that these are apartments in Carlile Street Balaklava, which is suburban Melbourne, I think, next to St Kilda.

30

35

In this account, which I have opened before your Honour on page 1 of CMM 26, there's no money coming in from the Carlile Street Balaclava properties. What one can see, though, is for example, item 4 under petrol stations 2-4 Cowslip Street, this is back on page 151, said to be an income of \$20,000 now, perhaps a little bit oddly, that appears – yes, sorry, one now sees, back on page 1 at about point 5 on the page, an amount of slightly over \$23,000 coming in from the Cowslip property, and I can follow that through it. The estimates are - - -

40

45

HIS HONOUR: So the bottom line is, it appears that through some sort of analysis of the materials, he has got rental income of 113,150 coming in with monthly expenses of 71,400 so he has access to a little over \$40,000, it appears, on those records?

5

MR GILES: Well, subject to this, your Honour. We know how much was being received from the properties other than the Carlile ones in March, April and May this year, because that's what our subpoena called for, and your Honour sees that at the foot of page 1, page 2, page 3, and I don't know why – there's no explanation as to why the numbers bounce around, but they are between – on page 3 is a low point at 97-odd thousand dollars and the high point is \$117,000 on page 2. One sees that at the total of the end of the period at the bottom of the page in the credits column.

10

HIS HONOUR: Yes.

15

MR GILES: And we have the unknown about from Carlile – the two Carlile Street properties. What one then has on the debits column - - -

HIS HONOUR: Well, Mr Giles, I don't think – I've got a trial at 10.15 - - -

20

MR GILES: I know.

HIS HONOUR: - - - but it seems to me that two things emerged from this morning. One is I've given my view about the fact that I do think, in all the circumstances, it's appropriate that Mr Tesoriero be in a position to fairly deal with the case and we've heard from Mr Giles as to why he says that the orders that I've made preparing the case now no longer affect the way he wants to run the case.

25

MR GILES: Mr Hayes.

30

HIS HONOUR: So they need to be varied. The – I've indicated what I think is a fair amount to run a trial of the nature which seems to me to be the type I'm talking about but I do think there needs to be some satisfactory explanation as to what the true position is and why the – it may be that I've missed something but it doesn't appear that, at least in the earlier affidavits, there has been a frank disclosure of what exactly the asset position is and what's happening on a monthly basis and I think it would be wrong for me to determine this application without there being some ability to get some further clarify from Mr Tesoriero about that point and for you to have the opportunity to cross-examine him if he wishes because that might be a discretionary factor which bears upon how much money be released in order to get to what – a figure that I regard as being fair.

35

40

MR GILES: Quite. Just so that – I don't want – I'm not going to talk your Honour out of that, at least I don't intend to talk your Honour out of that because we think that that's right .....

45

HIS HONOUR: Yes.

MR GILES: I mention one other thing so at least out learned friends know.

HIS HONOUR: Yes.

5 MR GILES: I mean, page 70 of the bundle.

HIS HONOUR: Yes.

10 MR GILES: So this is a Judo Bank statement. This is the - - -

HIS HONOUR: 70, sorry. This is in the affidavit of Ms Murray.

MR GILES: Ms Murray. Sorry.

15 HIS HONOUR: Sorry. I was looking at the court book. Yes.

MR GILES: Perhaps one should go back to page 69.

HIS HONOUR: Yes.

20

MR GILES: This is the company that owns the house in Toorak that Mr Tesoriero is presently living in.

HIS HONOUR: Yes.

25

MR GILES: Hawthorn, I'm told. I see. Page 69 one sees that there's a – this is a loan facility. It seems to be from the account type entry, right-hand column at about point 3 on the page. Business loan variable IO, which, again, I'm in a world of drawing inferences, interest only. One sees there, on that day – that month, that is  
30 March, \$31,000-odd in interest and \$33,000-odd paid down so - - -

HIS HONOUR: Yes.

35 MR GILES: \$2000 is not going to change anything but if one goes over to page 70, your Honour, what it appears to be - - -

HIS HONOUR: There's a couple of big whacking credits.

MR GILES: Quite.

40

HIS HONOUR: Of \$66,000.

MR GILES: Quite.

45 HIS HONOUR: Yes.

MR GILES: And then if one goes over to page 72. Yes.



HIS HONOUR: I really don't need to see anything more, Mr Giles.

MR GILES: No.

5 HIS HONOUR: I need to – I don't need to see anything more other than to reach the conclusion I need to see a lot more.

MR GILES: Yes. Yes.

10 HIS HONOUR: If you understand what I mean.

MR GILES: I understand your Honour's point.

15 HIS HONOUR: Mr Hayes, some of this or – I presume this is that – this material on subpoena may have been material that you haven't had the opportunity of looking at before.

20 MR HAYES: No. We haven't and it's not explained in the affidavit of Ms Murray so this is all news to us and while we accept our learned friends, in the world of inference, we certainly – it would seem as though it might be slipping into speculation. Obviously, it one goes back to pages 1 and 2, what my learned friend was doing was comparing to a schedule.

25 HIS HONOUR: I don't – sorry, I don't want to get into a debate about it at the moment, Mr Hayes, because I am satisfied on the basis of the differences between the affidavits filed today that there has been – there's the July affidavit and the September affidavit and it's clear that there are material inconsistencies between those affidavits in any event but it appears even now the September affidavit may need to be, I will use a neutral word, revisited.

30 MR HAYES: Well, two things - - -

HIS HONOUR: Sorry.

35 MR HAYES: Sorry, your Honour. I didn't – sorry, your Honour.

40 HIS HONOUR: That's all right. What I was going to suggest is I want – if I'm going to make an order releasing legal funds, I want complete transparency and an understanding of precisely what the asset position of Mr Tesoriero is as of today because the – those statements raise questions which I think you should have the opportunity of answering. The course I propose to – I've indicated my preliminary view concerning that amount – the amount. An additional amount should be released in order to allow you to prepare and appear at trial. I also – it's going to be necessary to amend the orders that I've made to reflect the way you now want to run the trial.

45

MR HAYES: And I should say, your Honour, in respect of those orders it was only apparent after – on 10 March when your Honour made – when we had an opportunity reflect on the strikeout matter being - - -

5 HIS HONOUR: Yes. I'm not being critical in the least, Mr Hayes. The - - -

MR HAYES: We could have and should have raised it earlier with your Honour.

10 HIS HONOUR: Yes. The forensic decisions called for in a case such as this are not necessarily easy.

MR GILES: As your Honour's doing that, might - - -

15 MR HAYES: But the two things – but, your Honour, it might be timely for an update by Mr Tesoriero because my learned friend was comparing monthly rental from 12 months ago so it's not necessarily a given and there's not a vast difference between the figures if one compares page 151 of the court book to pages 1 and 2 of the court book.

20 HIS HONOUR: I think you should – I won't hold you to anything you say at the moment but I think you should take some instructions about this very carefully because there – the discrepancies in those two affidavits at the moment are a concern to me and I must say the documents annexed to Ms Murray's affidavit of 30 June highlight concerns I already have about whether or not there has been a full and frank  
25 disclosure of assets and continuing access to funds.

MR HAYES: If your Honour pleases.

30 HIS HONOUR: Now, I may be – it may be that those concerns can be allayed easily if I had more information from your side and it may be that Mr Giles wishes to explore any further explanation. In which case – but I don't think we can afford to rush this and I've got a hearing that has already been delayed for 15 minutes. Are you – when are you back from the United Kingdom?

35 MR HAYES: I'm in chambers on 18 July, your Honour.

HIS HONOUR: Well, it probably can't wait till then. I think - - -

40 MR HAYES: And I'm no longer in the United Kingdom as of this weekend.

HIS HONOUR: I see. Is it - - -

MR HAYES: I will be back in chambers in a fortnight, your Honour.

45 HIS HONOUR: Well, I think I should stand this over till 19 July if that's convenient for you, Mr Giles and Mr Hayes.

MR HAYES: Yes, your Honour.

MR GILES: I wonder if we might have an afternoon – I have something which I think has got a high prospect of going away before O’Sullivan J at 10.45 for the rest  
5 of that morning but – and this is – I mean, this is important.

HIS HONOUR: It is important.

MR GILES: I’m not sure whether in the afternoon or a 9.30 start - - -  
10

HIS HONOUR: I think it has to be a day.

MR GILES: Yes.

15 HIS HONOUR: Particularly if there’s going to be cross-examination. We can’t rush this.

MR GILES: No. I mean, in fairness, it’s a security for costs application. It’s hardly terribly important but - - -  
20

HIS HONOUR: Well, I think your junior can do the other one.

MR GILES: If I had one. Yes. We will work that one out.

25 HIS HONOUR: Accepting a brief unless you have a junior.

MR GILES: It’s just - - -

30 HIS HONOUR: But – so the – so I will set it down and we will commence at 9.30 am on 19 July. I think at that stage I’m going to make any further orders I need to make to ready this matter up for hearing on – that order for you to file – I’m going to vacate order 7 and 8 that I made on 10 March insofar as they relate to Mr Tesoriero.

35 MR GILES: While we’re doing that, your Honour, might I ask your Honour when we can expect to get Mr Tesoriero’s discovery.

HIS HONOUR: There has been no discovery yet.

40 MR GILES: No.

HIS HONOUR: When are you going to give discovery, Mr Hayes?

45 MR HAYES: It should have been done by now, your Honour, but we’re hopeful it can be done very soon.

HIS HONOUR: Well, I expect it – I’m not going to extend time for that. You’re in default and I’m not going to grant any application to Mr Tesoriero unless extant defaults are remedied so you better get it on quick sticks because every day is - - -

5 MR HAYES: Would your Honour be – sorry, your Honour.

HIS HONOUR: No. I won’t extend the time. You’re just going to have to get it done. So – but I will vacate the order you’re to file your affidavit material.

10 MR HAYES: Thank you, your Honour.

HIS HONOUR: The – by the 19<sup>th</sup> – on 15 July Westpac will serve their summary and I would expect that you would be able to be in a position on 19 July to indicate your attitude towards that, Mr Hayes.

15 MR HAYES: Yes, your Honour.

HIS HONOUR: And – all right. Well, they’re the - - -

20 MR HAYES: Just briefly before your Honour rises, would your Honour be prepared to release at least some of the money. Westpac consented, I think it was to \$670,000.

HIS HONOUR: No. No. I’m not releasing – as a matter of discretion I’m not releasing any money to people who are in subsisting default of my orders, as a matter of discretion.

25 MR HAYES: As your Honour pleases.

HIS HONOUR: And we will come back. And if you could notify whether you require Mr Tesoriero for cross-examination and Mr Tesoriero – any affidavit as to assets. Updated affidavit material by Mr Tesoriero as to his current asset and liability position should be filed by no later than – I think no later than 11 July and I will make any subpoenas returnable that might emerge from that. They can be – I will give you leave in chambers to have subpoenas returnable on 15 July at 9.30.

35 MR GILES: May it please, your Honour. Assets and liabilities, given the debate, includes statement – income and expenditures.

HIS HONOUR: Yes. Yes.

40 MR GILES: Of course.

HIS HONOUR: Assets and liability including his current income position. Income and expense position. Yes.

45 MR GILES: And reserve the costs of today.

HIS HONOUR: I reserve the costs of today.

MS BEECHEY: I will be just 15 seconds. I'm here because - - -

5 MR HAYES: Your Honour pleases.

MS BEECHEY: I'm here because SMBC has – is suing some of the companies. It does not sue Mr Tesoriero and we have an interest particularly in the Margaret property – Margaret Street property and we may seek just to be heard in relation to  
10 that. I raise that now because Mr Tesoriero may wish to keep that in mind when preparing his affidavit material of the companies, from our perspective, from the different position to Mr Tesoriero as an individual.

HIS HONOUR: Well, yes, but the affidavit material should be dealing with any  
15 entity or entities in respect to which Mr Tesoriero has any type of interest, including an object of a discretionary trust.

MS BEECHEY: Up to this point, there has been a merging of information regarding  
- - -  
20

HIS HONOUR: I understand that but it's important it be merged for the purposes of me getting a true position of his assets and liabilities position but I understand the different point that you're making. All right. Could your solicitors send up a copy of a minute of order which reflects that and I will make those orders in chambers and  
25 I will now adjourn to – and I will come back on presently.

**MATTER ADJOURNED at 10.34 am INDEFINITELY**



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## TRANSCRIPT OF PROCEEDINGS

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O/N H-1753354

**FEDERAL COURT OF AUSTRALIA**

**NEW SOUTH WALES REGISTRY**

**LEE J**

**No. NSD 616 of 2021**

**No. NSD 642 of 2021**

**No. NSD 681 of 2021**

**No. NSD 747 of 2021**

**WESTPAC BANKING CORPORATION and OTHERS**

**and**

**FORUM FINANCE PTY LIMITED (IN LIQUIDATION) AND OTHERS**

**SMBC LEASING AND FINANCE, INC**

**and**

**FORUM ENVIRO (AUST) PTY LTD (VOLUNTARY ADMINISTRATORS  
APPOINTED) and OTHERS**

**IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED  
(ADMINISTRATORS APPOINTED) and OTHERS**

**SYDNEY**

**9.32 AM, TUESDAY, 19 JULY 2022**

**MR J.C. GILES SC appears with MS C.A. HAMILTON-JEWELL for Westpac**

**MS E.L. BEECHEY appears for SMBC Leasing and Finance**

**MR R.K. JAMESON appears for the liquidators and receivers**

**MR P. HAYES QC appears with DR P. TURNER for Mr Tesoriero**

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5 MR J. GILES SC: May it please your Honour, I appear with my learned friend MS HAMILTON-JEWELL for the Westpac parties.

HIS HONOUR: Yes.

10 MS E.L. BEECHEY: May it please the court, Beechey, B-e-e-c-h-e-y. I appear for SMBC Leasing and Finance.

HIS HONOUR: Yes.

15 MR R.K. JAMESON: May it please the court, Jameson. I appear for the liquidators and receivers and companies in liquidation.

HIS HONOUR: Yes, thank you.

20 MR P. HAYES: May it please your Honour, I appear with DR TURNER for the third respondent.

HIS HONOUR: Are you still overseas, Mr Hayes?

25 MR HAYES: No, no. I'm back in chambers, your Honour. I'm back in Melbourne.

HIS HONOUR: Then why aren't you here?

MR HAYES: We understood - - -

30 HIS HONOUR: I hadn't appreciated – I thought one of the reasons we're having it today was you could be back and appear in court.

MR HAYES: Yes.

35 HIS HONOUR: Appear in court.

MR HAYES: I understood it was online, your Honour. That was my understanding.

40 HIS HONOUR: No, no. I don't have hearings online unless there's a – a substantial hearing online unless there's some good reason for it, so in respect of the balance of the appearances in this case, if you could appear in person, I would be grateful.

45 MR HAYES: If your Honour pleases. I'm terribly sorry, your Honour. It was our - - -

HIS HONOUR: No, no. There was obviously a misunderstanding, Mr Hayes.

MR HAYES: ..... short matter this morning, your Honour, and we will - - -

5 HIS HONOUR: Is it? Sorry. Mr Giles - - -

MR GILES: Shaking his head.

10 HIS HONOUR: - - - shaking his head saying it's not going to be short. In any event, perhaps, I will hear from Mr Giles first, and we will see where we go from there.

MR HAYES: If your Honour pleases.

15 HIS HONOUR: Mr Giles.

MR GILES: Could I deal with an administrative matter, your Honour, so that you've got the paper. Could I hand up a folder of the material that came in late, and the - - -

20

HIS HONOUR: This is material from – that has come in since the last occasion, is it?

25 MR GILES: Yes. So your Honour will see that behind tab 1 – I will read it for the benefit of our learned friend. Behind tab 1 is Mr Tesoriero's affidavit with exhibit VTF6 of 12 July, served sort of in accordance with your Honour's directions, sort of because it was late. Behind tab 2 is Mr Tesoriero's affidavit of 18 July, which is also accurately described as being last night. Then behind tab 3 is an affidavit of Mr Nasimi together with exhibit SM6 also accurately described as being of last night.  
30 Behind tab 4 is our learned friend Mr Hayes's written submissions. Behind tab 5 are some written submissions from our learned friend Ms Beechey, and behind tab 6 is an affidavit of Mr Prestwich, which doesn't affect Mr Tesoriero, at least, in any direct way, but it's just something that should be dealt with so a third party that requires it. So that's the additional material, your Honour, subject to one matter,  
35 which I will come to in a moment. If Mr Tesoriero's affidavits are to be read, as one imagines they will be, we've notified that we required him for cross-examination, and your Honour, I thought, had made pellucidly clear that if there was to be cross-examination, he was to be here.

40 HIS HONOUR: Yes. All right.

MR GILES: And I've got some paper that I wanted to put to him.

45 HIS HONOUR: Yes. What's the position, Mr Hayes? Do you rely on this additional material?

MR HAYES: I'm sorry, your Honour?



HIS HONOUR: Do you rely on this additional material?

MR HAYES: Yes, we do. It's referred to in paragraph 4 of our supplementary submissions.

5

HIS HONOUR: Right.

MR HAYES: And Mr Tesoriero is available for cross-examination online, your Honour. As we - - -

10

HIS HONOUR: I'm not having cross-examination online. I'm going to stand the matter down, and you and your client can appear in court. When can you do that?

MR HAYES: I'm available this week, your Honour, and I imagine Mr Tesoriero is similarly available. I arrived back in chambers yesterday, and I'm available all this week.

15

HIS HONOUR: Right.

20 MR HAYES: We can head up there - - -

HIS HONOUR: Is Mr Tesoriero in Sydney?

MR HAYES: No. He's in Melbourne, your Honour.

25

HIS HONOUR: So what do I do, Mr Giles? Just see whether I can – how are you placed tomorrow?

MR GILES: I can move things and do tomorrow.

30

HIS HONOUR: Yes. Unfortunately, I have a funeral I need to go to in the afternoon from 2.30 to 4.30, but I will - - -

MR GILES: I will cut my cloth.

35

HIS HONOUR: We will start early, and we will come back after that.

MR GILES: I will cut my cloth as well.

40 HIS HONOUR: No, no. You don't need to. No doubt, I'm not having you inconvenienced or your cross-examination truncated because people presumed that things would occur in a different way. Is there any reason why Mr Tesoriero couldn't be here at half past 2 his afternoon?

45 MR HAYES: I will take some instructions, your Honour. I can, certainly, endeavour to get up there this afternoon as well. If your Honour stands the matter

down, I can get those – and I will ask for those instructions if it’s possible, your Honour. If we can get a flight, we will be there.

5 HIS HONOUR: All right. Well, I do think it’s important that cross-examination occur in person for a host of reasons, and my intention today was to have a hearing in person but, particularly, in circumstances where I noted, at page 25 of the transcript, that I thought there would be cross-examination, and it would occur in person. All right. Well, I’m going to stand the matter down to 2.30.

10 MR GILES: I wonder – your Honour, some documents have been produced on a notice to produce, as I understand it. They’re in the registry. I don’t know whether I need an access order to it, but to the - - -

15 HIS HONOUR: Yes, you will.

MR GILES: Yes.

HIS HONOUR: So who is the notice to produce directed to?

20 MR GILES: To Mr Vince Tesoriero and Mr Giovanni Tesoriero.

HIS HONOUR: And those documents have been produced to the registry.

25 MR GILES: Something has been produced. I don’t know what.

HIS HONOUR: Well, yes, you can have access to those documents in the registry. If there’s some difficulty when you got down to the registry in getting them, they can contact my associate, and they will - - -

30 MR GILES: May it please.

HIS HONOUR: - - - facilitate access to them. You can also ..... access which – and bring them back in court at 2.30 this afternoon.

35 MR GILES: May it please.

HIS HONOUR: Is there anything that – is there anything not involving Mr Tesoriero so Mr Hayes and Tesoriero can make the necessary arrangements?

40 MR JAMESON: Your Honour, the issue of the Palante freezing order doesn’t involve Mr Tesoriero, and I wonder - - -

HIS HONOUR: All right. Well, you’re excused, Mr Hayes - - -

45 MR HAYES: Thank you, your Honour.

HIS HONOUR: - - - and that matter is stood down to 2.30, and I will deal with this other matter now.

5 MR HAYES: And, your Honour, our most profound apologies for the misunderstanding.

HIS HONOUR: That's all right, Mr Hayes. These things happen, but I – these things happen, and we will sort it out at 2.30.

10 MR HAYES: And it's a different world up there, your Honour. We've been hearing things online here in Victoria at the moment, or most things are, so we just - - -

15 HIS HONOUR: Right. I see. Yes.

MR HAYES: We just - - -

20 HIS HONOUR: Well, that's all right, Mr Hayes. If you get here at 2.30, we will have time between this afternoon and tomorrow to deal with it.

MR JAMESON: Your Honour, my instructing solicitor sent - - -

MR HAYES: ..... your Honour.

25 MR JAMESON: - - - some short minutes of order to your Honour's associate – I have a copy for your Honour – on about 6 July.

HIS HONOUR: Yes. No. I've got a copy of that.

30 MR JAMESON: They're consented to by Westpac, the applicant, for a freezing order in respect of Palante Proprietary Limited in liquidation, which is a company wholly owned by Mr Bill papas. The reason for seeking a variation is to allow the liquidators to realise some shares that are held to Palante's benefit in an account called a Macrovue trading account and to reallocate some cash in an account to be  
35 held by the liquidators. That's consented to by Westpac, and this order simply seeks to vary the freezing order against Palante to deal with it.

40 HIS HONOUR: All right. Yes. Well, I'm happy to make orders in accordance with that consent short minutes of order. Is there any – you haven't provided any further supplementary submissions, I see.

MR GILES: No, I haven't, just a - - -

45 HIS HONOUR: Right. Okay. Do you intend to, or - - -

MR GILES: No. It's just a question of fact, your Honour, which - - -

HIS HONOUR: Just a question of fact. All right. That's fine. All right. Well, I will stand the matter down to 2.30.

MR GILES: May it please.

5

**ADJOURNED**

**[9.42 am]**

10 **RESUMED**

**[2.57 pm]**

15 HIS HONOUR: Yes. Can I just ask my associate to hand to the parties a copy of a list which identifies what we think is the material that's currently before the court on the application, the evidentiary material. So I think the first step is for – you've got no further evidence, I take it? Yes. All right – well, for you, then, to read the additional material upon which you rely, Mr Hayes.

20 MR HAYES: Thank you, your Honour. The further material I read is the affidavit of Vince Tesoriero sworn 18 July 2022 and the further affidavit of Mr Sas Nasimi sworn on 18 July 2022. Your Honour, those affidavits are in addition to the affidavits relied upon and referred to in paragraph 4 of the respondent's submissions.

25 HIS HONOUR: In relation to the affidavit of 12 July, is there any objection, Mr – any objection?

MR GILES: No, your Honour.

30 HIS HONOUR: No objection.

MR HAYES: We - - -

35 HIS HONOUR: All right. Well, I don't think the affidavit of – do you read this one, 12 July, did you say?

MR HAYES: We do, your Honour, yes.

40 HIS HONOUR: Yes. The affidavit of Vincenzo Frank Tesoriero sworn 12 July 2022 is read without objection, and exhibit VFT6, being a bundle annexed to that affidavit, will also go into evidence with that exhibit marking.

**EXHIBIT #VFT6 BUNDLE ANNEXED TO AFFIDAVIT OF VINCENZO  
FRANK TESORIERO DATED 12/07/2022**

45

HIS HONOUR: And the affidavit of the same deponent sworn 18 July 2022 is also read without objection.

5 MR GILES: Seeing his affidavit, your Honour, I do object to. It came in last night. It's not what your Honour directed, and - - -

HIS HONOUR: This is the sixth affidavit of Mr Nasimi.

10 MR GILES: Yes.

HIS HONOUR: Yes. Just let me have a look at that. Well, it's only directed to the topic referred to in paragraph 5, Mr Giles. If it's received on that basis, is there any problem with it?

15 MR GILES: If it's received on that limited basis - - -

HIS HONOUR: Yes.

20 MR GILES: Although, could I say, I would invite – and it can be done from the bar table – a clarification on instructions as to how paragraphs 9 and 10 are to be read together. The tense of it has left me, to say the least, confused as to whether what is being said is that discovery has now been – “Discovery was a difficult task and has now been given,” or what has been said is, “We've given some discovery, and there's more to come.”

25 MR HAYES: We will clarify that, your Honour.

HIS HONOUR: Yes, Mr Hayes.

30 MR HAYES: On the material available to date, I'm informed that the discovery has been completed, but, of course, it's an ongoing obligation, your Honour, and if matters come to the fall that should be discovered, they will be discovered.

35 HIS HONOUR: Has an affidavit of discovery been sworn?

MR HAYES: It has, 14 July, your Honour, I'm instructed.

40 HIS HONOUR: Yes. All right. All right. Well, the affidavit of S-a-r-w-a-r Nasimi, N-a-s-i-m-i, sworn 18 July 2022 is read, and I will make a limitation pursuant to section 136 of the Evidence Act that the representations contained in that affidavit are restricted to an explanation for the delays referenced by Westpac appearing on 1 July 2022.

45 MR JAMESON: Your Honour ..... traverse your Honour's ruling. I just ..... receivers and liquidators ..... there were some ..... affidavit to the conduct of the receivership and the correspondence in connection with the receivership and liquidation. I just simply wish to make ..... that ..... liquidators and receivers dispute

some of the matters in this affidavit ..... I just wish to make that claim .....  
circumstances ..... yesterday evening ..... opportunity to respond to it fully.

HIS HONOUR: For example?

5

MR JAMESON: For example, your Honour, paragraph 16 through 18, the position  
of the liquidators ..... nature of those communications ..... I just didn't want ..... to go  
..... your Honour.

10 HIS HONOUR: Well, if you want to cross-examine the deponent, you can.  
Otherwise, the material is there. It's limited in its scope, so I will just allow you to  
make whatever decision you wish to make about it. All right. Should we proceed,  
then, with Mr Tesoriero?

15 MR HAYES: Yes, your Honour. I've just had the opportunity to see your Honour's  
precis of the material before the court. Mr Tesoriero's later affidavits to refer to  
earlier affidavits, and we do say, in paragraph 4, that we rely upon them, of our final  
submissions. Has your Honour read the third respondent's outline of submissions in  
this matter?

20

HIS HONOUR: I have, and it's one of the reasons – because I was surprised to see  
that there because they weren't read on the last occasion.

MR HAYES: No, no. But - - -

25

HIS HONOUR: So they're not in evidence.

MR HAYES: Well, but they are read now because - - -

30 HIS HONOUR: Well, the evidence is - - -

MR HAYES: Well, to this extent, your Honour, it arose on the previous occasion.  
There was a complaint about disclosure. They didn't need to be read on the previous  
occasion. To the extent, now, that the later affidavits deal with the latest complaint  
35 about disclosure, they need to refer back to the earlier disclosure affidavits to have  
meaning.

HIS HONOUR: Well, you say there has been complete disclosure now.

40 MR HAYES: We say yes.

HIS HONOUR: Yes. That - - -

45 MR HAYES: As best as Mr Tesoriero's ability in terms of the difficulties he has  
had in gaining access to documents, and the circumstances which have been  
addressed in his later affidavits set out - - -

HIS HONOUR: Sure.

MR HAYES: But, yes, we say there has been.

5 HIS HONOUR: And I'm – the fact was, previously, the subject of challenge. I'm  
not sure whether it will continue to be the subject of challenge. No doubt, that will  
emerge during the process of the cross-examination. What I think I will do is I will  
defer the issue of whether or not you wish to, for example, make reference to those  
10 additional affidavits in the process of re-examination, but I think, in circumstances  
where I did give you – my recollection was that the evidence closed, and I made a  
direction for you to put on - - -

MR HAYES: Further material.

15 HIS HONOUR: - - - additional material. That wasn't leave to, as it were, reopen  
your case unless there is material in those affidavits which would properly go in in  
re-examination, but, perhaps, let me deal with – I don't want to create a tempest in a  
teacup.

20 MR HAYES: No. And we don't wish to - - -

HIS HONOUR: If there's – is there a particular unfairness associated with receiving  
that material which you've had for some time, Mr - - -

25 MR GILES: I thought was being asked a question.

HIS HONOUR: I was just going to ask if there's a particular unfairness in receiving  
it.

30 MR GILES: Only 8 November because that's the affidavit that has, sort of, floated  
before your Honour a couple of times and then not been read because that's the one  
which, it may be said, has reference to the substantive possible defence in it. Now, it  
wasn't read on the – consciously not read when I took objection to it on the last  
occasion. Now, Mr Hayes says to me he's not reading it today, so if 8 November is  
35 not being – 8 November '21 - - -

HIS HONOUR: All right. Well, the other - - -

40 MR GILES: - - - is not being read, I, otherwise, don't mind.

HIS HONOUR: So you're better – all right. 8 November is not read, but in respect  
of those other affidavits, if you could just identify them for the transcript - - -

45 MR HAYES: Certainly, your Honour.

HIS HONOUR: - - - and I will take those as being read.

MR HAYES: It's 21 July 2021.

HIS HONOUR: Yes.

5 MR HAYES: 3 September 2021; 19 October 2021; and then 17 June, which was  
read on the previous occasion, 2022; and then 12 July and 18 July, which I've also  
read today; Mr Nasimi's affidavit of 9 November 2021 at paragraphs 13 to 21; his  
affidavit of 8 February 2022; and then the affidavit that has been read today, your  
Honour, of 18 July.

10 HIS HONOUR: So does – sorry. Go on. I didn't mean to interrupt you.

MR HAYES: The earlier affidavits, your Honour – they are referred – in the more  
recent affidavits, as Mr Tesoriero endeavours to explain anomalies in those earlier  
15 affidavits, they are referred to, and so giving that he's referring to them in subsequent  
affidavits, it's probably prudent, in our respectful submission, your Honour, that  
those earlier affidavits be read into evidence because he refers to them in his later  
affidavits.

20 HIS HONOUR: Well, it's a matter for you, but if they contain inaccuracies,  
adducing them in chief – it wouldn't seem to me to be the regular course. What you  
would do is ask that, to the extent that they're referred to in the affidavit which gives  
the correct evidence – that they be marked for identification, but, look. There's no  
objection to them.

25 MR HAYES: No.

HIS HONOUR: That's the course you wish to take, so I will receive them, those  
affidavits referred to on the transcript. They can all be taken as read as your  
30 material.

MR HAYES: If your Honour pleases.

35 HIS HONOUR: All right. Is that – are you ready to proceed? If we could have Mr  
Tesoriero, please, in the witness box. Court officer, could you, please, swear the  
witness.

MR HAYES: And, your Honour, Mr Giles – I've had the advantage of having a  
very helpful discussion with Mr Giles. It has been agreed between counsel that  
40 cross-examination won't trespass on matters in respect of the substantive dispute. It  
will only go to matters of disclosure and means of Mr Tesoriero, given the nature of  
this hearing.

45 HIS HONOUR: That's the way Mr Giles ..... if there's an objection – that I will deal  
with it on the basis of the Evidence Act.



<EXAMINATION-IN-CHIEF BY MR HAYES

5

HIS HONOUR: Yes. Please, take a seat, sir. Mr Hayes.

10 MR HAYES: Mr Tesoriero, could you please state your full name and address for the record?---Vincenzo Tesoriero, 64 Berkeley Street, Hawthorn.

And you're the third respondent in this proceeding?---Yes.

15 And, your Honour, might Mr Tesoriero be shown his affidavits of 17 June, 12 July and 18 July 2022.

HIS HONOUR: Have we got a copy of the court book? They're in the court book, aren't they, or the supplementary court book? Court officer, if you could - - -

20 MR GILES: I will give Mr Tesoriero volume 2 of the court book and also the volume that I handed to your Honour this morning, which is .....

25 HIS HONOUR: Thank you. That material should contain the affidavits to which counsel has made reference, Mr Tesoriero?---Thank you, your Honour. Thank you. Can I lift this up or no?

MR HAYES: And in respect of the court book – just excuse me, your Honour.

30 In respect of the – could you please go to 492 of the court book, tab 12, and from tab 12, the pages 492 to 562. That's an affidavit you swore on or about 17 June 2022?---Yes, that's correct.

35 And the contents of that affidavit are true and correct to the best of your recollection and knowledge?---That's correct, yes.

And could you then, please, go to tab 13 – sorry. My apologies – of the second bundle. There will be a tab there. Thank you – an affidavit you swore on 12 July 2022?---The one I have is 28 June here.

40 When you have – the 28<sup>th</sup>. All right – and tab 1. Do you have that? Second bundle, the - - -?---Second bundle. I beg your pardon, Mr Hayes.

Yes. Tab 1 of the second bundle?---Yes.

45 That's an affidavit you swore on 12 July 2022?---Yes, it is. Yes.

Now, the contents of that affidavit are true and correct to the best of your knowledge?---Yes, they are.

5 And tab 2 of that bundle, or the second bundle, that's an affidavit that you swore on 18 July 2022?---That's correct, yes.

And the contents of that affidavit are true and correct to the best of your knowledge?---That is also correct, Mr Hayes.

10 If you just wait there, Mr Tesoriero, Mr Giles will have some questions for you?---Thank you.

**<CROSS-EXAMINATION BY MR GILES**

**[3.11 pm]**

15

MR GILES: I wonder if Mr Tesoriero could be handed a bundle of documents marked CMM26, which was the bundle which I gave your Honour on the last occasion. It's behind Ms Murray's affidavit of 30 June 2022?---I can close these up for now, Mr Giles?

20

You can, Mr Tesoriero?---Slowly running out of room, otherwise.

I am going to take you back to the volume that has got - - -

25

HIS HONOUR: Sorry. What was the number of that again? I apologise.

MR GILES: That's - - -

30 HIS HONOUR: CMM25?

MR GILES: CMM26, your Honour.

35 HIS HONOUR: Have I got that electronically? No. Was that the additional bundle of documents?

MR GILES: Your Honour, it's in your Honour's very helpful document of material before the court on the application. It's the final entry on the first page, so it's - - -

40 HIS HONOUR: Yes, thank you.

MR GILES: At the risk of me being characteristically old-fashioned, your Honour, would your Honour like a hard copy?

45 HIS HONOUR: Yes. I will get a hard copy. Thank you. I do want to ..... this – my preference would be to do this, in due course, though – this case electronically ..... trying to force myself to do it.

MR GILES: Yes.

Now, Mr Tesoriero, what you should see is you've got an affidavit of Ms Murray  
- - -?---Yes.

5

- - - which goes for, with a list of parties, about five pages, and then something called  
an exhibit certificate?---Yes.

10 And then after the exhibit certificate, you have a bundle of documents which are  
paginated in the bottom right-hand corner?---Yes.

Could I ask that you go to page 1 of that bundle, and you see there – you should see  
there a bank statement - - -?---In the name of - - -

15 - - - in the name of 14 Kirwin Road, Morwell Proprietary Limited?---Yes, that's  
correct.

And you should see that that's the statement for the – for March 2022?---Yes, I do,  
31 March 2022.

20

Yes. Now, you direct attention to this bank account, that is, the bank account for 14  
Kirwin Road, Morwell - - -?---Yes.

- - - in your affidavit of 12 July this year?---Yes.

25

And I just want to make sure that I understand this. All of the rent from the petrol  
station properties is paid into that account?---That is correct, yes.

That has been the case since November last year?---I believe it was November, yes.

30

None of the rent from the petrol station properties is paid to any other account; is  
that your evidence?---No, sir. No.

And from that account - - -?---Sorry, Mr Giles. Previously, it had been.

35

Yes?---Yes.

But after - - -?---But from - - -

40 - - - November '21 - - -?---After November, it has been going to this account, yes.

Yes. And the only other rent that you describe as presently receiving, that is, in the  
last six months – I withdraw that, in the last three months is rent from the properties  
known as unit 305 and 306/48 Blenheim Street?---No. I think they were disclosed in  
45 the previous affidavit last year. I don't think it's for the last three months.

I'm not quibbling with that - - -?---Sorry. No. Only because you mentioned - - -

- - - but over the last three months - - -?---Yes.

- - - the only other rent that you have received are from units 305 and 306/48 Blenheim Street?---That's correct, yes. Yes.

5

And that rent is paid into a Commonwealth bank account in your parents' name?---It goes into a Westpac account in my parents' name, and then from there, it's usually distributed to a CBA loan account.

10 All right?---Covers the loan for that – those two properties.

All right. So all of the income that you have received - - -?---Yes.

- - - other than from units 305 and 306 Blenheim Street this calendar year has been paid into the 14 Kirwin Road, Morwell account?---That is correct, yes.

15

And you pay, from that account, the interest that is payable by your companies on various loans?---Correct. That's correct.

20 And, as I understand it, you pay nothing else from that account?---That is correct, yes.

So the case is that in the first six months of this year, there should be no payments from the 14 Kirwin Road, Morwell account for anything other than interest on loans owed by companies which you control?---That's correct, yes.

25

And the payments from this account, as I understand it, you say, all go to the ANZ or Judo Bank?---That is correct, yes.

30 Now, can I first ask about this. The payment you see at the foot of that page that we're on, page 1, on 31 March 2022 - - -?---Yes.

Where was that paid to?---I'm unfamiliar with that particular payment, but I would say it would have gone to one of the banks for an interest payment.

35

All right. Well, the bank statements for the ANZ start on page 7, and the first one for March is on page 11, and, please – you may wish to go through ANZ or Judo Bank, but what I want to suggest is that no payment was made to the ANZ or Judo Bank by your companies on 31 March or, for that matter, on 1 April this year. Does that accord with your recollection?---I would have to – I would have to look into that, Mr Giles, and see, but it would definitely be for – for some sort of interest payment with ANZ or Judo. There's no other – the accounts are all locked, so - - -

40

HIS HONOUR: I'm sorry. The accounts are - - -?---The accounts have all been locked, your Honour, so it's not that I can transfer money anywhere else other than directed by ANZ. Either Judo sends an email to get interest directed, or ANZ takes their interest payment. That's - - -

45

MR GILES: Who locked your accounts?---The accounts – the accounts are all locked, Mr Giles.

5 So then - - -?---All of my accounts are locked since the freezing orders of last – last year.

But - - -?---So any time a payment needs to be made, I need to have the account unlocked.

10 HIS HONOUR: You need to what? You will have to keep your voice up. I'm terribly sorry?---I'm sorry, your Honour.

15 No, not at all?---Every time a payment is need to be – needs to be made, the accounts would need to either be unlocked, or an email needs to be sent to – to instigate the – the transfer. It's not that a transfer can just be done, Mr Giles.

All right?---So there will be some record of that transfer.

20 So you instructed the payment of \$25,000, then, did you?

HIS HONOUR: Twenty-four, isn't it?

MR GILES: Twenty-four thousand dollars. I'm sorry?---Most likely, yes.

25 Right. Well, what I'm asking you, the round payment of \$24,000 that you made four months ago – four and a-half months ago – to whom was it made?---I would say it would be ANZ direct debiting their own account, but I would have to check, Mr Giles.

30 Right?---And that's not a problem for me to come back to you with that.

All right. We may do that?---That's all right.

35 But at present, you're unable to tell his Honour where that payment was made to. Is that the case? You can't tell his Honour where that payment was made to?---No, that's correct, Mr Giles, but that's no difference to a lot of the other payments that are here. They don't have a reference on this particular statement, but there's definitely a reference attached somewhere. There's – money wouldn't just get transferred without having known where it's gone.

40

All right. And it would be transferred out of that account which you control on your direction, wouldn't it? It would be transferred - - -?---That is correct.

- - - out of that account on your - - -?---Yes, that's correct.

45

Thank you. Right. Could I ask that you go to page 19 now?---Yes. Yes.

You see this is an account – this is a statement for a loan account - - -?---For 160 Murray Valley, is that the one?

For 160 Murray Valley?---Yes.

5

And you see the only entry on that page – I withdraw that. The last entry on that page - - -?---Yes.

On 15 March:

10

*Interest redirected from account 3202 –*

I shouldn't have read it all out. You see - - -?---Account ending in 71117.

15 HIS HONOUR: Well, it's already in evidence. Doesn't matter.

MR GILES: Now, do you know what account – the account – who holds the account number 1117?---I would say that would be the – I will double check, but I would say that that would be the 14 Kirwin Road account.

20

Okay. Well, I invite you to go back to page 1 - - -?---Yes.

- - - and you will see that it's not the 14 Kirwin Road account. You see the account number there - - -?---Yes, I do see that.

25

- - - which finishes in 6238?---Yes. Well, then, it might reference back to the Murray Valley loan account, in which case I believe ANZ have got their own system where they would transfer – if you – if I can take you back to the Kirwin Road Morwell account, Mr Giles.

30

Yes?---You will see that there is lump sums there that have been transferred internally, I believe, to ANZ. So if you look at – I think if you look at 17 March, there's one there for 7183. I don't think that references exactly to a particular loan account. I think what you will see is that ANZ transfer it and then distribute it to the accounts, if that makes sense.

35

No. Well, I think – I actually think I see your point?---Yes.

In fairness, I should direct your attention to page 18, and perhaps that's what you're trying to explain to me, that - - -?---Page 18. What am I looking at, Mr Giles?

40

Well, you see the account, that's also a 160 Murray Valley account?---Yes. Yes.

And you see the account number that ends in 1117?---There you go. That's exactly – yes.

45

Right. So as I – I should understand that what happens is money is paid from the 14 Kirwin Road account - - -?---Yes.

5 - - - into a bank account with a – for the debtor company with the ANZ Bank, and then from the debtor – that bank account pays off the loan?---I believe that’s the case, yes.

10 I see?---ANZ does all that themselves. Once the money leaves the 14 Kirwin Road account, then they distribute it accordingly.

All right. Could I ask that you take up your affidavit - - -?---Yes.

- - - of – which is behind tab 1 of the bundle, which is your 12 July affidavit?---Yes.

15 And in that affidavit, you sought to tell his Honour about all of your and your company’s present assets?---Yes. You’re referring to the table, Mr Giles?

I’m referring to the affidavit as a whole - - -?---Sorry.

20 - - - but your intention was to tell his Honour about all of the – your assets and your company’s assets?---Yes.

25 Well, nowhere in it do you tell his Honour how much money is in the Kirwin Road bank account, do you?---Well, I think I would have to go through the table and double-check it, Mr Giles, but I think it – I think it would have been noted there, but it’s not that that’s a holding account. It’s – it’s purely a transactional account.

30 It has still got money in it?---No. I think if you look – I – that’s – it would definitely be noted somewhere, Mr Giles, maybe in one of the attachments in the exhibits.

Well, can I ask you to go to page 45?---You can.

35 I think those are probably National Australia Bank?---Page 45, yes. Maybe, I will come around to this another way. Could I ask that you be handed a bundle of documents, one for Mr Tesoriero and one for his Honour?---Thank you.

And I ask that you go to - - -?---So I’m leaving this one now, Mr Giles?

40 You can leave that one now?---Okay.

HIS HONOUR: Sorry. I’m a little confused. You made reference to page 45, which is annexure C to the affidavit. What was I supposed to be looking at at page 45?

45 MR GILES: I was directing - - -

HIS HONOUR: Which number?

MR GILES: The answer is I don't think that the Kirwin Road account appears there at all, your Honour.

HIS HONOUR: So why was – why - - -

5

MR GILES: Well, I'm just asking.

HIS HONOUR: All right.

10 THE WITNESS: I'm pretty sure it would have been, Mr Giles, but if it's - - -

MR GILES: Okay?---Copies of statements and all that, you had, sir.

15 All right. Well, could I ask that you go to page 51 of the bundle that I've just handed to you – to you and to his Honour?---Page 51, is it? Yes.

Now, that's a bank statement for the 14 Kirwin Road account?---Yes.

20 And if you go over to page 52 - - -?---Yes.

- - - you will see that that's for the period through till the end of June or, at least, 28 June this year?---Yes, I can see that.

25 And what you see is that the sum of 65-odd thousand dollars is in that account?---I do see that, Mr Giles. Yes.

30 Yes. What happens is that you receive the bulk of the rent from the service stations in the first couple of the days of the month, isn't it?---It's spread across the month, I believe. They all come at different times. If you look there, you can see the dates are spread. There's some at 2 June, some at 14 June.

The bulk of it's at the start of the month?---I wouldn't say that. I would – I would say it's spread pretty evenly.

35 And then the interest payments are towards the end of the month. You see the \$100,000 deduction on – withdrawal on 23 June?---That – that one could have been particularly late, but I think there's three – if my memory serves me correct, I think there's three different times where interest is – is deducted over the month, being the start of – I think one might fall over to the start of the month, which you may have  
40 missed on that statement, being 1 July or 1 June, and then, I think, there's two other times where interest is taken. That 100,000 you see is a lump sum. There would have been – where one was behind, so we've tried to catch it up.

45 All right?---That will be reflected in – in the Judo Bank statements.



Well, Mr Tesoriero, if you go back to CM 26 and page 1 of that. That is, Ms Murray's affidavit I was asking you about. The loose one?---I beg your – so I'm going to this one?

5 Yes?---Sorry.

Page 1?---Page 1, is it?

Page 1 of the?---Of Ms Murray's affidavit, yes.

10

So go past Ms Murray's affidavit and go back to the bank account that I was asking you about before. Flick?---You lost me, Mr Giles. What are you asking me to - - -

Yes. Go past the affidavit again.

15

HIS HONOUR: You see the numbered pages in the bottom right-hand corner?---Yes.

Or – of each folio. If you go to page 1?---I'm on page 1. This one, you're saying?

20

MR GILES: No, no, no. No, no. Let's do it - - -

HIS HONOUR: No. This – the first document. The first document that you were asked to look at?---Right.

25

Yes. Thank you?---Yes, Mr Giles. ....

MR GILES: So page – page 1 shows, again, two, four, six, eight, nine payments of rent in - - -?---That is correct, yes.

30

- - - on the first, third, and some on 10 March?---That is correct. Yes.

And that's before any interest payment goes out?---That is correct, yes.

35 And again, similarly on page 2?---But if I can just draw your attention for a moment, Mr Giles. If you look on this particular month, the interest gets deducted on 10 March, whereas if you refer back to the one where you asked me for – it's – it comes out on the 23<sup>rd</sup> of June. So it's not a hard and fast rule on when the dates – when they actually come out.

40

Yes. All but three of the rent payments come in before the first interest payment; that's right, isn't it?---It's not always the case.

Well, let's have a look - - -?---Unless you can draw my attention to the last twelve months with the statements, your Honour.

45

Let's have a look at page 2 where all but three of the rent payments come in before the first interest payment?---Yes.

5 And then in page 3, all of the rent has come in before the first substantial interest payment. There might be a small one on 17 May that's different?---Yes.

And page 4. All of the interest payments before - - -?---All of the rent – rental payments, yes.

10 All the rent payments before the first interest payment. And then similarly, if you put that away, the document I was asking you about in the bundle on page 52?---Yes.

The bundle I handed to you?---Similarly, the rent has come in prior to the interest gets paid.

15 Right. So what happens is the bulk of the rent is paid in the month prior to you paying any interest payment from this account, isn't it?---The month of, Mr Giles.

Yes?---We typically need the rent to be able to pay the interest.

20 Well, that's what I'm putting to you?---I can't pay the interest without having the rent paid.

25 You had \$62,000 in this bank account at the end of June. How much was in it when you swore your affidavit of 12 July?---I would need to double check that, but I would say it would have been down to probably – it was – it would have probably been negative because the interest payments would have come out. So if you – if you go and check our statement as of 1 July, you will see that it would have been drawn down and then rent would go down again.

30 I want to suggest to you, Mr Tesoriero, that that is inconsistent with what I have just shown you, namely that after the end of the month, most of the rents are – that – the end of the prior month, early the next month, that would be July, rent is received and that rent is received before any interest is paid. That's the model, isn't it?---Well, it –  
35 I don't understand your point, Mr Giles. It's very hard for me to pay interest with money I don't have. I need the rent to come in to be able to pay the interest. So yes, that is correct. The rent comes in and then the interest comes out shortly after.

40 Right?---And that is the case every – each and every single month. It has been.

With the ..... - - -?---Since I've purchased those properties.

45 With the consequence that because there was \$65,000 in the account at the end of June, you would then receive rent on top of that amount prior to 12 of July?---Possibly.

And the interest payments were following this model, other than – following this model, have been made after 12 July, haven't they?---I would have to check the July statement. Do you have the July statement there? I would have to check it.

5 Did you check how much money was in this bank account before swearing the affidavit on 12 July?---I would have checked it, yes.

Well, did you? Not “would have”; did you?---I regularly check the statement to check on the rents that go in, so yes, I would have checked it.

10

I don't want to know what you would have done. Did you check it before swearing the affidavit for his Honour about what your assets were?---Yes. Yes, I did, Mr Giles.

15 And why is it not referred to in the 12 July affidavit? That is, how much money is in this bank account?---Because quite typically by 12 July, the interest would have probably come out.

HIS HONOUR: Mr – can I ask this question, Mr Tesoriero?---Yes, your Honour.

20

Do you have access to - - -?---Internet banking?

- - - your accounts electronically?---Yes, I do.

25 On an app?---Yes, I do, your Honour.

On your phone?---Yes.

So have you got your phone with you?---Yes, I do.

30

MR GILES: Can you open the account?---My phone is in my coat on the chair.

HIS HONOUR: You can go and get it if you like?---I can go get it?

35 Yes?---Thank you, your Honour.

MR GILES: Through the app, could you open up the ANZ – well, open up the ANZ app - - -?---I can do that.

40 - - - so that it show – and then do that which is necessary to be done to show the transactions on the 14 Kirwin Road Morwell account in July this year?---So there was – would you like me to read them out, Mr Giles?

I would actually like you to show them to me?---So - - -

45

HIS HONOUR: Both counsel can approach if they wish?---So as you can see, the last one that came out was 100,000 on 23 June as per that statement, then you will

see all the rent has gone in and then it has now started to come out, the interest payments. So there will be another 100,000 that will come out in a couple of days.

MR GILES: Can you – are you able to - - -?--- .....

5

Are you able to show me what the running balance was, that is? How much was in that account on - - -?---A hundred and - - -

- - - 12 July?---12 July, it was – I don't know if I can tell you 12 July, but I can tell you it would have been \$150,841.76.

10

HIS HONOUR: How much, sorry? Hundred and?---\$150,841.76, your Honour.

Thank you, Ms Tesoriero?---No problem.

15

MR GILES: Why did you not tell his Honour in your 12 July affidavit that that was the amount of money, the 150-odd thousand dollars, in the account?---Let me just double check that, Mr Giles, if it is actually as at 12 July, because that was as of now when all the rents have gone in. Yes, no, it would have been around that amount. As I mentioned, Mr Giles, it's purely a transactional account, so there's often months where that account is actually – as you would have seen, there's actually months where the account is actually in the negative.

20

But weren't you - - -?---Quite often. More often than not.

25

Didn't you understand you were meant to be telling his Honour what all of the assets that you and your companies had access to?---I don't believe it to be an asset, Mr Giles.

Sorry, you don't believe that money in a bank account is an asset?---Not when the interest payment is due the next day to come out.

30

Is his Honour meant to take that answer seriously?---Well, I take it seriously.

This is money in a bank account. You're telling his Honour that that's not, to your mind, an asset?---I'm not sure what you're getting at, Mr Giles. No one was trying to hide the account. We attached them for you to see. This is - - -

35

HIS HONOUR: ..... attend to Mr Giles' question. Do you regard money in a bank account as an asset or not?---No, I didn't, Mr – your Honour, because I thought that was a transactional account. But I do believe it was attached in one of the affidavits.

40

I'm sorry?---I do believe it was attached for Mr Giles to have seen. Maybe not as at 12 July, but it's definitely shown here as of 28 June.

45

I'm sorry, you had better explain that to me. I don't quite understand that, Mr Tesoriero. It's – ..... I've got the affidavit of 12 July 2022 in front of me. The only

parts I've been taken to in that affidavit, you refer – if you go to page – if you go to that affidavit, 12 July - - -?---I'm sorry, your Honour. I – which page is that?

Sorry?---You're right.

5

The affidavit of 12 July?---Yes.

Have you got that one there?---Yes, I do. I do.

10 And you will see on page 2 up the top there it has got your name, it describes - - -?---Yes.

- - - who you are. Paragraph 5:

15 *I refer to the previous affidavits I've sworn in these proceedings.*

?---Yes.

And the first one is your July affidavit?---Yes.

20

And then at paragraph 9, you say:

*I've attached four annexures to the affidavit which are marked (a), (b) and (c).*

25 ?---Yes. Yes.

Relevantly, (c) over the page says:

30 *Annexure (c) lists all the National Australia Bank accounts that, to the best of my knowledge, I have with that bank. I intend to refer to these annexures throughout my affidavit.*

Do you see that?---Yes, I do.

35 And I think I was taken to page 45 of that affidavit, and the account which is 66238 doesn't appear to be there. So if you could – if you want to take your time - - -?---I'm pretty sure it's somewhere, your Honour.

Well, take your time?---Because I definitely shared it with my lawyers at the time.

40

No, that's fine?---Yes.

45 Take your time. I think you're being asked whether or not there's any reference to it in the affidavit, so by all means, just take your time, and you indicate to me where in the affidavit there's a reference to that account. While that's happening, Mr Giles, and Mr Tesoriero is looking at that, is there any evidence about when this account, the 66238 Business Extra account, was opened?

MR GILES: Yes. November – November last year.

HIS HONOUR: 2021.

5 MR GILES: 2021.

HIS HONOUR: See, that might be where the problem has arisen, because he – what he says in paragraph 9 is that he has updated, in effect, the - - -

10 MR GILES: Sorry.

HIS HONOUR: - - - same form as the table in July 2021.

15 MR GILES: No, I'm – I understand why your Honour says that. I'm wrong. Paragraphs 18 and 19 of the affidavit are to the effect that he started using the account in November '21 for that purpose. The account actually existed back when the first affidavit was sworn, although it is misdescribed in that affidavit.

20 THE WITNESS: But it wasn't used for that purpose at that time, Mr Giles.

MR GILES: That's right. But it was - - -?---Yes. So it was - - -

25 It was open at that time, wasn't it, back in July last year?---It was open at that time, yes. Yes. I believe it – I would have to double check, but I'm pretty sure it was open at that time. There's quite a number of accounts, Mr Giles.

If you go to page 33, Mr Tesoriero, you will see a reference to the 14 Kirwin Road Trust as being account number 21.

30 HIS HONOUR: Annexure - - -

MR GILES: Sorry.

35 HIS HONOUR: I think - - -

THE WITNESS: Thirty-three?

40 HIS HONOUR: I think I found it on annexure (b). Number 10 in annexure (b)?---Thank you, your Honour.

MR GILES: Sorry, your Honour.

45 HIS HONOUR: The electronic version. It's – let me get the electronic version. Page 186 of the court book.

MR GILES: Yes.

HIS HONOUR: This is the July 2021 affidavit. Annexure (b) of the July 2021 affidavit.

5 MR GILES: Yes. And there's the – that's right. There's the error that - - -

HIS HONOUR: Yes. Okay. It's described there as 31 Ellman Street Trust.

MR GILES: That's right.

10 HIS HONOUR: Yes.

MR GILES: So, Mr Tesoriero - - -?---Yes, Mr Giles.

15 You did disclose the existence of that account with the 14 Kirwin Road account number - - -?---Yes.

- - - in your affidavit of 21 July 2021?---Yes.

20 In your affidavit of 12 July '22, if you could go to page 33 - - -?---Yes.

You see, item 21 on page 33 is an account described as the 14 Kirwin Road account trust?---Yes.

25 But that's the wrong account number, but if you go down to 23, row 23, you see it's the right account number?---25, is it?

No, 23. Yes.

30 HIS HONOUR: Yes. Because it has been taken from the other affidavit.

MR GILES: That's right.

35 Okay. My point is why didn't you tell his Honour that you had \$150,000 in that account as at 12 July?---I still believe that it was in – in the documents somewhere here, Mr Giles. I - - -

40 Do you have money in any other bank account as at today?---Nothing of significance. Whatever – whatever I have has been disclosed in the – in the last affidavit.

Well - - -?---It's up – up to date for whatever is in those accounts.

45 Doing the best you can and not worrying about whether I consider something of significance or not, do you have money in any other bank account?---I would – yes.

MR HAYES: Well, your Honour, I - - -

THE WITNESS: There would be. There would be money in other bank accounts, definitely, most definitely.

5 MR HAYES: No, your Honour. Your Honour, I object to this question now because there have been numerous - - -

HIS HONOUR: Do you want the witness to go outside?

10 MR HAYES: It might be best, your Honour. Yes.

HIS HONOUR: Mr Tesoriero, if you just wouldn't mind going outside for a moment, we just want to be able to have a candid discussion without embarrassing you, giving your giving evidence, so if you wouldn't mind just going outside of the court - - -?---Okay.

15 - - - and the court officer will come and get you momentarily?---No worries, thank you.

20 <THE WITNESS WITHDREW [3.47 pm]

MR HAYES: As your Honour will apprehend, Mr Tesoriero has no trouble being fully transparent about all of these matters, but to invite him to consider what the  
25 precise balance might be of a particular bank account when there has already been, in substance, proper disclosure and where there have been multiple bank accounts – if I count them up, your Honour, in annexure – in the bank accounts referred to in annexure A, there's 29 bank accounts, and if my friend is going to split hairs over what the balance might be as at 12 July as opposed to what it would have been in  
30 June, it's just unfair to this witness, and it's not productive, and it doesn't assist your Honour.

What we've seen out of the last exchange between – or most recent passage of evidence, your Honour, is that the balance was disclosed a matter of only some  
35 weeks ago when that affidavit was updated. There were no balances for those current accounts, but the witness has faithfully explained, your Honour, the nature of those accounts and how it is that, while there might have been 150,000 there on 12 July, that would have changed very suddenly, as it had in previous months when the interest payments were due, and - - -

40

HIS HONOUR: Well, no. I may have the wrong end of the stick, Mr Hayes, but I thought the point that was being made was that the end of the financial year, 30 June 2022 - - -

45 MR HAYES: Yes.

HIS HONOUR: - - - there was an amount of 60-odd thousand dollars - - -



MR HAYES: Yes.

HIS HONOUR: - - - which was a credit amount, and that's, obviously, after all expenses had gone out in June - - -

5

MR HAYES: Yes.

HIS HONOUR: - - - prior to the receipts coming in at the beginning of July.

10 MR HAYES: Yes.

HIS HONOUR: It gets up to \$150,000 - - -

MR HAYES: Yes.

15

HIS HONOUR: \$150,841.76 on the day he swears his affidavit.

MR HAYES: Yes.

20 HIS HONOUR: And there's no mention of that in his affidavit which has been ordered to be put on to disclose what his current financial position was.

MR HAYES: Well - - -

25 HIS HONOUR: I think that was the burden of what was being put.

MR HAYES: Well, indeed, but there's no – and I see what your Honour - - -

30 HIS HONOUR: I wouldn't have thought \$150,000 sitting in a bank account to his credit is something which would ordinarily be regarded as a trivial admission from an affidavit - - -

MR HAYES: We don't - - -

35 HIS HONOUR: - - - as to assets.

MR HAYES: We don't say that, your Honour, but there's no concealment. There's, certainly, no concealment. It has been less than – and coming back to the next question, your Honour, it's inviting this witness where he has got 29 accounts – he has already gone into evidence saying that he's having difficulty getting information from his accountant about it, his own view of his own accounts and his state of affairs is far from complete, given the challenges he has encountered which he swears to in his affidavit, your Honour.

45 HIS HONOUR: Well, I think these are all matters for submissions at the end of the time, Mr Hayes.

MR HAYES: Well - - -

HIS HONOUR: But I think the question you objected to is he was asked whether or not he had any cash in any other bank accounts at the moment. And I don't see  
5 what's objectionable about that question.

MR HAYES: Well, unless he is going to be invited to go through each of the 29 bank accounts, it's an unfair question. If Mr Giles is going to say, "I got you, there's \$5000 in this account you have overlooked." Or something of that nature is – there's  
10 29 accounts here, your Honour. For him to have a – it would require almost a – it would be a very unusual person who could remember the exact balance of 29 different accounts on a day to day basis. And - - -

HIS HONOUR: I don't think he's being asked - - -  
15

MR HAYES: I think he is, your Honour. This - - -

HIS HONOUR: I don't think he is being asked to remember the balance of 29 different bank accounts on one day. I think he's being asked a question. Was it –  
20 perhaps I will ask this. Mr Giles, you're asking him to make reference to any accounts in respect of which he has not made reference to in his affidavits. Is that the question?

MR HAYES: Your Honour, not with precision. I'm including the accounts in his  
25 affidavit. Your Honour put it to my learned friend a moment ago perfectly. It's, "Do you have cash in any other account at all?"

HIS HONOUR: Yes. I don't think that's an unfair question.

30 MR HAYES: Well, it should be entitled to go to the - - -

HIS HONOUR: Of course.

MR HAYES: He should be entitled to go to all the accounts.  
35

HIS HONOUR: Of course.

MR HAYES: And go through all 29 accounts as of today.

40 HIS HONOUR: He can, presumably. That's why he's got an app there, so presumably he can do so.

MR HAYES: Yes. If my friend wants to go that way, that's - - -

45 HIS HONOUR: All right. We can have the witness back in, please.

MR HAYES: But otherwise, to invite him to recall it without him having the opportunity to go through it - - -

HIS HONOUR: No, no. I will give him any opportunity if he - - -

5

MR HAYES: If your Honour pleases.

HIS HONOUR: Just do it in whatever way he wishes.

10

**<VINCENZO FRANK TESORIERO, RECALLED [3.52 pm]**

**<CROSS-EXAMINATION BY MR GILES**

15

HIS HONOUR: Thank you, Mr Tesoriero. If you come back and just take a seat in the witness box, sir. Thank you?---Thank you.

20

MR GILES: Mr Tesoriero, do you or your companies have money in any bank account other than the 14 Kirwin Street bank account?---I believe there is money in other accounts, yes.

25

Right. Are you able to tell his Honour how many other accounts there's money in?---I would have to double-check. All the accounts that we have have all been shared in the material that has been shared over the last couple of days. I have seen emails. This shows all of those account balances.

30

Would you be able to tell his Honour approximately how much money is in those other accounts?---There might be a few thousand dollars spread across the accounts.

35

And you didn't identify how much money was in any of those other accounts in your 12 July affidavit, did you?---I would have to double-check the attachments on that, Mr Giles. But I believe that some accounts would have been shared, yes.

40

All right. In your 12 July affidavit, you have referred – and you can go to it, page 21 and following – to various properties that your companies own?---Various companies. You're talking on page 4, Mr Giles?

21 and following, there's a table of them?---Yes.

And you see you give an approximate value of them in - - -?---Yes, I can see that.

45

- - - sixth – and if you – you have given that valuation on the basis you believe that to be true, have you?---The valuation that I believe to be true, yes.

And that's for each of those properties?---That's correct, yes.

And to your understanding, the value of the properties has not changed in any material way in the last three months?---We haven't had valuations done in the last three months. But most of these properties have been liquidated by the liquidators, I believe. And the service stations, we haven't.

5

Now, who is Mr Michael Johns to your understanding?---Michael Johns works at SMA Finance.

10 And what is SMA Finance?---They're a brokering house in – located in South Yarra in Melbourne.

All right. And have you got SMA Finance currently engaged to act on your behalf?---I've been talking to them to try and refinance some properties, yes.

15 And they've been approaching financiers on your behalf, haven't they?---Not on my behalf. It's on behalf of my father.

And also on your behalf?---Well, I've been – I've been assisting. Yes, that's correct.

20 But also to refinance, for example, the service station properties?---We discussed the potential of it, but, no, we haven't. They're quite comfortable with our Judo and ANZ.

25 I wonder if you could be shown an email that we received out of the documents we received this morning of 1 April 2022?---Are we finished with the bank accounts now, Mr Giles? Is that - - -

30 You can close up each of the - - -?---Sorry. Just because I'm getting lost in documents, your Honour. That's - - -

You can close up the bank accounts.

35 HIS HONOUR: ..... no, no, no. I'm suffering the same difficulty, so if you close them up and just put them to one side, Mr Tesoriero - - -?---Sure.

You're just being shown a different document now which I will get a copy of and I will mark as MFI1, so MFI1 will be - - -

40 MR GILES: An email from Mr Johns to Mr Tesoriero and Mr Pratt of 1 April 2022 with an attachment.

**MFI #1 EMAIL FROM MR JOHNS TO MR TESORIERO AND MR PRATT  
WITH ATTACHMENT DATED 01/04/2022**

45

HIS HONOUR: Thank you.

THE WITNESS: Yes.

MR GILES: You see there an email chain?---Yes, I do.

5 The one earliest in time, that is, lower on the page of MF11, is an email from you to Mr Johns or Mr Pratt, also of SMA Finance?---Yes.

And you ask for a current updated property list?---For property values.

10 So that - - -?---Is it?

Well, you see what you say?---Yes.

You wrote:

15

*Hi, Michael. Can you please send me the current updated property list you guys have so I can confirm values, etcetera.*

?---That's correct, yes.

20

And the list was sent to you?---Yes.

And you reviewed it?---Yes.

25 And you confirmed the values stated in the list?---There's an email to that effect, is there? But we – yes.

Yes, you did confirm the values in that list?---I can only see the email you have here from Michael to me.

30

All right. Well, there's an attachment to it which - - -?---There's only one page here, Mr Giles.

35 HIS HONOUR: Well, don't worry at the moment about the email. I think you were being asked to you recall – do you recall confirming the values in that list or not. If you can't, it's either yes, no, or "I can't recall"?---I can't recall confirming the values, but - - -

40 You can't recall?---With Michael Johns, we did discuss these values and they gave me an indicative value. They thought the property in Wagstaffe could be worth nine and a-half, but we have never had an evaluation to that effect. So my belief was that I think we put it in – whatever it was in my affidavit, because I don't have a valuation. I think the liquidators were going to share a valuation, but they never did.

45 MR GILES: All right. But in the attachment - - -?---So it's – I'm not a valuer, Mr Giles. I can't go around swearing valuations.

But you have sworn to a valuation, Mr Tesoriero, in your affidavit, haven't you, of 12 July?---I haven't sworn a valuation, no.

5 You have sworn to a valuation, though?---I have sworn to an indicative value of what I believed it was worth.

All right?---Yes.

10 HIS HONOUR: An approximate valuation?---Approximate value, yes. But I definitely don't have a valuation that shows it at nine and a-half million and never had.

15 MR GILES: And you don't have one that shows it at eight million either, do you?---no, I don't.

And if you see the attachment to the email, MFI 1, there's a table that lists a series of properties with indicative values?---Is that this table you're referring to.

20 Yes?---Yes. That's the one I was looking at.

All right. And did you instruct Mr Johns that you confirmed that those indicative values were correct?---We thought that they may be able to get a valuation to that effect, but we were waiting on the valuations to be shared by the liquidators and they never were. So this never progressed further than this sheet of paper, Mr Giles.

25 Are you sure about that, Mr Tesoriero?---Yes, I am.

30 I wonder if you could be shown an email – and one for Mr Hayes. Can I hand to your Honour and the witness an email chain with attachments, the latest in time email being from Mr Johns to Mr Tesoriero and Mr Pratt of 8 April 2022.

HIS HONOUR: Yes. Well, I will mark the email from Mr Johns to Mr Tesoriero and the attachments MFI 2.

35 **MFI #2 EMAIL FROM MR JOHNS TO MR TESORIERO WITH ATTACHMENTS DATED 08/04/22**

40 MR GILES: Please take your time to familiarise yourself with that document?---No, I'm aware of this document. What would you like me to - - -

Okay?--- - - - to look at, Mr Giles.

45 You see the - - -?---Indicative values?

No, just slow down. You see in the email at the top of the page, the one of 8 April 22 from Mr Johns to you and Mr Pratt, subject re Tesoriero, with the attachment, loan scenario summary Jadig?---Yes.

5 J-a-d-i-g?---Yes.

Jadig was a financier that Mr Johns had approached on your behalf?---That is correct, yes.

10 And what had happened was that he had given them a summary – that is, the summary which is the attachment loan scenario summary?---Yes.

15 Did he also sent to the Commonwealth Bank the attachment?---He would have sent my father's properties to the Commonwealth Bank, but not these – I don't believe he would have sent all these ones.

20 Right. But he sent - - -?---this would have been shared with Jadig, because at the time we were trying to extract some value out of these properties to try and see what we could do in terms of refinancing.

Yes. And indeed, if you go to the first of the spreadsheets, the one top left-hand corner, top confidential scenario?---Yes.

25 You see in the second box against the left-hand column, a heading, Jadig and loan draw of \$28.75 million that you were seeking; is that right? You see that?---Yes, I can see that. Yes.

30 And that was the amount of finance you were seeking to raise from Jadig?---That's correct, yes.

And you were seeking to raise that over your properties and your father's properties?---That is correct, yes.

35 And then if you go over to the next spreadsheet?---Yes.

Which is the table with various properties in it?---Yes.

40 That's a document that you caused to be sent to Jadig for the purpose of seeking finance, isn't it?---I believe this would have been shared with Jadig, but I'm not 100 per cent certain, to be honest, Mr Giles. If - - -

45 It's a document - - -?---If I'm swearing under oath, I would like to double-check whether it was sent to Jadig. I'm familiar with the document, but I don't know that it was sent to Jadig.

In any event, in the first week of April this year, you satisfied yourself that the document was appropriate to be sent to a financier, didn't you?---Again, I would have to double-check that, Mr Giles.

5 You satisfied yourself that the indicative value stated in the document was correct – were correct?---It was indeed. I was satisfied the indicative values were correct. They were values that the brokers thought could potentially be had. That was some discussion that was had. I didn't think it was entirely, but - - -

10 You didn't think it was what, sorry?---I didn't think it was entirely possible, but we didn't have a valuation at the time.

Well, if you go to the regional petrol stations – that is, items number 27 to 36, you see that the indicative values are the same as the indicative values in MFI 1?---The  
15 indicative values are the same as the indicative values in MFI 1.

Yes, for those same properties. Do you remember the table in MFI 1?---You've lost me, Mr Giles. Whereabouts is that?

20 Go back to the 1 April email.

HIS HONOUR: Remember the first email – the first – the first email that you were sent?---This page here, yes.

25 Yes. That had an annexure?---This annexure here, yes.

Confidential for draft discussion only?---Yes.

And down the bottom of that page, it says, "regional petrol stations"?---Yes.  
30

And that's what you're being asked about it?---Yes. Yes, the figures are consistent, Mr Giles.

MR GILES: And what I wanted to suggest is that having seen the 8 April email and  
35 the attachment, you know you did verify the values – the indicative values in the email of 1 April?---I disagree with your comments. Nothing was verified, Mr Giles. There was no valuations. If you've gone through SMEs file, you will see that no valuations have taken place. It's merely a discussion.

40 HIS HONOUR: Well, can I ask you this question, Mr Tesoriero?---Yes, your Honour.

If you look at the email of 1 April; MFI 1?---Yes.

45 This is an email from you:



*Can you please send me the current updated property list you guys have so I can confirm values, etcetera. Thank you.*

?---Yes. Yes.

5

Do you think it's more likely than not given that email that what you did was confirm the values after you were sent the current updated property list?---Possibly. We could have met and we could have discussed it, yes.

10 MR GILES: Does possibly mean that it was likely that you did so?---Well, I don't know that it was each and every value that's here.

HIS HONOUR: Well, wasn't the point of obtaining the current updated property list so you could confirm the values? That seems to be what I read the email to mean,  
15 but have I got the wrong end of the stick with that?---There's a lot of properties listed there, your Honour. So there's some that – like, Wagstaffe was in liquidation, you know, so that might have been irrelevant at the time. And the same with the James Street Factories. So - - -

20 I see?---So he could have been referring to the Asterlink properties.

I see.

25 MR GILES: But - - -?---There is a number of properties on that list, Mr Giles.

But directing attention to the regional petrol stations?---Yes.

30 You did confirm the values of the regional petrol stations, didn't you?---No. I don't think I did.

Well, that's why - - -?---Again, there's an old valuation on that which is significantly less than what's in there.

35 Well, why did you write the email of 1 April 2022, then?---Again, Mr Giles, I could have been referring to the Asterlink properties. If you look, nothing progressed with Jadig. And SME Finance has been working on the restructure of the Asterlink properties for my father that are currently with CBA. If you look at his file, the majority of his file is working on the Asterlink properties.

40 Going back to MFI 2 and the attachment to that - - -?---Yes.

- - - the list of documents?---Yes.

45 The list of properties - - -?---Yes.

- - - with indicative values; did you see that before it was sent to - - -?---I can't recall.

- - - Jadig?---I have seen the document. I don't know if I saw it before it was sent to Jadig. Or if it even was sent to Jadig, to be honest.

5 Right. Did you pay attention to the indicative values stated in this document when preparing your affidavit of 12 July?---Did I pay attention to it?

10 Did you give consideration to it?---I'm not sure of your point, Mr Giles. It would be in my best interests to push those values up more on those properties. There was no one trying to bring the property values down. Did I pay attention to it? Of course I would have paid attention to it.

15 Mr Tesoriero - - -?---But am I able to be a sworn valuer, Mr Giles, no, I'm not. I can't go around making valuations that I haven't got. So without a sworn valuation, in my opinion I thought the property might have been worth 8 million.

Just keeping MFI 2 open?---Yes.

Could you go to page 27 of your 12 July affidavit, please?---Page 27. Yes.

20 Do you see there you've deposed to an approximate valuation of \$3.4 million for the petrol station at 2-4 Cowslip Street, Violet Town?---Yes. Yes. I do see that, yes.

25 Could you go back to MFI 2 and see that the indicative valuation given to the proposed financier was - - -?---\$5,177,343?

Yes?---Yes. Yes, I can see that, Mr Giles.

30 Can you explain the difference to his Honour?---It's approximately \$2 million difference. Maybe a little bit less - - -

35 Can you explain how it came to be that you swore to a approximate valuation of \$3.4 million when this document sent on your behalf to a financier has a valuation of \$5.177 million in it?---I don't know if you've had much experience with brokers, Mr Giles, but they often promise the world and under deliver, but I actually have a valuation for this property that says it's worth 3.4 million.

40 I thought you - - -?---So that's why we've put that indicative of 3.4. I don't have a valuation of 5.1. That was just something the broker thought he might be able to evaluate.

HIS HONOUR: That's something the - sorry, that - - -?---This is by no means a sworn valuation. This hasn't been sworn.

45 I'm sorry, it's my fault, I just couldn't hear what you were saying. Can you just repeat that last part of that answer? I'm sorry, I didn't hear it?---So there's a - sorry, your Honour. There's a variation of two values here.

Yes?---Because I actually have a sworn valuation for this property that says it's worth 3.4 million. The broker that we were using at SME Finance thought that it might be able to be increased; the value on the property may have increased. But we have never had a sworn valuation to that effect.

5

So you had a value – a sworn value of 3.4?---I have a sworn valuation of 3.4 million and that's why I attached that to my affidavit at 3.4 million.

MR GILES: How old is that sworn valuation of 3.4 million?---It's approximately 12 months old.

10

I call for that document.

MR HAYES: We will endeavour to obtain it overnight, your Honour.

15

HIS HONOUR: Thank you.

MR GILES: Do you also have sworn valuations of the other regional petrol stations referred to - - -?---Yes. Yes, I do, Mr Giles. Yes. We have sworn valuations for all of them and they are the indicative values that we've shared.

20

Sorry, you said you have sworn valuations for all of them and they are the indicative valuations did you just say?---No, no. We have sworn valuations on all of the petrol stations.

25

Right?---Yes.

Well, I call for those?---No problem.

MR HAYES: Again, we will obtain them over night, your Honour.

30

HIS HONOUR: Thank you. Thank you, Mr Hayes.

MR GILES: Just while we're on MFI 2?---Yes.

35

Could I just direct your attention in the spreadsheet with the properties in it?---Yes.

To the comments column. So the right-hand column?---Yes.

Property number 11; 44 Howard Road, Caulfield North?---Yes.

40

That's your parents' residential address, isn't it?---It is my parents' residential address. Yes.

Where they live?---That is correct. Yes.

45

And it's not one of the properties over which the Commonwealth Bank has issued a demand, is it?---They have issued demands over all my parents' properties, I believe.

5 Well, could you go back to paragraph 71 of your affidavit of 12 July. And there you list a series of properties owned by your parents?---I'm sorry, Mr Giles, the page numbers disappear on this one as it goes forward. Is that - - -

It's paragraph 71 that I was directing your attention to?---Yes. On page - - -

10 Page 17 at the top of the page of your 12 July affidavit?---Page 17. Sorry. Yes.

So you list a series or properties there?---Yes.

15 They are properties owned by your parents?---Yes.

None of those are their personal residence, are they?---No. They're not mentioned there, but they were definitely mentioned.

20 Well, I just want to ask how you came to swear in the fourth line:

*Additionally, both my parents took out a loan secured by a mortgage over their personal residence in order to advance my funds. I believe these properties were listing .....*

25 None of those properties are your parents' personal residence, are they?---Those – those two seem to have been missed. The rest have all been included, Mr Giles, but those seem to have been missed. The debt facility with CBA is all cross-collateralised.

30 But if you look at paragraph 71(f), 30 Nelson Street is not your parents' personal residence, despite what you say?---No. It's an error that has been made, Mr Giles. I think this is another – there is additionally another property that is also missing from that list that you will see on this.

35 Did you reread this affidavit before telling Mr Hayes that its contents were true when he called you?---I did – I did definitely reread it, Mr Giles, but I've missed those. They're not mentioned elsewhere in this?

40 The statement in paragraph 71(f) - - -?---

*In order to .....*

45 - - - is quite false to suggest that 30 Nelson Street is your parents' personal residence, isn't it?---Yes, it is. Yes. Completely.

And, indeed, in order to fund the acquisition – a number of property acquisitions prior to July 2021 - - -?---Yes.

- - - they didn't mortgage 44 Howard Street, did they?---Yes, they did.

Because if they had done so, you would have told his Honour about it. It would be hard to forget your parents' actual address, wouldn't it?---It was mentioned  
5 somewhere, definitely, Mr Giles, because they've all been mortgaged. 44, 46, .....  
Street, 30 Nelson, 32 – they've all been mortgaged. As I mentioned, they're all on  
this list because they're all cross-collateralised with the CBA.

Just returning to that - - -?---And I'm pretty sure it's attached here somewhere  
10 because you've got all the CBA statements and everything is included.

Just returning to MFI2 and the spreadsheet and the comments column?---Yes.

Can you go to the last comment. Net monthly income from service station property  
15 after servicing existing debt to Judo and ANZ is approximately \$30,000 per  
month?---That's correct.

360,000 per annum?---That is correct, yes.

20 And that's a correct statement, is it?---No, it's not.

Where was that? Sorry, Mr Giles. Where's that?---The last page of MF 2, your  
Honour.

25 MR GILES: Right-hand column.

HIS HONOUR: I see. Yes. Thank you.

MR GILES: Well, how did that statement come to be made in a document sent to a  
30 prospective financier?---Because SME, as I mentioned to you, Mr Giles, was looking  
to refinance a lot of these properties for us.

Do you approve this statement being sent to a financier?---I told you I would have to  
35 double check if this was the actual one that was sent, but this was a high-level  
discussion that was had with SME. As I mentioned to you, no evaluations have  
taken place and this – none of this debt has been placed anywhere at present.

Well, is that something you told SME finance?---Is that something I told SME?

40 Yes. Did you tell - - -?---We were trying to refinance them to extract extra income  
out, yes.

Right. So in order to obtain - - -?---But it's not – it's not the actual case.

45 So in order to obtain finance, you told SME something that was not true; is that  
.....?---No. It's – I think it's - - -

MR .....: Your Honour.

MR HAYES: No, your Honour. Your Honour.

5 HIS HONOUR: We will just a – just bear – perhaps you just go outside for a moment. If you go for outside – if you just go outside for a moment. I just have to deal with an objection. It’s just something we have to do?---Your Honour, I don’t want to answer any of these questions, your Honour. It’s just clarification. I think Mr Giles is confused. Sorry.

10 That’s fine?---Sorry.

No, that’s fine. If you just go outside for a moment?---Happy to answer .....

15 Yes, thank you. Just bear with me for a moment. Just bear with me for a moment. I’m thinking of section 192G of the New South Wales Act. That’s why I stopped it because as the question arises whether section a hundred and eighty – section 128 of the Evidence Act should be a certificate, because you’re effectively – if section 192G of the new – I’m not – this all happened in Victoria, did it?

20 MR HAYES: Yes.

HIS HONOUR: Well, I’m not sure if there’s a Victorian cognate of section 192(g) of the New South Wales Crimes Act, which is a person who dishonestly makes or publishes or concurs in making or publishing any statement, whether or not in writing, that is false or misleading, any material particular with the intention of obtaining a financial – relevantly, intuitively obtaining a financial advantage does ..... offence. I just want to make sure that - - -

30 MR HAYES: Well, my objection even preceded that, your Honour, because firstly it was in the comments column, there was – we let it go to a point, but there was no evidence as to who made those comments. That’s the first – in other words, whose comments they are. Secondly, there’s no evidence so far that that information was conveyed or told to the person whoever made those comments by Mr Tesoriero. So  
35 the foundation hasn’t been established to this point, your Honour, and that was really – we’re not at the point at which your Honour apprehends yet and we might not even – apprehend we might not ever get there.

40 HIS HONOUR: Right, yes. Can I go back a step. These documents, Mr Giles – they were produced on subpoena directed to whom?

MR HAYES: SME Finance, I understand, your Honour, which is a finance brokerage in Melbourne.

45 MR GILES: Well, I’m instructed that it was a notice to produce to Mr Tesoriero.

HIS HONOUR: This email?

MR GILES: Yes. I – we got that on the – the documents that - - -

HIS HONOUR: MFI 2?

5 MR GILES: - - - your Honour gave access to this morning. And I understand that to have been those which were produced by Mr Tesoriero. I should say we have issued a subpoena to SME. It's possible that I – what I have just said is wrong. But our understanding is that it was on the notice to produce.

10 MR HAYES: Your Honour, I'm instructed that we don't think it has come from us. We think it's from SME.

HIS HONOUR: Well, I think that should be - - -

15 MR HAYES: But that's beside the point, your Honour.

HIS HONOUR: I think that should be clarified. If - - -

20 MR HAYES: Even if it has come from Mr Tesoriero, he has been sent a copy of this – sorry, your Honour, the other one – spreadsheet. So who prepared it? And whose comments appear there? And the basis for those comments - - -

HIS HONOUR: If it's Mr Tesoriero or from the financier, it's clearly a business record he is entitled to cross-examine on.

25

MR HAYES: Sure. But as to – yes, that's right. But subject, though, as to the type of question, your Honour, insofar as to attribute - - -

30 HIS HONOUR: I thought he had already – I thought he had already given evidence concerning the document which is attached to MFI 2, that it was something that was prepared – at least prepared by the broker.

MR HAYES: That's right.

35 HIS HONOUR: Yes. Well, it's a broker who is putting together a financial proposal on his behalf.

MR HAYES: That's right. And the provenance – I'm sorry. Your Honour, I'm instructed it has come – just excuse me, your Honour.

40

HIS HONOUR: Sure.

45 MR HAYES: Your Honour, the provenance of the document came under the notice to produce to Mr Tesoriero, which is not surprising, given that it's attached in an email sent to him.

HIS HONOUR: Yes.

MR HAYES: But the spreadsheet itself, your Honour, that's not Mr Tesoriero's document. It's a document prepared by the broker, not by him.

HIS HONOUR: So this document has not been produced by the financier.

5

MR HAYES: Well, it might have been. It might have been produced. I would expect, your Honour, that if a subpoena has gone to SME Finance, it - - -

HIS HONOUR: Well, the questions seem to be premised on the basis that this is a business record that was either – that the broker deployed by providing it to the finance company. Is that your instructions, Mr Giles?

MR GILES: But I thought that I had the witness accept that. That was my understanding of the email. I was cross-examining on that basis. On the first couple of questions I asked, I thought I got the acceptance from Mr Tesoriero that it had been provided to the financier – the prospective financier. He was not sure whether it had gone to the CBA as well.

HIS HONOUR: I see.

20

MR HAYES: The next step, your Honour, as to whether or not he has adopted – in other words, he has explicitly adopted those before the document has gone to the financier or not, your Honour, that's – it was never put to him in those terms as to whether he – the way I want to put it, your Honour, the foundation hasn't been established as to that next step as to what his role was without going to the financier.

HIS HONOUR: Well, I would infer, I must say – I mean, I don't have recollection of those questions and answers, Mr Giles. But you say they were the answers. I'm sure your – I'm sure the transcript will bear you out. But am I to infer that the communication from Johns to Mr Tesoriero and Mr Pratt at the top of MFI 2, that is:

30

*Thanks, Vince. See you on Monday. I have sent the summary info to them this afternoon, left CBA at 15 million. Cheers.*

Is that the summary that we're talking about?

35

MR GILES: That's my understanding, because that's the attachment. And Ms Hamilton-Jewell might - - -

HIS HONOUR: I think in fairness to Mr Hayes, if – I think I had better look at the transcript. If this document has been sent to the financier, then it seems to me he would be perfectly entitled to cross-examine in relation to it, because it's a representation made about the financial value, which you're asking – you're going to ask me to infer at the end of the day was something that, at the very least, his agent has put forward - - -

40  
45

MR HAYES: That's right.



HIS HONOUR: - - - on their behalf in order to obtain financing. Yes. I – given we started so late, I was proposing to sit until 5 o'clock. Are you - - -

MR HAYES: I can move on to a different topic.

5

HIS HONOUR: If you want to move on a different topic, you're not going to be finished by 5 o'clock in any event, I expect.

MR HAYES: I don't think so, no.

10

HIS HONOUR: We can come back to that.

MR GILES: I should then seek to tender MFI 1 and MFI 2.

15 HIS HONOUR: Do you mean you wish to tender them?

MR GILES: Yes.

HIS HONOUR: Okay. Any objection?

20

MR HAYES: No objection, your Honour. As your Honour says, they are business records.

HIS HONOUR: Yes. MFI 1 will become exhibit B.

25

**EXHIBIT #B MFI 1**

30 HIS HONOUR: And MFI 2 will become exhibit C.

**EXHIBIT #C MFI 2**

35

HIS HONOUR: Yes. Court Officer, if we could have Mr Tesoriero back in, please.

<VINCENZO FRANK TESORIERO, RECALLED

[4.27 pm]

40

<CROSS-EXAMINATION BY MR GILES

45 HIS HONOUR: Mr Tesoriero, Mr Giles is going to move on to something else?---Thank you, your Honour.

MR GILES: Now, Mr Tesoriero, you've got the two documents that I have been referring to as MFI 1 and MFI 2 sort of open - - -?---Yes. Yes, I do.

- - - more or less to your right?---Yes, Mr Giles.

5

You can fold those up and get them out of your way?---Okay.

Indeed, you could even give them back to the court officer, because I'm not going to ask about them again this evening?---No worries.

10

Now, you can also, for now, close your affidavit of 12 July?---Yes, Mr Giles.

I don't think I can tell you you can put that one away or give it to the court officer, but you can close it and put it - - -?---That's all right.

15

- - - out from in front of you?---No worries.

And I would like you to pick up again Ms Murray's affidavit?---Yes. That's this one, isn't it, Mr Giles?

20

Of 30 June?---Yes.

That's right. And I think you have now seen how it works. The first five pages are Ms Murray's affidavit. They've got numbers in the - - -?---Yes.

25

- - - at the top of the page. Then there's an exhibit certificate?---Yes.

And if you then turn over there, the pages are paginated in the bottom right-hand corner?---Yes.

30

Now, I would like you to go to page 70, please?---Judo Bank.

That's right. And see that's the - - -?---Berkeley Street Hawthorn one? That's the one you're referring to, Mr - - -

35

That is?---Yes.

That's the 64 to 66 Berkeley Street Hawthorn Unit Trust?---Yes.

40

Now, the director of – the trustee of the 64 to 66 Berkeley Street Unit Trust is - - -

HIS HONOUR: Surely it's "Berkeley".

MR GILES: "Berkeley". "Berkeley" or "Berkeley"?---Whatever you like.

45

MR HAYES: "Berkeley" is the correct pronunciation, your Honour, as in - - -

THE WITNESS: I think you're right, your Honour. I think you're right.

MR HAYES: - - - Bishop Berkeley, the famed diarist scholar - - -

5 HIS HONOUR: Right.

MR HAYES: - - - of Trinity College Dublin.

MR GILES: I made the mistake of following the witness.

10 There's a company, 64 to 66 Berkeley Street - - -?---That is correct. Yes

- - - Proprietary Limited?---Yes.

15 You're the sole director of that company, aren't you?---I believe so. I will need to double-check that, Mr Giles.

Now, you see on this page there are two payments that are made of \$33,600 on 12 April and then one of \$33,000 on 28 April?---I do see those. Yes.

20 Could you explain to her Honour – to his Honour why two payments were made to the financier in April?---There is always two payments that are made to that facility.

25 I understand why you say that, and I should be clear. Could you go to page 73?---Yes.

You see in April there was a third payment of \$25,600 made?---I do see that. Yes.

30 So why were three payments made in April to the financier?---I think what you will find, Mr Giles, is – is similar to the ANZ. Judo puts money into one account, and then they redirect it to the various loan accounts as they deem appropriate.

35 Right. Step back from that. Did you direct each of those three payments to be paid?---I would have directed them. Yes.

Why did you direct the three payments be made in April?---I – I don't think it's three payments. I think what you will find is one of those payments are redirected from the other account.

40 Well - - -?---If that makes sense. I – I could be wrong. I would have to clarify for you, Mr Giles, but typically, it's – it's around the 57 to 60 thousand dollars a month, and often there is months that are a little bit in arrears, because the petrol station rents aren't enough to cover them on occasion, so it could have been a top-up. It could have been – I would have to double-check that.

45 All right. Well, page 70 - - -?---Yes.

You see a payment was – of \$33,600 was made on 12 April?---Yes. I do see that.

And then one of \$33,000 made on 28 April?---Yes. I do see that.

5 And both of those record payments being made by the company as trustee of the trust to Judo; that’s how you understand the statement?---The – the – this is Judo’s statement, so the money would have come from ANZ.

10 No. No. But once it - - -?---So it has landed in the Judo statement, so I think you will find, if you look at the other one - - -

That’s right. So - - -?---You said that’s on the 28<sup>th</sup>, so that would be the same – it doesn’t show up on the other one, so I think it’s the same money doubled up going from one account to another unless I’m wrong.

15 Well, can I suggest that can’t be right, because the – where there – the day on which there are two payments to Judo - - -?---Yes.

20 - - - is on 28 April - - -?---Yes.

- - - and one is for \$33,000 on page 70, and one is for \$25,600 on page 73?---Yes. But if you look at the facility reference, they’re two different facilities.

25 That’s right?---Yes.

Right. So they’re not - - -?---But it’s – it’s the same loan for Berkeley Street, but there is two different facilities on that loan, so as I said, money would go into one account and then be redistributed to the other account by Judo themselves.

30 I understand. As at today - - -?---Yes.

- - - there is only one facility - - -?---The facilities have been – has - - -

35 - - - secured by a mortgage over - - -?---Berkeley Street.

- - - Berkeley Street?---The – I don’t know.

Berkeley Street?---As of today, the facilities are in the process of being merged.

40 That’s right?---Yes.

Because about a month ago, you refinanced these facilities, didn’t you?---No. I didn’t refinance these facilities at all.

45 You entered into a deed of forbearance with Judo Bank, didn’t you?---We did. Yes.

You extended the term of the facilities, didn't you?---I would need to double-check that, Mr Giles.

5 You gave a release to Judo Bank, didn't you?---Again, I would need to double-check that, Mr Giles.

10 You agreed that Judo Bank would release its claim over Forum Group of Companies, didn't you?---I think that is – that's what Judo requested in the deed of forbearance. Yes.

15 Why did you do that? Why did you agree to that happening?---Because the interest payments are becoming too much, and with the increases in interest, I spoke to the ..... at Judo Bank, and we've tried to work out a way with the interest payments increasing on the service stations and on the Berkeley Street facility to be able to merge the facilities to bring the interest payments down. Otherwise, it won't be able to be maintained.

20 So as at today, there's just the single facility, which is the merger of the two previous facilities?---I don't know if it has taken effect as of yet, Mr Giles. I believe it hasn't taken effect as of yet.

But back in April, there were two facilities secured by mortgage over Berkeley Street?---That is – that's correct.

25 Right?---One of the same, but split over two facilities.

That's right?---If that makes sense.

30 And - - -?---But I believe still as of today it still remains like that. I don't think it has taken effect of the new facility as yet.

So the point is that on page 70 is the statement for one of the facilities - - -?---Yes.

35 - - - in existence?---Yes.

Two payments were made in April?---Yes.

40 Why?---I – I thought I just explained that, Mr Giles. There was – there was two facilities. There is still two facilities. There has always been two facilities on that property - - -

Two payments - - -?--- - - - from - - -

45 - - - were made on the facility - - -?---Yes.

- - - which is the – if you look in – on page 70 - - -?---Yes.

--- described as “account type” ---?---Yes.

--- “business loan variable I/O”, and the facility name ---?---The – the ---

5 --- ends with 572?---One ends in 572, and if you look on the other one, it ends in 571. They’re two different facilities.

That’s right?---Yes.

10 Two payments were made on 572 in April?---Yes. That’s correct.

Right. One payment was made on 571 in April?---Yes. But – but if you look, there is – there is a debit across of 29,688, as well, so money gets transferred, like I said to you. I don’t know – I would have to double-check what occurred, but Judo transfers  
15 money themselves internally, the same as ANZ does, to satisfy the facilities.

But, Mr Tesoriero, on page 70, the twenty-nine thousand dollar payment is not a transfer. It’s the interest being charged to you?---That’s – that’s correct, Mr Giles.

20 Right. It’s the long and the short of it that you can’t tell his Honour why two payments were made from the ---?---I thought I just explained that.

--- 572?---No. I did. Did I not clarify, your Honour? Did you ---

25 Could I ask that you turn up the cross-examination bundle and go to – so the slimline bundle that I gave you?---Before we move on, Mr Giles, did you want me to further clarify that? Because you seem to be confused. I’m happy to clarify it, if – if there’s – there’s two facilities – two payments.

30 Mr Tesoriero, what I’ve been trying to ask you is that there are two payments on the – on one facility and a third payment on the second facility?---No. That’s not correct.

35 So you’re saying that the Judo Bank statement at page 70 is wrong?---I – I believe so. Yes.

All right?---There should be money coming into that account, and you’ve obviously missed one of the dates where it goes back out to the other account.

40 Okay?---I do love my relationship manager at Judo Bank, Mr Giles, but I wouldn’t pay him double interest.

Well, could I ask you this, then?---Yes.

45 Could you go to page 76 ---?---Yes.

--- of CMM26?---Yes.

You see there are two payments made in April on the 4 Cowslip - - -?---Yes. I do see that.

- - - loan account?---Yes.

5

Right. Why were those made, that is, why were two payments made on that account?

10

HIS HONOUR: Did you say “page 26”?

MR HAYES: 76.

MR GILES: 76, your Honour.

15

HIS HONOUR: 76.

20

THE WITNESS: I’m just having a look now, Mr Giles, to see if potentially maybe one of the months prior might have got missed. I would need to clarify that, Mr Giles, but we definitely don’t pay interest twice. It could be a catch-up from a previous month. Like I said, sometimes the rent isn’t enough to cover the interest. There’s often months where the account that you referred to earlier today with 150,000 – there’s often months where that account is in – in negative debits. So that could potentially be why, but I would need to clarify, and I’m happy to get back to you on that.

25

HIS HONOUR: I’m a little confused?---Yes, your Honour.

30

It’s obviously my fault. Page 76, Mr Giles – you said there were two payments. There’s two credits.

MR GILES: That’s right. Reducing the loan.

HIS HONOUR: I’m sorry?

35

MR GILES: So it’s a credit reducing the loan. It’s from the bank’s perspective rather than the – so you see the right-hand column, the loan amount is decreased.

HIS HONOUR: Yes.

40

THE WITNESS: I think you’re wrong, Mr Giles. That’s a running balance.

MR GILES: That’s right.

45

HIS HONOUR: So the opening balance is \$1923 – 10658. That’s a loan account.

MR GILES: That’s a loan account.

HIS HONOUR: That's a loan account debit.

MR GILES: That's right. That's the amount owed.

5 HIS HONOUR: \$8000 has been put, which reduces that balance to - - -

MR GILES: Correct.

10 HIS HONOUR: - - - \$1914 – a further 8000, which is reducing that balance – 1907.

MR GILES: That's right.

HIS HONOUR: So what's the issue?

15 MR GILES: I'm just trying to ask why there were two payments made on that loan account in April.

THE WITNESS: I did explain, Mr Giles.

20 HIS HONOUR: Well, there was only one that was made in April.

MR GILES: There was only one – if one goes back to 75, there was only one made in March. 76 – there are two made in April. 77 – one made in May. See that?---I haven't got it open in front of me, Mr Giles. I'm - - -

25 Could you open it up in front of you - - -?---Yes.

- - - Mr Tesoriero?---So the only – I have page 70 here – is the Berkeley Street – or Berkeley Street, and then - - -

30 Just ..... another page?--- - - - as I keep going, I have the March statement, I believe, here – yes – which shows one payment for Cowslip, and I have two in May, but I don't have April shown here.

35 Page 76 – you see the dates?---Yes. But the – if you look at the – where did I just see that?

HIS HONOUR: There are varying credit amounts paid unless I'm missing something?---It does vary, your Honour. Yes.

40 There are various credit amounts paid at various months, but they're all – it's a P&I loan, and there are amounts being paid off from time to time – this Judo - - -

45 MR GILES: Right. I'm just trying to suggest – Mr Tesoriero, was it a matter of your choice that two payments were made to – on the – on each of those loans - - -

HIS HONOUR: Yes.



MR GILES: - - - I've directed your attention to in April?---Again, Mr Giles, I would have to double-check. I'm – I'm sure there's a plausible explanation as to why, but I'm just trying to see if there's a statement date that's missed here, and possibly that's why.

5

HIS HONOUR: Well, it's pretty clear. You've got all the statements. It's from - - -?---Yes.

10 It's from April, May, June for both facilities?---But there could be a potential – a different facility with that - - -

Well, the facility reference - - -?---See, if I look – if - - -

15 The facility reference is up the top?---Yes. So if you look at the two different facility – there's two different facility references there, Mr Giles. If you look at the exhibit on page 78 and page 77, there's two different facility references there. But – yes. The account name stays the same.

20 MR GILES: Yes?---Again, I'm not saying that's the answer. I would need to check with Judo and come back to you on that. I'm happy to – to come back to you on that. Is it just the one month that you're questioning, the 8000, or is there another one?

I've been asking you about the double payment made in April – what I have - - -?---Yes.

25

- - - characterised as a double payment made in April - - -?---Yes.

- - - in relation to Cowslip Street - - -?---And a double payment on - - -

30 - - - in relation to Berkeley - - -?--- - - - Berkeley, you're suggesting.

- - - Street - - -?---Okay.

35 And a double payment, also in April, on 275 High Street at page 82?---Okay. Bless you.

HIS HONOUR: Thank you.

40 MR GILES: And a double payment made on page 85 for a second account on 275 High Street, also in April, and on page 88 another double payment in April, also High Street?---Yes. I – I believe it's – it's definitely an error, Mr Giles. I don't think I would be making double payments.

45 HIS HONOUR: Well, there's was a double credit always in April on pages 79, 82, 85, 88, 91, 94, 100 and 103?---I think your Honour will find it would be redirected to a different facility. But again, Mr Giles, if you can make that list, and we can – we can respond to you.

MR GILES: I will just draw your attention to it?---It's no – no problem.

No doubt – yes?---Happy to oblige.

5 Could I then ask you to turn up the slimline folder that I gave you earlier?---Slimline folder. Yes.

That's the one which I think I've called the cross-examination folder. I wonder if that might be marked MFI3 for now.

10

HIS HONOUR: I don't think I've got a copy of it, Mr – is it this one? Yes. I have.

MR GILES: Yes.

15 HIS HONOUR: All right. The folder entitled Cross-Examination Bundle for Hearing on 19 July 2022 will be marked MFI3.

20 **MFI #3 FOLDER ENTITLED CROSS-EXAMINATION BUNDLE FOR HEARING ON 19 JULY 2022**

THE WITNESS: What page would you like me to go to, Mr - - -

25 MR GILES: Page 81, please?---Page 81? Forbearance deed. Yes.

And if you go to page 96, you see that this was executed by you on 14 June 2022?---Yes. That's correct.

30 And you see, on page 86, Judo has released .....?---Yes. I do see that.

And you see, on page 89, clause 7.1, "oblige all party", which is relevantly the Berkeley Street company and you, have released Judo?---Which point is that – sorry – you said?

35

7.1?---Yes.

And you see, on page 93, that the term has been varied - - -?---Yes.

40 - - - for 15 years?---Yes. I think the original term might have been something similar, also.

HIS HONOUR: But this is a variation of mortgage, effectively.

45 MR GILES: It is.

THE WITNESS: Yes.

HIS HONOUR: It doesn't appear to be stamped.

MR GILES: No. But I thought the consequence of the Full Court was – section 55 would mean that that's not picked up. But - - -

5

HIS HONOUR: No.

MR GILES: No.

10 HIS HONOUR: That's an exception. It's an exception. The revenue laws are picked up in federal jurisdiction - - -

MR GILES: Are they?

15 HIS HONOUR: - - - under section - - -

MR GILES: Well, Ms Hamilton-Jewell corrects me that there's a further exception - - -

20 HIS HONOUR: Section 9.

MR GILES: - - - because I am not the party liable for the duty.

25 HIS HONOUR: Yes. Okay. Good. You haven't tendered it yet, anyway. So you can tender it.

MR GILES: Well, to crystallise that, I tender the document at page - - -

30 HIS HONOUR: In any event - - -

MR GILES: - - - 81 and following. Your Honour, I tender the document at page 81 to 96.

35 HIS HONOUR: Well, why don't we just tender all the documents that you wish out of – we will do that in one hit.

MR GILES: We will do that at the end.

40 HIS HONOUR: Out of MFI3 – because I presume there's other ones you want to go to, as well.

MR GILES: I'm grateful.

45 Now, this was executed on 14 June '22 by - - -?---That's correct. Yes.

- - - Judo Bank. It was also executed by you, was it? I should direct your attention to page – yes. It was?---I – I think I executed it.

96?---I think I executed it. If we're going on dates, Mr Giles, I think I executed it prior to Judo Bank, and they might have been a week or two later.

5 All right. And this was an agreed, in effect, refinance of the loan, wasn't it?---No. It wasn't a refinance. No.

It was extending - - -?---It was – it was purely a merging of facility to – to be able to allow it to – my interest payments to be met.

10 It was extending the term, though, wasn't it?---No. I don't think it was. I think the term is the same.

Could I ask that you go, then, back to page 66 of MFI 3?---Yes.

15 Slightly curiously described – addressed document, 13 November 2020 to – addressed to you as 64 to 66 Berkeley Street Hawthorn Proprietary Limited?---Yes.

“Dear Basile” – Basile?---Yes. Yes, I can see the document you refer to.

20 Back to that in a moment. But the – if you go to page 68, the term. And 69, you see the term on page 68 for one part – for facility 1 was 60 months?---Yes.

And on 69, 36 months?---That is correct, yes.

25 So then agreement you entered into less than a month ago, you extended the term of that, facilities as well as merging them?---I would – I would need to double-check with you, Mr Giles, because I believe that the 60 month term had a rollover to continue. So I would need to double-check that with Judo and come back to you. And the 36 month one was always on a run-out, so it was always going to pay itself  
30 off, if that makes – it was principal in interest. So as that depleted, it was going to diminish and disappear in any case and just roll into the one facility.

And the fact - - -?---Does that make sense, Mr Giles?

35 No. The Basile referred to on page 66 is Mr Papas, isn't it?---Yes, it is. Yes. Would you like me to clarify that last point if it doesn't make sense?

HIS HONOUR: Your counsel can seek to clarify anything he wishes to in due course?---Sorry.

40

That's all right.

MR GILES: So this is aligned to 64 to 66 Berkeley Street Hawthorn?---Yes.

45 Now, that's a trustee of a trust, isn't it?---I believe - - -

That company?---I believe so. Again, I would need to check for you, Mr Giles.

Well, I did promise you that you didn't need your 12 July affidavit, but perhaps you do. Could you take up your 12 July affidavit?---Yes, I can. What page would you like me to go to, Mr Giles?

5 I'm just trying to find where you describe the companies that you have an interest in.

HIS HONOUR: Just bear with me for one moment, Mr Giles. I had a horrible thought I was supposed to give a speech in five minutes, but it's an hour and five minutes.

10

MR GILES: Yes, page 22, item 6. You see there you've described in the third column legal owner?---Yes.

64 to 66 Berkeley Street Hawthorn as trustee for the - - -?---That's correct.

15

- - - similarly named unit trust?---Yes.

Then in the next column which you see from what the heading of the next column is from back on page 21, extent of interest or control?---Yes.

20

50 per cent of the units on issue - - -?---Yes.

- - - in the Berkeley Trust are held by TIT Trust, which you know is the Tesoriero Investment Trust?---That is correct, yes.

25

The other 50 per cent of the units is held by a company called Eaross, isn't it?---I would have to double-check, but quite possibly, yes.

And Eaross, to your knowledge, is a trustee of - - -

30

MR HAYES: I object to the question. Unless the – unless it's an entity associated – if it's an entity associated with Mr Tesoriero, I don't press the objection. If it's going to be suggested it's an entity associated with someone other than Mr Tesoriero, I do, because it's irrelevant. What we have an inquiry into today is into Mr Tesoriero's circumstances.

35

MR GILES: No. I am going to suggest it's an entity other than Mr Tesoriero, and - - -

40

MR HAYES: Well, it's plainly irrelevant, your Honour.

MR GILES: No. I – there is an obvious relevance, if I might say.

HIS HONOUR: Well – sorry.

45

MR GILES: Yes.

HIS HONOUR: I'm sorry. Can we - - -?---You're going to make me leave again, your Honour.

5 Yes, please. Thank you?---I've got a pretty thick skin. My feelings don't get that hurt.

<THE WITNESS WITHDREW

[4.55 pm]

10

MR GILES: I'm going to suggest that Eaross is controlled by Mr Papas. The beneficiaries – I actually don't know who they are, but I'm going to put they were either Mr Papas or his children. And then I'm going to suggest that he's causing his companies to make payments for the benefit of a trust or, more accurately, the trustee of a trust of which Mr Papas has a 50 per cent interest in and that that's going to relevantly going to go to your Honour's discretion as to whether you allow legal fees out of money over which my client has a proprietary interest.

20 HIS HONOUR: Just say that again. I don't have - - -

MR GILES: Yes.

25 HIS HONOUR: - - - the affidavit in front of me, so this affidavit – it's the July 2021 affidavit.

MR GILES: No. July '22.

30 HIS HONOUR: July 2022. I couldn't see it in the – when you were cross-examining on it. I thought I must have had the wrong affidavit, because it – could you give me the page number again.

MR GILES: Page 22.

35 HIS HONOUR: What I've got at page 22 of the 21 – 12 July or 21 July?

MR GILES: 12 July.

40 HIS HONOUR: 12 July is Buxton Oakleigh Commercial Industrial Pty Limited statement.

MR GILES: No. Mr Tesoriero's - - -

HIS HONOUR: Well, that's what I got - - -

45 MR GILES: - - - 12 July - - -

HIS HONOUR: That's what I got - - -

MR GILES: - - - '22 affidavit?

HIS HONOUR: That's what I got confused about. 12 – his 12 July 2022 affidavit.

5 MR GILES: Page 22.

HIS HONOUR: Sorry. I was looking at page 22 of 366, which was the - - -

10 MR GILES: Yes. I'm sorry.

HIS HONOUR: - - - exhibit numbering. I'm sorry. That's my fault.

MR GILES: No. No. It's my fault for operating off last night's version.

15 HIS HONOUR: Yes. Now that I've got it in front of me – so - - -

MR GILES: The row with the number 6 in it, 64 to 66 Berkeley Street.

20 HIS HONOUR: Yes.

MR GILES: Legal owner is the company as trustee, so the third column, and the fourth column is extent of interest or control; 50 per cent of the units on issue are held by the TIT trust.

25 HIS HONOUR: Yes.

30 MR GILES: I was going to ask – well, the other – in effect, put the proposition the other 50 per cent are owned by a Mr Papas controlled entity and that what's happening is Mr Tesoriero is choosing to make payments for the benefit of a trust that Mr Papas or his entity has a 50 per cent interest in. And ultimately, in submissions, I will say, well - - -

HIS HONOUR: But he's liable. He's liable, isn't he - - -

35 MR GILES: Well - - -

HIS HONOUR: - - - to pay them?

40 MR GILES: Well, except the persons making the payment aren't, of course, because they have – they are other companies.

HIS HONOUR: I know, but I'm just finding it – I understand why this might be relevant to a whole range of things, but I'm a little perplexed as to why it would be relevant to the issue I have to determine at the moment.

45

MR GILES: There's one point I slipped over. Of course, 64 to 66 Berkeley Street doesn't actually pay the money itself. He – Mr Tesoriero causes his other

companies, that is, the income-earning ones, to do it – to make the payment. That’s just the point.

5 HIS HONOUR: Well, why – I mean, to the extent that that’s relevant – and undoubtedly you will explain that in submissions – why is it – there the necessity to cross-examine on it?

MR GILES: I suppose there’s not.

10 HIS HONOUR: No. All right.

MR GILES: Well, yes.

15 HIS HONOUR: Well, we can - - -

MR GILES: Okay.

20 HIS HONOUR: - - - move on. We can move on, then. I think that would be a convenient time. Perhaps I will get my associate to go out and explain to – or perhaps I will ask the witness to come back in. Could you ask the witness to come back in, please.

25 MR HAYES: Prior to giving him the conventional explanation, your Honour, while he’s under cross-examination, I would ask that we would be permitted to at least get instructions to obtain the various documents that were called for under the notice to produce.

HIS HONOUR: Yes. By all means.

30 MR HAYES: Thank you, your Honour. Excuse me, your Honour.

35 HIS HONOUR: Mr Tesoriero, there’s no need to come back in the witness box at the moment. That concludes the cross-examination for the purposes of today. If – no. It’s all right. You can stay there. That’s fine. No. No. It’s fine. You can stay there. That concludes the cross-examination for today. If you can come back at 9.30 am tomorrow when the cross-examination will continue.

MR TESORIERO: Sure.

40 HIS HONOUR: I’m saying this – I say it to every witness. It has got nothing to do with you. But given you’re under cross-examination, you can’t discuss the matter with anyone whilst you are under cross-examination. The one exception is that your legal advisers will speak to you before you leave, if you wait outside for a moment, about documents that you should seek to try to obtain overnight, and so they will  
45 identify those documents for you, but otherwise, if you could just then make sure you come back here at, say, 25 past 9 tomorrow. It will – I will just check whether it will



be in this courtroom. Yes. If you come back here to this courtroom, it will either be here or, alternatively, someone will give you an indication of where you need to go.

MR TESORIERO: Yes.

5

HIS HONOUR: Thank you. So you're – if you could leave now.

MR TESORIERO: Do I leave these documents here?

10 HIS HONOUR: You can leave that there for present purposes.

MR TESORIERO: Thank you.

HIS HONOUR: Thank you. Is there anything further?

15

MR GILES: No.

HIS HONOUR: All right. Well, my associate will be in touch about what courtroom we're in tomorrow.

20

MR GILES: May it please.

MR HAYES: If your Honour pleases.

25

**MATTER ADJOURNED at 5.02 pm UNTIL WEDNESDAY, 20 JULY 2022**

### **Index of Witness Events**

VINCENZO FRANK TESORIERO, SWORN	P-12
EXAMINATION-IN-CHIEF BY MR HAYES	P-12
CROSS-EXAMINATION BY MR GILES	P-13
THE WITNESS WITHDREW	P-27
VINCENZO FRANK TESORIERO, RECALLED	P-30
CROSS-EXAMINATION BY MR GILES	P-30
VINCENZO FRANK TESORIERO, RECALLED	P-44
CROSS-EXAMINATION BY MR GILES	P-44
THE WITNESS WITHDREW	P-57

### **Index of Exhibits and MFIs**

EXHIBIT #VFT6 BUNDLE ANNEXED TO AFFIDAVIT OF VINCENZO FRANK TESORIERO DATED 12/07/2022	P-7
MFI #1 EMAIL FROM MR JOHNS TO MR TESORIERO AND MR PRATT WITH ATTACHMENT DATED 01/04/2022	P-31
MFI #2 EMAIL FROM MR JOHNS TO MR TESORIERO WITH ATTACHMENTS DATED 08/04/22	P-33
EXHIBIT #B MFI 1	P-44
EXHIBIT #C MFI 2	P-44
MFI #3 FOLDER ENTITLED CROSS-EXAMINATION BUNDLE FOR HEARING ON 19 JULY 2022	P-53



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## TRANSCRIPT OF PROCEEDINGS

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O/N H-1753355

**FEDERAL COURT OF AUSTRALIA**

**NEW SOUTH WALES REGISTRY**

**LEE J**

**No. NSD 616 of 2021**

**No. NSD 642 of 2021**

**No. NSD 681 of 2021**

**No. NSD 747 of 2021**

**WESTPAC BANKING CORPORATION and OTHERS**

**and**

**FORUM FINANCE PTY LIMITED (IN LIQUIDATION) AND OTHERS**

**SMBC LEASING AND FINANCE, INC**

**and**

**FORUM ENVIRO (AUST) PTY LTD (VOLUNTARY ADMINISTRATORS  
APPOINTED) and OTHERS**

**IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED  
(ADMINISTRATORS APPOINTED) and OTHERS**

**SYDNEY**

**9.30 AM, WEDNESDAY, 20 JULY 2022**

**Continued from 19.7.22**

**DAY 2**

**MR J.C. GILES SC appears with MS C.A. HAMILTON-JEWELL for Westpac**

**MS E.L. BEECHEY appears for SMBC Leasing and Finance**

**MR R.K. JAMESON appears for the liquidators and receivers**

**MR P. HAYES QC appears with DR P. TURNER for Mr Tesoriero**

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HIS HONOUR: Yes, Mr Giles.

5

MR GILES: I've made a call for some valuations yesterday.

MR HAYES: Your Honour, they've been, I think, a matter of only moments ago, forwarded in PDF format to our learned friend's instructors, and I'm instructed that a hard copy is on the way up to court this morning. It should be here by 10 am.

10

HIS HONOUR: All right. Well, when it arrives, if in the – it can be produced to the court and I will make an access order in relation to it.

15 MR HAYES: We don't oppose access, your Honour.

HIS HONOUR: Yes.

MR HAYES: And as I've said to Mr Giles, if he doesn't tender it, I will.

20

MR GILES: The transcript hasn't arrived, as I understand it, yet, your Honour, and I will just do things another way.

HIS HONOUR: There's a partial transcript, I think, till 3.30.

25

MR GILES: Yes. Doesn't get me far enough to the question that arose.

MR HAYES: We haven't seen that.

30 MR GILES: But I will just – I'm just going to move on, I think.

HIS HONOUR: Well, I will let you know. I will have my associate chase up Auscript to see what's happening with the balance of the transcript.

35 MR GILES: I think our instructors have done the same, and as of about 10 minutes ago it was foreshadowed to be about 20 minutes then.

HIS HONOUR: Okay. All right. Well, we will – I indicated yesterday that I have a difficulty. I'm just going to see how things go. I'm making some inquiries about something. So I'm just a bit, at the moment, up in the air about sitting hours today, but I will let you know in due course.

40

MR GILES: Yes, your Honour.

45 MR HAYES: If it assists, your Honour, and appreciating your Honour's circumstances, we're free tomorrow as well, if that helps.

HIS HONOUR: Yes. Unfortunately, I'm in Canberra tomorrow.

MR HAYES: Your Honour pleases.

5 HIS HONOUR: Yes. All right. Well, if we have Mr Tesoriero. If you could come back in the witness box, sir. And, Court Officer, could you reswear the witness, please.

10 <VINCENZO FRANK TESORIERO, RESWORN [9.33 am]

<CROSS-EXAMINATION BY MR GILES

15 HIS HONOUR: Yes. Thank you, Mr Tesoriero?---Thank you. Thank you.

Mr Giles.

20 MR GILES: Thank you, your Honour.

Mr Tesoriero, I wonder if you might be given back a copy of your affidavit of 12 July 2022?---Thank you.

25 Mr Tesoriero, sorry ..... was trying to give you something different. Mr Tesoriero, could you go to page 35 of your 12 July affidavit, please?---Yes, Mr Giles.

Now, you see there is a second row, a company called 286 Carlisle Street Proprietary Limited?---Yes.

30 And you identify there that that's a company which you hold shares in?---Yes.

Are you the sole shareholder in that company?---I believe so.

35 And you don't act as a trustee. That's what the word "no" indicates there, in relation to those shares. So you hold them for yourself?---I believe so.

40 And the "beneficially owned" column – does that mean – or maybe I've got it back to front. Anyway, the company is not a trustee?---I believe so, Mr Giles, if that's what it says there. Yes.

Yes. I see. All right. And then Tesoriero Investment - - -

45 HIS HONOUR: Sorry. I think that's a different question you asked before.

MR GILES: I will - - -

HIS HONOUR: I think – I would just like to clarify. I thought you were asking for whether he held the share as a trustee or whether the company was acting as the trustee.

5 MR GILES: I had intended to ask those two questions. I will do it again.

I've messed up the questions. I do that sometimes, Mr Tesoriero?---I – I might have messed up the answers, too, Mr Giles.

10 The share you hold in 286 Carlisle Street: you own that yourself and not as trustee?---I believe so. That's what it's marked at – as there. So I – without having it in front of me, I believe that's the case. Yes.

15 Right. And 286 Carlisle Street is not a trustee of any trust, either?---No. I don't believe it is.

No. And if one goes down to the ninth row, Tesoriero Investment Group, you're a shareholder in - - -?---Yes.

20 - - - Tesoriero Investment Group?---Yes.

You hold that share yourself and not as trustee?---I'm not 100 per cent certain on that one, Mr Giles.

25 But Tesoriero Investment Group itself holds all of its assets on a trust?---I would have to get back to you, Mr Giles. I'm not 100 per cent sure.

Isn't that what acting as trustee indicates, the second column?---Potentially, yes.

30 And then the trust of which Tesoriero Investment Group is trustee is a discretionary trust?---Again, I believe it is, but I would have to check to be certain.

And you're described in the trust deed as a primary beneficiary of that trust?---Again, I would need to check, but I believe so. Yes.

35

If it helps, you can go back to page 20 of that affidavit, and you see the numbered row 1?---Yes. It's – it's definitely marked there as a discretionary trust.

40 Could I ask that you be handed two bank statements. A copy for Mr Tesoriero. A copy for his Honour.

HIS HONOUR: What does “default beneficiary” mean? Is that the same as an object or is it something different?

45 MR GILES: I don't - - -

HIS HONOUR: Anyway, it may not matter.

MR GILES: Could I say – I can say, your Honour, from the structure of these trusts normally – and we all know they are a fairly common form.

HIS HONOUR: Yes.

5

MR GILES: For tax reasons, so that – in case the trustee does not make a distribution of income by 30 June, the default trustee – the default beneficiary the income is automatically distributed to is the usual way that happens.

10 HIS HONOUR: Yes, but he’s also an object of the discretionary trust.

MR GILES: Quite, yes. A default beneficiary must also be an object.

HIS HONOUR: Yes, yes.

15

MR GILES: Or – yes.

20 So the top one – the top statement that I’ve given you, Mr Tesoriero, is a bank statement for an account that 286 Carlisle Street Proprietary Limited has with the Commonwealth Bank?---Yes.

As at 1 June 2022, you see it had almost \$12,000 in that account?---Yes. I do see that.

25 And as at today, it also has an amount of almost \$12,000 in the account, doesn’t it?---That – that is correct.

I see. I wonder if that bank statement might be marked – sorry, might be - - -

30 HIS HONOUR: Yes.

MR GILES: I withdraw that. I tender that bank statement.

35 HIS HONOUR: All right. That’s the bank statement for the period ending 30 June 2022 for Tesoriero Investment Group Proprietary Limited – will become exhibit D.

MR GILES: It should have been 286 Carlisle Street. I handed up - - -

40 HIS HONOUR: I’m sorry, which was MFI4. So it will become – I was going to mark it MFI4, but that will be exhibit D.

45 **EXHIBIT #D BANK STATEMENT FOR 286 CARLISLE STREET PTY LTD  
FOR THE PERIOD ENDING 30/06/2022**

HIS HONOUR: Yes.

MR GILES: Grateful.

5 HIS HONOUR: Sorry.

MR GILES: Then the second document – bank statement that I’ve handed to you is one for Tesoriero Investment Group?---Yes. That’s correct.

10 And you see it’s also for the period ending 30 June 2022?---Yes.

And if you go over to the second page, there’s a closing balance of almost \$41,000?---That’s correct, Mr Giles. Yes.

15 And as at today, it also has a balance of almost \$41,000 in it, doesn’t it?---That is correct. Yes.

Thank you. I tender that, as well.

20 HIS HONOUR: Yes. Well, the statement for Tesoriero Investment Group Proprietary Limited for the period ending 30 June 2022 will be marked as exhibit E.

25 **EXHIBIT #E BANK STATEMENT FOR TESORIERO INVESTMENT GROUP PROPRIETARY LIMITED FOR THE PERIOD ENDING 30/06/2022**

MR GILES: All right. Now, Mr Tesoriero, you can put those two bank statements to one side?---Sure.

30 MFI3 – I wonder if Mr Tesoriero could be handed MFIC – sorry, MFI3.

THE WITNESS: Thank you.

35 MR GILES: I wonder if we could just go back to a document that I took you to yesterday. Page 81, you see the forbearance deed?---Yes.

You see on page 93 of it (f), Repayment?---Yes.

40 And you see (f)(ii), Monthly Repayments?---Yes.

And the effect of this forbearance deed, to your understanding, was to combine – was, amongst things, to combine the two loans secured over the property in Berkeley Street?---That – that’s correct, Mr Giles.

45 And another effect of it was to reduce the monthly interest payments down to 30 – about \$33,000 a month?---It’s – it’s a bit more than that now, with the interest rate



changes. That document is quite a few months old, but the idea was to reduce the monthly payments. Yes.

5 Yes. So a month ago, you entered into this – less than a month ago, because it’s the – I withdraw that. Just over a month ago, five weeks ago, you entered into this forbearance deed?---I would have to check the date. I don’t know if we entered into it at that time, because I still think it hasn’t taken into effect.

10 Try page 95?---It was signed then. Yes.

Try reading page 96, where I went to yesterday. Prior to 14 June 2022, you had two – there were two loans secured over the Berkeley Street property?---Yes. That’s correct.

15 And the monthly payments on those, which you disclose to his Honour, were about \$33,000 plus about \$25,000?---That’s correct.

20 And since about 14 June, in fact, the monthly repayments have been reduced to \$33,000, haven’t they?---No, they haven’t, Mr Giles.

They haven’t?---No, they haven’t. I believe they are going to take effect from the next month.

25 I see, but you didn’t tell his Honour about - - -

HIS HONOUR: I’m sorry.

30 I didn’t quite hear that last answer, Mr Tesoriero?---They haven’t actually taken effect yet, your Honour. The document has been signed, but that has been procedurally.

35 MR GILES: And when you told his Honour in your affidavit of 12 July that you were making monthly repayments of slightly over \$58,000 on the Berkeley Street property, is there any reason why you didn’t mention the forbearance deed and that it was to be reduced to \$33,000 a month?

MR HAYES: Well, I object to the question, your Honour.

40 HIS HONOUR: Yes. What’s the objection?

MR HAYES: Because the order requires him to say what his assets and liabilities and – maybe if Mr Tesoriero just goes outside for a moment.

45 HIS HONOUR: Yes.

Mr Tesoriero, if you would go outside for a moment, please?---I was happy to answer.

There's no point showing exasperation. It's done for the benefit of the integrity of your evidence, Mr Tesoriero.

5 <THE WITNESS WITHDREW

[9.44 am]

MR HAYES: Might have been with me, your Honour.

10 HIS HONOUR: Yes. Go ahead.

MR HAYES: If your Honour pleases. The order – your Honour's order is very plain in what it requires of Mr Tesoriero, namely, that he disclose his assets and liabilities, and the picture – and also his income and expenses, and the picture that he  
15 has – this document doesn't any – it doesn't in any way undermine, on this discrete issue, what he disclosed in that affidavit on 12 July. So, essentially, what Mr Giles is endeavouring to do is to cast upon Mr Tesoriero responsibility or a more onerous burden than that contemplated by your Honour, and if it's going to be suggested that, "Well, you should have told his Honour that things might change in the future,"  
20 your Honour, that in its own right has got – if he was swearing the affidavit next week, that might be a different proposition, and - - -

HIS HONOUR: Well, if your submission is – if this deed took effect when the second counterpart signature was made on it - - -

25 MR HAYES: Yes, on 14 June.

HIS HONOUR: Both signatures appear to have – made on 14 June. This affidavit was sworn - - -

30 MR HAYES: On 12 July.

HIS HONOUR: - - - on 12 July, which is after the date of the deed. If your submission at the end of the day is that it was the truth and the whole truth and  
35 nothing but the truth that his expenses were 58,000 in respect of that, because the terms of the deed hadn't yet taken effect and they had been – they – he was still obliged to pay \$58,000 until the first payment of \$33,000 – then, obviously, that's a submission you make. What I understand Mr Giles will submit is the fact that it wasn't frank to swear an affidavit not making reference to the forbearance deed, and  
40 if that submission is going to be put, it seems to me this question is relevant.

MR HAYES: Well, no, your Honour, because what it endeavours to do – it's unfair in the extent that it invites the witness to speculate beyond the precise terms of your Honour's order. Your Honour's order of – just excuse me – of your –  
45 your Honour's order of the 9<sup>th</sup> of – or your Honour's freezing order was clear in its terms as to what it requires, and the most recent iteration of it is in the Westpac proceeding. Mr Tesoriero is to file and serve an affidavit deposing as to his current

assets and liabilities position, including his current income and expense position, as at 11 July 2022.

HIS HONOUR: Yes.

5

MR HAYES: He has done that.

HIS HONOUR: I understood the submission when you articulated it the first time. You say that an affidavit made in those terms, where someone has executed a deed some weeks before which materially changed the nature of those expenses, is irrelevant to the question of whether or not that order has been complied with. I understand that submission. You're free to make it.

10

MR HAYES: Your Honour pleases.

15

HIS HONOUR: Mr Giles is making a different submission.

MR HAYES: Yes.

HIS HONOUR: And it seems to me it is relevant to the determination of the fact in issue – in me determining whether or not I accept that submission for this question to be asked, but I will hear submissions about it in due course.

20

MR HAYES: Well, we say it's no more relevant, your Honour, as to going to – if that is your Honour's approach, we say it's no more relevant to the question as to the current extent of his resources to fund the proceeding. It might be relevant to that issue, but it doesn't in any way – and I simply take objection on this point, your Honour. If it's going to be said that - - -

25

HIS HONOUR: Well, I was only addressing the relevance ground that you articulated.

30

MR HAYES: Yes. If it - - -

HIS HONOUR: I do see it is relevant, because – on a broader basis, because what you're seeking to do was to seek an order from the court releasing funds.

35

MR HAYES: That's right.

HIS HONOUR: His financial position going forward is clearly material to the exercise of the broad discretion.

40

MR HAYES: On that, yes, but we say this, your Honour: if it's going to be put on the basis that he has in some way not complied with your Honour's order, that's – it's nothing of the sort. I've taken your Honour to the order, and he has – what he has done - - -

45

HIS HONOUR: Well, the question is whether it's relevant within the meaning of section 55 and 56 of the Evidence Act. It is. I will allow the question.

MR HAYES: Your Honour pleases.

5

HIS HONOUR: I will hear submissions in due course.

MR HAYES: Your Honour pleases.

10 HIS HONOUR: It's a very broad discretion that I'm exercising, and I don't think the question Mr Giles was asking is unfair in all the circumstances. Can we have the witness back in, please, Court Officer.

15 <VINCENZO FRANK TESORIERO, RECALLED [9.48 am]

<CROSS-EXAMINATION BY MR GILES

20

HIS HONOUR: Yes, Mr Giles.

MR GILES: Mr Tesoriero, when you swore your 12 July affidavit, why did you not refer to the forbearance deed?---The forbearance deed hadn't been signed, I believe, by the other side – hadn't been returned as yet, but I would have to check that, Mr Giles.

25

Well - - ?---So it hadn't actually – in any case, it hasn't taken effect. And in addition to that one, there's also the other loans with the petrol stations, which have also gone up in interest rate. If you've seen that one, you would have seen the others would have also gone up, Mr Giles. So between the two, they almost work out the same.

30

You told me yesterday, I think, that you signed it before Judo Bank signed the forbearance deed?---I signed – I signed it before. That's correct.

35

Right. And I thought you also told me yesterday that you thought that Judo Bank signed it on 14 June?---I think I said I had to double-check that, but if that's what I said, yes.

40

And it's the best of your recollection that Judo Bank and you signed it by no later than 14 June, isn't it?---I would need to double-check that, Mr Giles, but in any case, it hasn't taken effect. As of 12 July, it had not taken effect.

45 Can I direct your attention on page 93 to the opening words under the heading Schedule 2?---Yes.

The amended terms – you’ve read this before, haven’t you?---Yes, I have, Mr Giles.

And you know that the forbearance commencement date is a defined term?---Yes, Mr Giles.

5

Go back to 84. It’s the date of this document?---Back to 84, is it?

Page 84, second-last definition?---Yes.

10 And the only date on the document is 14 June, isn’t – 14 June 2022, isn’t it?---That’s what I saw, yes.

Yes. Right. Having had your attention directed to that, do you still maintain that the forbearance deed had not taken effect at the time you swore your 12 July affidavit?---Yes, I do.

15

HIS HONOUR: Why is that?---Because we had signed it with Judo, and the gentleman at Judo said he had to go back and go through their procedures and all that sort of thing and come back to us with – with a date when it would take effect.

20

MR GILES: That’s just not right, is it? That evidence that you’ve just given his Honour is just not right?---I believe it to be right, Mr Giles.

Well, could you go to page 80, please.

25

HIS HONOUR: Can I understand – I’m sorry, Mr Giles.

MR GILES: Yes.

30 THE WITNESS: Yes, your Honour.

HIS HONOUR: Can I just understand this. I just want to clarify this?---Yes.

When you say “not taken effect”, is what you’re saying the amount that you were – you hadn’t understood that the amount that you were required to pay pursuant to the new arrangements, that is, the drop from \$58,000 to approximately \$33,000, hadn’t yet taken effect?---That is correct, your Honour. Yes.

35

Right. So the - - -?---And – and hadn’t been - - -

40

So to - - -?---Sorry.

So just so I understand - - -?---Yes.

45 So you had signed the deed, but the obligation to pay hadn’t yet changed, because you hadn’t yet made a payment; is that what you’re trying to say?---No. Judo Bank still said they had to come back to confirm, because this deed had been discussed for

about six months or so. We had been in discussions with Judo Bank, so when it was finally signed after such a long period of time, he said he – the gentleman at Judo Bank, Lou Todesco, said he would have to go back and discuss it and then confirm what would happen next. So nothing was set in stone as to what date it was going to take effect, whether it was going to be July or whether it was going to be August.

5  
So sitting in the witness box there, today, you say that you haven't – you have or have not received that confirmation from Judo Bank?---I have received the confirmation, yes.

10  
And when did - - -?---Just – that was two days ago. On Monday, I think it was.

Monday, was it?---Yes.

15  
Okay. And what was that gentleman's name?---Lou Todesco.

Luke?---Lou.

20  
Lou?---Todesco.

Todesco?---Yes.

How do you spell that, T-e-d?---T-o – T-o-d-e-s-c-o.

25  
And where's he?---He's at Judo Bank.

In Victoria?---In Victoria, yes.

30  
Yes. All right?---And the figure now, your Honour, is closer to 40,000, because of the interest rate increases.

And your evidence - - -?---So it's – it's actually an old document.

35  
So your evidence is that, around 14 June, Mr Todesco told you that deed was no effect until he came back to you?---That's correct. Yes.

And he only came back to you two days ago?---On – on Monday, yes.

40  
On Monday. All right. Thank you?---To confirm that everything was taking place.

MR GILES: Could you go to page 80, please, Mr Tesoriero?---Yes, Mr Giles.

Is this a document you've seen before?---Yes, Mr Giles.

45  
See it's a statement for the combined loans - - -?---Yes, Mr Giles.

- - - over Berkeley Street?---Yes.

Shows the combined loans were drawn down on 24 June '22?---On 24 June, it shows – it shows a credit of 25,000 going in, Mr Giles, on the 24<sup>th</sup>, and a credit of 25 going in on the 30<sup>th</sup>.

5 Just look one further entry up, Mr Tesoriero?---Yes.

The first 24 June loan drawdown of 6.7-odd million dollars?---Yes.

10 Then a repayment of just under \$26,000?---And there's 5000-something above it, also. That's the two you're talking – referring to – the debits?

The second 24 June entry, Mr Tesoriero?---You're referring to the one at the top, the 6,756,000?

15 HIS HONOUR: No, he's referring to the one underneath it?---The one underneath reads – reads zero. Which way are you going, Mr Giles?

MR GILES: The "credit" column?---Yes.

20 \$25,959.38 - - -?---Yes.

- - - on 24 June '22?---Yes.

25 Right. That was a repayment made by the company, of which you're a director, on that date?---Yes.

Right. You received this statement shortly after 1 July '22, didn't you - - -?---Yes.

30 - - - and prior to swearing your affidavit on 12 July '22, didn't you?---I would need to check the date I received this statement, Mr Giles. I believe we got them together to send across to you guys, just prior to this. So I would need to check the date I received the statements. Yes.

35 And having seen this statement, you knew, prior to 12 July, that the forbearance deed was in effect, didn't you?---No, I didn't, Mr Giles. I stated that before. Do you have a July statement there, Mr Giles?

40 Now, I wonder if you could just put MFI3 to one side for the moment and be shown exhibit C again, which is the 8 April 2022 email that I cross-examined you about yesterday?---No, I don't. Can I have a copy, please, Mr Giles.

I wonder if you might - - -

45 HIS HONOUR: Exhibit C.

THE WITNESS: Yes, Mr Giles.

MR GILES: If we go back to the spreadsheet with the properties on it - - -?---Yes.

- - - which I was asking you about yesterday?---Yes.

5 Towards the bottom, there's a reference to other properties held outside this portfolio?---Yes, Mr Giles.

And there are 12 properties in Carlisle Street, Balaclava?---Mmm.

10 HIS HONOUR: I'm sorry. I've got the wrong document, I think, Mr Giles. It's my fault. I was looking at exhibit C - - -

MR GILES: C.

15 HIS HONOUR: - - - which is the email of 8 April.

MR GILES: Yes, the attachment to it – second spreadsheet attached to it.

HIS HONOUR: The second attachment.

20

MR GILES: Sorry.

HIS HONOUR: Sorry. I beg your pardon. I was looking at the first.

25 MR GILES: No, no. My fault.

HIS HONOUR: No. I had it in a different ..... that's my fault. Yes, I see that.

THE WITNESS: Yes, Mr Giles.

30

MR GILES: Now, those are properties – are they owned by your father?---They're owned by my father and his two sisters.

And the indicative value that's expressed there - - -?---In – in companies, Mr Giles.

35

The indicative value expressed there of \$40 million: is that your father's share?---No, Mr Giles, it's not.

But it's the indicative value that - - -?---Of the properties, yes.

40

Of the properties, and an indicative value you were happy to be put forward to a financier?---It was - - -

MR HAYES: I object. I object to the question.

45

HIS HONOUR: I allow the question. I allow the question.



MR HAYES: Your Honour - - -

HIS HONOUR: I allow the question. I've made a ruling.

5 THE WITNESS: That's fine.

HIS HONOUR: It's a relevance objection, I take it?

MR HAYES: No.

10

HIS HONOUR: All right. Mr Tesoriero, if you would go out, please?---Mmm.

<THE WITNESS WITHDREW

[9.59 am]

15

HIS HONOUR: Yes, Mr Hayes.

MR HAYES: This arises on the matters canvassed yesterday, your Honour. It's  
20 now at the point where the witness may need to be warned under section 128,  
because it's – the question was put in such a way it – put in such a way, in respect of  
the whole document, that this is a – I think, as I recall the question, "This is a  
document you were happy or prepared to send your financier?" This falls from what  
your Honour said yesterday.

25

HIS HONOUR: Mr Giles.

MR GILES: That is – that's the question, I think. Yes.

30 HIS HONOUR: There is a cognate provision, is there, in Victoria?

MR HAYES: There is, your Honour. Yes. It's section 82 of the corresponding  
legislation in Victoria, your Honour.

35 HIS HONOUR: Just having a look.

MR HAYES: It's cast in, perhaps, broader terms than the New South Wales  
equivalent.

40 HIS HONOUR: So it's the Crimes Act of 1950. It's the 1950 - - -

MR HAYES: '58, your Honour.

45 HIS HONOUR: '58, yes. Sorry, you mentioned the section. I'm sorry. I didn't  
pick that up.

MR HAYES: Section 82(1), your Honour, cast in - - -

HIS HONOUR: All right. Thank you.

MR HAYES: - - - considerably broader terms than the New South Wales  
equivalent. And if upon your Honour providing a warning or a direction to the  
5 witness and the witness requires a moment to obtain some advice in respect to  
your Honour's warning, we would ask the matter be briefly stood down for a minute  
or two, so that that advice could be offered.

HIS HONOUR: Yes. The issue, however, is section 128(4). And, Mr Giles, this is  
10 something, I think, perhaps, you should address me on. I'm satisfied that there  
would – I think I would be satisfied – I'm not sure in respect of that particular  
question, but certainly cross-examination directed to the same end – and the section  
contemplates evidence being given on a particular matter, so representations made by  
– to a financier, which you allege were made falsely in order to obtain a financial  
15 advantage – if we can describe that as evidence on a particular matter – I would be  
satisfied that there would be reasonable grounds for the objection within the meaning  
of section 128(2) – subsection (2). So that would then mean that I should provide a  
warning, but that's, of course, subject to section 128(4), that I would only require  
him to give the evidence if I was satisfied - - -

20 MR .....: The interests of justice.

HIS HONOUR: - - - the interests of justice require the witness to give the evidence.  
It's really a – this is a matter which - - -

25 MR GILES: Could I try it another way, your Honour. If I might just – no. I do  
want to come to it another way, which might alleviate the problem, because I have  
put it more – I put the question more broadly than I needed to, on reflection,  
your Honour. This was – on this occasion, I was using it as a stepping stone to  
30 where I was going, and I really need only ask him whether the value of 40 million  
reflects his view as to the value of the properties.

HIS HONOUR: Well, I guess, it ultimately – it's ultimately directed to what the  
submission is going to be at the end of the day, because if the submission is going to  
35 be, at the end of the day, that - - -

MR GILES: Going to be that the - - -

HIS HONOUR: Let's remove it from the circumstances of this case and  
40 deliberately speak in the abstract. If one had a situation where, in one context,  
someone was giving a low estimate of assets and you say – and there's a reason – but  
you say there's a motivation – giving a low estimate. And there was another  
situation where someone was giving a high estimate and he was saying this for  
financial motivation for doing it. In a sense, I – someone faced with that where you  
45 said it was a credit point – I don't need to form a view one way or the other as to  
which was accurate.

MR GILES: No.

HIS HONOUR: It might be that one is accurate. It might be the other was accurate. So I don't have to, as it were, make a determination on the falsity or otherwise of –  
5 save for the fact that you say, if you said it's more important to make a false statement if someone was under oath, then you may. I can see of circumstances where that submission is put.

MR GILES: If I keep talking in the hypothetical, I might – I will put a submission  
10 in what – the circumstance your Honour has just put to me of the judicial officer hearing that circumstance couldn't come to a conclusion as to what was right or be satisfied that an onus on our learned friends had been discharged. That's what I'm going to put.

15 HIS HONOUR: Well - - -

MR GILES: I might come to it - - -

HIS HONOUR: Look, I - - -  
20

MR GILES: - - - another way.

HIS HONOUR: I think I should – I mean, there is another way of – I mean, I had understood – and I may be wrong about that but I wanted to be careful about it and  
25 see the transcript – but is there any further clarity as to whether or not this document has shown up in the subpoenaed materials that have been produced by Judo?

MR HAYES: Your Honour, I persist on that. There are three documents that turned  
30 up overnight that have been referred – or three emails that – brought to my attention just before court his morning dealing with this. Those emails – and they were in a folder – in the documents that were produced marked privileged.

HIS HONOUR: Right.

MR HAYES: Those documents – the date and description of them has been  
35 identified and the ground of privilege articulated – and it's the same ground of privilege that I'm claiming here that are relevant to this document – were provided to Westpac's solicitors this morning. Is that what you - - -

40 MR GILES: I didn't know any of that.

MR HAYES: That was just before we came into court.

HIS HONOUR: What I might do is just stand this matter down for five minutes so  
45 you two can chat.

MR HAYES: Yes.

HIS HONOUR: So I can get some clarity precisely – if it’s possible to agree what has happened in relation to these documents and that’s not an issue, then it may be – there may be an ability to short cut this. If this document has been - - -

5 MR HAYES: Sure.

HIS HONOUR: - - - forwarded to Judo – it’s full – and it’s not in contest that – obviously enough, that Mr Tesoriero would have seen it – then, obviously enough, all this cross-examination is irrelevant. So what I might do is just stand it down for, say, 10 minutes to allow - - -

MR HAYES: That would assist, your Honour.

15 HIS HONOUR: Just to allow you to have this discussion with Mr Giles and perhaps, at least, then we know what the ambit of any dispute it.

MR HAYES: The point of this is he has given the more conservative valuation to your Honour. And, aside from inflaming what my – I expect my friend will say is a collateral issue which goes to the issue of credit or reliability - - -

20 HIS HONOUR: Well, it - - -

MR HAYES: We say it really goes nowhere.

25 HIS HONOUR: Yes. All right.

MR HAYES: In terms of your Honour’s determination of this discrete - - -

30 HIS HONOUR: Yes. All right. Well, look, I might adjourn for 10 minutes.

MR HAYES: If your Honour pleases.

35 **ADJOURNED** [10.09 am]

**RESUMED** [10.27 am]

40 MR GILES: I’m going to try this a – I’m going to try what I was aiming to do a different way, your Honour.

HIS HONOUR: All right. We just get the witness back, do we? Yes. Thank you.

45 **<VINCENZO FRANK TESORIERO, RECALLED** [10.28 am]

<CROSS-EXAMINATION BY MR GILES

MR GILES: Mr Tesoriero, you can close up the folder that you have in front of you,  
5 that had the forbearance deed in it?---Yes.

And I would like you to take up again your affidavit of 12 July and go to page 18 of  
the affidavit, paragraphs 76, 77 and 78?---76, 77, 78, was it?

10 That's right?---Yes.

In the first sentence of paragraph 78, where you refer to "all of my father's  
investment properties", were you referring to the properties at 242 through to  
272 Carlisle Street?---No, I wasn't.

15

No. Now, just above that, in paragraph 77 - - -?---Yes.

- - - you refer to an email that you – you say that a true copy of the email  
correspondence sent by Mr Mitchell of the Commonwealth Bank, dated 7 July 2022,  
20 is exhibited. Do you see that?---Yes.

Could you go to the final page of your exhibit?---Is that at the back of the folder, is  
it, Mr - - -

25 Back of the folder. Sorry, back of tab 1 of the folder?---Back of tab 1. Right.

Yes. Should have page 366 on the bottom?---Yes, Mr Giles.

30 Is that the email you describe as being the true copy of the email from  
Mr Mitchell?---Yes, I believe so.

Well, just take as long as you need. Is it the document you describe as being the true  
copy from Mr – of the email from Mr Mitchell?---I would need to check, Mr Giles.

35 What is it that you need to check to know that that is the document you describe back  
in paragraph 77 as the true copy of Mr Mitchell's email?---I would need to confirm.  
I believe it is the email, but I would need to confirm if that's the full email.

40 Well, why - - -

HIS HONOUR: Well, when you swore the affidavit, at paragraph 77, you said:

*A true copy of the email correspondence sent by Darren Mitchell, dated  
7 July 2022, is exhibited to VFT6 at page 366.*

45

?---It appear - - -

Page 366 is an email from Mr Mitchell. I mean, I would have taken that to be a true copy of the email?---I believe you're correct, your Honour.

Yes?---I think that is the email. Yes.

5

All right.

MR GILES: And a moment ago, before his Honour's question, you said you would have to check to see if it was the whole email or something similar. Why did you think you needed to do that?---I thought that's what you were asking, Mr Giles. I – I believe that is what has been represented there.

10

Right. Could I show you a document?---Thank you.

I've just shown you a document, which is an email chain finishing, that is, the end of – end of the chronological sequence - - -?---Yes.

15

- - - of an email from Mr Mitchell to Mr Pratt of 7 July 2022 - - -?---Yes.

20

- - - time-dated 12.58 pm?---Yes.

You see the document at 366 of your affidavit is an email from Mr Mitchell to Mr Pratt, time-dated 12.57 and 52 seconds pm?---Yes.

25

Same "re", the same text in bold?---Yes.

Same first sentence with two bullet points; see that?---I think it's an additional email, isn't it?

30

Just - - -?---That one is – that one is 12 pm. The other one is 12.04 pm. They're two different emails.

Just bear with me. Go back to the email that I've just given you?---Yes.

35

The email chain I've just given you. The top of the front page, email from Mr Darren Mitchell - - -?---Yes.

- - - to Mr Pratt, copied to you, of 7 July 2022, sent at 12.58 pm?---Yes.

40

Page 366 of your affidavit?---Yes.

Mr Mitchell to Mr Pratt, copied to you. Both of them are also copied to Mr Johns?---Yes.

45

Of 12.57 and 52 seconds pm?---Yes. This would be the same email.

Yes. Same – the two of them, just working through, have the same bold text as the first line:

5                    *CBA information classification: customer and personal.*

?---That – that is the same email that - - -

Well, then you see on the one that I've just given you that the email from Mr Mitchell finishes:

10                    *[CBA information trading guidelines can be found on our website - - -*

?---Yes.

15                    Continuing:

- - - *commbank.com.au/dataclass.]*

?---Yes.

20

And that appears at 366 of your affidavit?---Yes.

And then there's the signature block of Mr Mitchell in your affidavit - - -?---That is correct. Yes.

25

- - - but not on the document that I've just given you?---No, it's not.

At least, not there?---No.

30                    Under – on the document I've just given you, there's then an email from Mr Pratt to Mr Mitchell?---Yes.

And if you go over to the next page, there's then an email from Mr Mitchell to Mr Pratt?---Yes.

35

And then at the bottom of Mr Mitchell's email, on the second page, appears his signature block?---Correct. Yes.

40                    And what has happened is that someone has deleted the intermediate email. In preparing the document at page 366 of your affidavit, someone has deleted the intermediate email from Mr Pratt to Mr Mitchell of 7 July, at 12.04 pm, and all of the text of Mr Mitchell's email to Mr Pratt, other than the signature block?---No. I don't believe that to be the case, Mr Giles. I believe that the email from Darren Mitchell would have been forwarded and not the ones from Michael Pratt, because it was – if  
45                    – if you refer back to the affidavit, it mentions a true copy of the email sent by Darren Mitchell. So it doesn't mention a true copy of the email sent by Michael Pratt.

And what I'm putting to you is that it - - -?---So I think we just forwarded the email from Darren Mitchell.

5 And what I'm putting to you is that it's not a true copy of the email from  
Mr Mitchell, because what's in your affidavit has Mr Mitchell's signature block on it  
immediately after five lines of text, but, in fact, on the true copy of the email, there is  
in between those five lines of text and the signature block two other emails?---I don't  
think that is correct, Mr Giles. Like I said, I think the email was forwarded and that  
10 is how it forwarded from our side. I'm not an IT person. I can't explain why the  
signature is missing on this one, but it could be because that has been sent through  
the chain that included Michael Pratt. But in the affidavit we make mention to the  
email sent by Darren Mitchell, and that is a true copy of the email sent by Darren  
Mitchell that refers to the home loan exposures for my parents. That email has not  
15 been edited or deleted, as you've implied. That is a true copy of that email.

That's your evidence to his Honour, that that's a true copy of the email, even though  
it has the – the one at 366 has the signature block, yet what has been produced by the  
Commonwealth Bank doesn't. Produced by you – did you produce the document  
I've just given you in your – on the notice to produce?---This – this email has Darren  
20 Mitchell's signature on it, in the – in the affidavit. Yes.

No, no. The two-page email that I've just given to you: did you produce that to my  
solicitors in – to the court, in response to the notice to produce?---Is it – are you  
25 suggesting as part of this affidavit, Mr Giles?

The two-page document that I've handed to you?---Where is the two-page – this –  
this one here?

Yes?---Yes.

30 Three-page document that I've just handed to you, that finishes in the email from  
Darren Mitchell to Mr Pratt - - -?---Yes.

- - - of 12.58 pm?---I – I am unsure if I've – if my solicitors have given that to you  
35 guys, Mr Giles, but if you say they have, then they must have.

HIS HONOUR: While you're interrupted, the document being shown to the  
witness, which comprises the email from Darren Mitchell to Mr Michael Pratt,  
Mr Tesoriero and Mr Johns, with the subject "re Tesoriero Group", on 7 July 2022 at  
40 12.58 pm, will be MFI4, or do you wish to tender it?

MR GILES: Well, I tender that document.

45 HIS HONOUR: All right. Well, that can be exhibit F.



**EXHIBIT #F DOCUMENT COMPRISING THE EMAIL FROM DARREN MITCHELL TO MICHAEL PRATT, MR TESORIERO AND MR JOHNS, WITH THE SUBJECT “RE TESORIERO GROUP”, DATED 07/06/2022 AT 12.58 PM**

5

MR HAYES: Your Honour, it should be noted on the tender, at the moment, we don't concede that it's a document that emanated under the notice to produce. I'm waiting for instructions on that. We think it might be on subpoena from SM –  
10 SME Finance.

MR GILES: All right.

Well, just while we're on exhibit F, could you go to the second page, Mr Tesoriero –  
15 Mr Mitchell's email to Mr Pratt copied to you of 7 July at 12 pm?---Yes.

Mr Mitchell refers to – it says:

20 *Hi Michael. Good to meet today.*

Just pausing there, did you go to a meeting with Mr Mitchell on 7 July? I'm not suggesting that this says that you did, I should - - -?---I would – I would need to check my diary. But – but I – yes, I believe I may have. I have met with Mr Mitchell and Mr Pratt.

25

And in that he – Mr Mitchell describes the current exposures of the Commonwealth Bank - - -?---That is correct, yes.

30

- - - to the Tesoriero Group?---Yes.

Included in that is Tesoriero Investment Group – \$6.8 odd million?---That is correct, yes.

35

Is that a loan secured over any property?---Yes, it is.

What property?---It's – as I mentioned to you yesterday, Mr Giles – it's cross-collateralised – all the CBA debt across all those properties that are on the spreadsheet.

40

On - - -?---When I say all those properties – particular ones, if you like, I can take you - - -

45

Could you tell me – are any of the properties owned by Tesoriero Investment Group?---No, they're not.

What assets does Tesoriero Investment Group have?---I don't believe it has assets. It only has debt.

Other than, of course, the money in the bank account you told me about this morning?---The money in the bank account is held by CBA because, if you look further down, you will see that there's a position of arrears. That's frozen by CBA at the moment. That's CBAs money. Not my money, Mr Giles.

5

What about 286 Carlisle Street?---What about it, Mr Giles?

That's a company of which you're a director and a shareholder?---I believe so, yes.

10 And it has \$40 odd thousand – about \$40,000 – I withdraw that. It has about  
---?---No. It ---

--- \$11,000 in its bank account?---It has 11,000 something dollars in it, yes. That –  
that is also in arrears and been frozen by CBA. That is not my money. That's CBAs  
15 money.

And what other assets does 286 Carlisle Street have?---It does not have assets. It  
only has debt.

20 And what's the source of that debt?---What is the source of that debt? What – what  
do you ---

Why does it ---?--- --- mean by that question?

25 --- owe the money?---Sorry?

Why did it borrow the money?---It borrowed the money – part of it went into paying  
for my boat. And part of it went into the Forum pool which was used for  
30 acquisitions.

Just explain that. Paying for my boat?---Paying for the boat, yes.

Which boat?---The boat that was liquidated.

35 The XOXO?---That's the one, yes.

Now, what was the second thing it did?---And – and the second part of it would have  
been used in acquisitions within the group.

40 Acquisitions of what?---I would need to check that, Mr Giles. But various properties  
which have also been liquidated.

HIS HONOUR: 286 Carlisle Street – that's – is that a company – 286 Carlisle  
Street Proprietary Limited?---I would need to check, your Honour. But I believe so,  
45 yes.

And am I take it that 286 – if it is 286 Carlisle Street Proprietary Limited – that would be a special purpose entity which purchased 286 – sorry, it would be an entity that is the registered proprietor of the land at 286 Carlisle Street, Balaclava – would that be - - -?---No. That’s not correct, your Honour. The - - -

5

Right?---The property at 286 Carlisle is held by my father but the entity was set up to borrow the money against - - -

But - - -

10

MR GILES: And then to do what with the money? Lend it to other entities?---No. The money was borrowed against that entity and that money was used, as I mentioned to you, Mr Giles, in purchasing the boat and in – in then acquiring other properties.

15

HIS HONOUR: But could I just understand this because I - - -?---Yes.

I was looking at the – you will recall, you were taken to the document behind exhibit C?---Where is that, your Honour, sorry?

20

Which is the other properties held – so outside this portfolio spreadsheet. Do you recall that?---This – this one here, yes.

Yes. It has got:

25

*Note other properties outside this portfolio.*

And that’s 242 Carlisle Street, 244 Carlisle Street, 246 Carlisle Street, 248 Carlisle Street - - -?---Yes.

30

- - - 250 Carlisle Street, 252 Carlisle Street, 254 Carlisle Street, 262 Carlisle Street, 264 Carlisle Street, 266 Carlisle Street, 268 Carlisle Street, 270 to 272 Carlisle Street, relevantly. And this company – 286 Carlisle Street - - -?---Yes.

35

It – can you just explain to me the relationship between – so I understood from what you said before that your interests associated with your father were the registered proprietors of these properties?---These properties are owned in companies and trusts and they’re held by my father and his two late sisters.

40

Your father and his two late sisters?---Yes.

And is that the same for 286 Carlisle Street or is that subject to a different arrangement?---No. 286 is owned solely by my father.

45

Owned solely by your father, I see?---Yes.

Yes. All right. And that's a large – what is it? Are they a series of - - -?---It's a group of shops.

5 Group of shops?---Yes. It was bought by my grandfather many years ago and has since been passed onto my cousins and my father.

I understand. Thank you?---Yes.

10 MR GILES: But 286 – the property 286 Carlisle Street is owned by your father?---It's owned by my father, yes.

And that's rented out to a tenant?---It is, yes.

15 And it generates income for your father?---It does, yes.

If you go back to the first page of exhibit F – there's Mr Pratt's response to Mr Mitchell?---Yes.

20 HIS HONOUR: The transcript has arrived, by the way.

MR GILES: The – sorry, your Honour?

HIS HONOUR: The transcript has arrived, by the way.

25 MR GILES: Grateful.

HIS HONOUR: I'm having my associate print out a couple of copies.

30 MR GILES: Thank you, your Honour.

And was the purpose for which Mr Pratt was speaking with Mr Mitchell seeking to refinance debts owed to CBA?---We were trying to get to a position – CBA has appointed receivers over my father's properties because of all the court - - -

35 But not all of the - - -?--- - - - proceeding.

Not all of the properties?---Well, the majority that have debts against CBA. So - - -

40 Well - - -?---When I say all of my father's properties – the ones that are owned by my father, yes. The other ones are owned by a company with my cousins.

Just to be clear, which ones are they?---They were the ones that your Honour just referred to.

45 No – no. Which ones have – has the CBA appointed receivers over?---You – you have the list of CBA properties there. They're referred to as the Elsternwick properties on the spreadsheet.

Right. And what I want to - - -?---Can you see those, Mr Giles?

What I want to suggest is that the CBA has not appointed receivers over all of those properties, has it?---Yes, it has.

5

Including, it hasn't appointed a receiver over your parents' residence at 44 Howitt Road?---All the properties are cross-collateralised, as I mentioned yesterday, Mr Giles. KPMG have been appointed to sell down the properties to a point where the debt is cleared.

10

But in any event, the CBA doesn't have security over the properties on Carlisle Street?---No. It – well, it does have security over properties at 286 Carlisle Street.

But none of the others?---Not the other ones, no.

15

By the way, what does Haidi, H-a-i-d-i, Holdings own?---It owns a portion of those properties on Carlisle Street.

And it holds those properties on the John Tesoriero Family Trust, doesn't it?---Yes, it does, I believe. I would - - -

20

And your - - -?--- - - - need to check that, Mr Giles. But I believe it does.

And you're a beneficiary of that trust, aren't you?---I believe I'm a beneficiary of that trust, yes.

25

And there's no mention of the – your interest in or through the Haidi Trust in your affidavit, is there?---No, there's not.

And there's no mention of your interest in the properties as a discretionary object of the Haidi trust on Carlisle Street, is there?---No, there's not, Mr Giles.

30

Sorry, the John Tesoriero Trust, I should have said. There's no - - -?---That's – I understood what you meant. Yes.

35

So coming back to exhibit F, what was happening as of 7 July, just under two weeks ago - - -?---Yes.

- - - was that a proposal to refinance the CBA debts owed by your parents was being put forward?---No. That's not correct, Mr Giles.

40

A detailed plan to go forward was going to be put forward?---A detailed plan to go forward, yes, in terms of doing some sort of forbearance deed with CBA to potentially get a 12-month hold on them selling the properties.

45

All right. And has that proposal been put?---That proposal has been put. Yes.

And has there been any response?---No, there has not been any response.

5 All right. Now, if I might have one second. The full email is in – the full email in exhibit F is in packet S94, which is your production, Mr Tesoriero, on the notice to produce.

MR HAYES: Your Honour, I should formally record it. It would seem that it was produced by my instructing solicitors.

10 HIS HONOUR: Thank you.

MR GILES: Grateful.

15 What I want to ask, Mr Tesoriero, is given you had the document that's now exhibit F, how did it come to be that you exhibited as a true copy of the email from Mr Mitchell to Mr Pratt of 7 July 2022 the document that's at page 366 of your 12 July affidavit?---I'm – I'm not sure what you're asking there, Mr Giles. I – it is a true copy of Darren Mitchell's email, and this is a copy of Michael Pratt's email to Darren Mitchell, but the email referring to Daren Mitchell referring to the arrears, 20 which is marked out in point 77 – that is a true copy of that, is it not? Am I missing something?

Mr Tesoriero, I will give you one last – I will ask this one more time. The document at 366 has got Mr Mitchell's footer on it?---Yes.

25 The document that you've produced as exhibit F does not have his footer as part of the email of 7 July '22 at 12.58 pm. It rather has two other emails, and his footer appears below those?---Well, I – I can't – as I said, Mr Giles, I'm not an IT person. I can't explain why the footer is missing, but the email is the same on both emails. On 30 the one on page 366 and the one in exhibit F, the email is exactly the same.

HIS HONOUR: Well, could I ask a - - -?---So I can't explain why the footer is missing.

35 All right?---Yes, your Honour.

I was just going to – even though you're not an IT expert, even though you've given evidence about it being a true copy, and even though you've just said to me you can't explain it, perhaps, I could just ask you a slightly different question?---Yes, please.

40 And it's this: you certainly didn't print out or have someone print out a copy of the email and then, as it were, cut and paste the email?---No, I didn't. No, I didn't, your Honour. No.

45 Yes. All right?---Not at all, and – and the email in point 77 is the one that's referred to, and that is the one that's attached. A true copy of that email is attached. Thank you for clarifying that, your Honour.

Well, it's a matter for Mr Giles if he wishes to put the proposition or not.

MR GILES: Did you check the exhibit, including the document at 366, before you swore the affidavit?---Yes, I would have. Yes.

5

And when you swore that it was a true copy, did you check it against something?---No, I didn't at the time. No.

10 All right?---I didn't go back through – it's quite a large folder here, Mr Giles, so I didn't go back through and cross-check everything. I just had included it and sent it through, but I still believe that to be a true copy of that email, stating those facts that are on that point 77.

15 All right. Now, you can close up your affidavit. I just want to ask, are your parents still paying your entertainment expenses as at today?---My parents are covering all of my living expenses, Mr Giles.

20 I see. That included buying tickets for you to a Ferrari enclosure at the Australian Grand Prix, did it?---No. I didn't go to a Ferrari enclosure at the Australian Grand Prix, Mr Giles.

Including buying tickets to the Australian Grand Prix for you?---No, Mr Giles. I didn't go to the Australian Grand Prix.

25 All right. Did it include buying tickets to some Ferrari function or event in April of this year?---I may have gone to an event. Yes.

All right. And your parents bought those tickets for you?---Yes, they did, Mr Giles.

30 Paid for dinner at Rockpool last Saturday night?---Yes, they did, Mr Giles. It was my girlfriend's birthday.

35 Okay. Now, could I ask you to go back to exhibit – MF13, please, the slimline bundle?---That's these folders.

And if you could go to page 1 of that, please. Now - - -?---Thank you for that. Sorry, I – thank you, sir. Page 1, did you say?

40 Yes, page 1?---Yes.

65 Nelson Street Enterprises Proprietary Limited - - -?---Yes.

- - - is a company that operates a cafe in Melbourne, isn't it?---That is correct. Yes.

45 You're a director of that company?---I am a director of that company.

It holds all of its assets on trust, doesn't it?---I would need to clarify that, but I believe so. Yes.

Right. And you're a beneficiary of the trust?---Yes, I believe so.

5

And you see on page 1 - - -?---Yes.

- - - registered to 65 Nelson Street Enterprises - - -?---Yes.

10 - - - at least, on 1 September 2021, was a black 2014 Porsche wagon?---That is correct. Yes.

It's a Cayenne, is it?---It's a Cayenne, yes.

15 All right. Now, you haven't referred to that as being one of the vehicles that you have an interest in, have you, in your affidavit?---No, I haven't, Mr Giles. No.

Why not?---Because I no longer own that vehicle.

20 But you did when you swore the first affidavit of disclosure, didn't you?---No, I didn't.

Well, can I just pause there. As of 1 September 2021, it was registered in the name of 65 Nelson Street, wasn't it?---Yes, and – and it is still also registered in the name of 65 Nelson Street.

25

But you say that you've sold it?---I have sold that car, yes.

30 And the registration hasn't been changed?---No. The registration hasn't been changed. Would you like an explanation, Mr Giles?

I suppose so?---I sold that car to my cousin back in 2020, and he didn't have the money for the car at the time. So I gave him the car, and then he was going to give me the money in 2021, and then with all the court proceedings that have happened, we haven't been able to transfer it to him. So he has since paid me for the car in early 2021, but we haven't transferred it. I no longer have that vehicle or own that vehicle.

35

And when did he pay you for it?---Probably, June 2021.

40

And into which bank account did he make that payment?---He didn't make a payment into a bank account. He's a builder and he did some work for me on a couple of jobs in exchange for the vehicle.

45 And what jobs were they?---He did a bathroom renovation, and he did some concrete work at my parents' place, and he's also working on the subdivision at Hartington Street for me.



And what's the subdivision at – sorry, did you say Hartigan Street?---Hartington Street, yes.

5 And that's one of the Elsternwick properties, is it?---That – that's correct. Yes.

And when you say did the subdivision for you, is that because it's a property which you have an interest in?---Hartington Street, yes. That's owned by Canter Investments, which I have an interest in.

10 And just considering the time of when the bathroom works were done, for example, does that make it possible for you to place when it was you were paid for the black Porsche?---I guess so, yes.

15 And when were the bathroom works done?---I would need to double-check that but, like I said, it was some time in 2021, prior – prior to the court proceedings.

How about a 1969 Ford Mustang Boss? Do you know about that car?---I do know about that car.

20 That was bought in September 2020, wasn't it?---I would need to check that. Yes, sounds about right.

25 Go to page 4 of MFI3. You will see the total cost was 239-odd thousand dollars on page 5?---Yes, I do see that.

That car is not presently registered, is it?---No, it's not.

30 And do you see that the tax invoice is made out to Ms Pagano, P-a-g-a-n-o?---That's correct. Yes.

And Ms Pagano is your girlfriend? That's a terrible turn of phrase. She's your partner?---She's my partner, yes.

35 Yes .....

HIS HONOUR: Why's it a terrible turn of phrase?

MR GILES: It's just a little informal. "Partner" has got formality to it.

40 THE WITNESS: Your question, Mr Giles?

MR GILES: If you go back to page 2, you see an email there from Grays Online - - -?---Yes.

45 - - - from who the car was bought?---Yes.

That's from Ms Pagano to, apparently, if you read the top email, someone called – well, someone at Grays Online, referring to a conversation between you and Jason?---Yes. I can see that.

5 And you're copied to that email?---Yes, I am.

HIS HONOUR: So which page is this, Mr Giles, I'm sorry?

MR GILES: Page 2.

10

HIS HONOUR: Page 2. Thank you.

MR GILES: Now, you caused the car to be paid for, didn't you?---Yes, I did. Yes.

15 And you asked Mr Bouchahine to make a payment from Forum Group Financial Services to buy the car?---That is correct, Mr Giles. Yes.

Yes. All right?---I don't know if it was made from Forum Group Financial Services, but I asked Mr Bouchahine to make the payment for me. Yes.

20

And who owns the car?---My girlfriend or my partner, as you so kindly put. It was a gift for my – for my partner.

I see?---Yes.

25

And it remains unregistered today?---It remains unregistered. Yes.

Okay.

30 HIS HONOUR: Sorry, just so I understand how this document works, Mr Giles – so this email to Ms Pagano, copied to Mr Tesoriero, refers to:

*Please find attached a copy of your invoice, totalling \$239,197.18.*

35 Are they – so that – what's attached to that is – was the tax invoice. At 4 and 5 I see the total?---I believe so.

So that was – the total cost of a 1969 Ford Mustang Boss is \$222,000, is it?

40 MR GILES: That's right.

THE WITNESS: That's correct, your Honour.

HIS HONOUR: All right.

45

THE WITNESS: I love my girlfriend, your Honour. I do love my girlfriend.

MR GILES: You're the man with the interest in cars, though, aren't you, Mr Tesoriero?---We – we both have an interest in cars, Mr Giles.

Now, could I ask you to go to page 13, please?--- Yes.

5

Just by the way, you know that my instructing solicitors have asked your solicitors about the Ford Mustang before, don't you?---I believe so, yes.

Yes, and the explanation was not given that you bought it for your partner, was it?---I  
10 – I would have to check on the explanation that was given, but, no, probably not.

Why not?---I didn't think it was anybody's business, Mr Giles.

But that request was made at a time when my - - -?---I think the request was made  
15 whether the car was mine or not, and – and the response was that it's not.

And, similarly, my instructing solicitors have asked about the 2014 Porsche, haven't they, to your knowledge?---No. I don't believe anyone has ever asked about the 2014 Porsche.

20

Could you go to - - -?---That's the first time today I've been asked about that car.

HIS HONOUR: I'm sorry. I must be being obtuse, Mr Giles, but the two hundred and – the invoice for \$239,197.18 – the payment of the invoice came from funds  
25 from where? What was the evidence?

MR GILES: Page 6, point 4 on the page, your Honour, from Forum GRPFS, that I put was Forum Group Financial Services.

30 HIS HONOUR: No, I – yes. I heard that evidence, but then I understood it was being – it was purchased by the witness as a gift for his girlfriend, so I was looking for the reference to the transaction by which Forum Group FS were reimbursed for that sum.

35 MR GILES: Your Honour won't find that.

HIS HONOUR: Right. Okay.

How did you reimburse Forum Group FS for the present given to your girlfriend?---It  
40 was part of a payment that was owed to me, your Honour, as per the other ones that have been outlined by my lawyers.

I see?---It was money that was owed to me by Bill.

45 So there was a loan account that was adjusted, was there?---Correct. Yes.

I see. Thank you.

MR GILES: I would have to get into the substance of the case if I asked about that, your Honour.

HIS HONOUR: It's a matter for you, Mr Giles.

5

MR GILES: Yes, I understand.

HIS HONOUR: I haven't made any ruling, but some – it's - - -

10 MR GILES: I understand, your Honour.

Could I ask that you go to page 13, please?---Yes, Mr Giles.

See that's your tax return for the year ended 30 June 2020?---Yes.

15

Have you completed a tax return for the year ended 30 June '21?---I don't believe it has been prepared as yet.

20 Okay?---My accountants had some trouble getting information since all these proceedings started.

So it's overdue?---I believe it's overdue, yes, as are many of the other entities, as well.

25 Can you go to page 14, please?---Yes.

See in your 2020 tax return - - -?---Yes.

30 - - - you describe your main salary and wage occupation as consultant – management?---Yes.

Who was your employer or engaged you as a consultant – management?---No, nobody, Mr Giles.

35 You were working for yourself, were you?---Yes.

So that's – who paid you the income?---I'm sure my accountant would have distributed that from one of my entities, potentially. But I would need to clarify that, Mr Giles.

40

Well, you see the next row down:

*Payer's Australian Business Number*

45 ?---Yes, I do see that.

Tax withheld and income – so income of \$148,955?---Yes.

In completing this tax return, you declared that it was true and correct, didn't you?---Again, Mr Giles, I would need to clarify. But if it's a - - -

Well - - -?--- - - - tax return, it would be true and correct, yes.

5

MR HAYES: Well, your Honour, as to what happened in financial year 2020 – this is some 12 months before the freezing order was made and we just say it would – just could be of no impact or relevance on what's before your Honour today. We've endeavoured to give some latitude in terms of cars and things like that but this is really starting to stray beyond the bounds of relevance for your Honour's discrete determination on this application. It's 12 months before the freezing orders were made.

10

HIS HONOUR: Well, I think the question of who his employer - - -

15

MR HAYES: We didn't object to that.

HIS HONOUR: - - - was in 2020 and who his employer was - - -

20

MR HAYES: Didn't object to that.

HIS HONOUR: If - - -

MR HAYES: This is now starting to drift into - - -

25

HIS HONOUR: Well - - -

MR HAYES: - - - how his affairs are conducted.

30

HIS HONOUR: I will allow this question. I understand what you say.

MR HAYES: Thank you, your Honour.

HIS HONOUR: But, Mr Giles, I will allow that question.

35

MR GILES: Well, what I - - -

HIS HONOUR: Which I think has been answered.

40

MR GILES: What I wanted to suggest was that the payer who paid you the income – is recorded as having paid you the income of \$148,955 was the Forum Group of Companies.

MR HAYES: Well, again, your Honour, this is descending now into the substantive

45

HIS HONOUR: No – no. I will allow that question.

MR HAYES: - - - merits of the - - -

HIS HONOUR: No, it doesn't.

5 MR HAYES: - - - substantive proceeding, your Honour. And it's 12 months - - -

HIS HONOUR: This is a cross-examination about this man's assets and liability expenses. It's clearly relevant to who his employer was. I - - -

10 MR HAYES: Well, your Honour, this is not – this is 12 months before the proceedings were even commenced. This is financial year 30 June 2020.

HIS HONOUR: I appreciate - - -

15 MR HAYES: The freezing order was more than a – well over – was 12 months later on 6<sup>th</sup> of - - -

HIS HONOUR: It allows me to get an understanding of payments this man has received over the last few years in order to ascertain his overall financial position.

20

MR HAYES: But, your Honour, he shouldn't be – he – the difficulty here is on this discrete issue where he may well be seeking to pursue various – in his overall defence, your Honour. It should not be used as an opportunity to elicit admissions

- - -

25

HIS HONOUR: I think he's - - -

MR HAYES: - - - that go to - - -

30 HIS HONOUR: - - - just asking him who his employer was. It's not exactly - - -

MR HAYES: We didn't object to that. Didn't object to that.

HIS HONOUR: Well, there - - -

35

MR HAYES: It's now suggested - - -

HIS HONOUR: There's an entity which is a payer:

40 *Payer's Australian Business Number 72 151 964 626.*

So I presume the reason why Mr Giles has asked the question is that on his instruction that part – the Australian Business Number that that relates is the Forum entity to which he asked questions. If that's not in dispute, the - - -

45

MR HAYES: I don't think it is.

HIS HONOUR: Well, if it's - - -

MR HAYES: But - - -

5 HIS HONOUR: If it's not in dispute that the payer of the income for the year ended 30 June 2020 was that Forum Group entity, then I can't see why there is further relevance in - - -

MR HAYES: No.

10

HIS HONOUR: - - - that. But if that's not in dispute.

MR HAYES: Well, it couldn't be if that is the right registered – if that is the correct attribution for the ABN – that is what it is. And to have this witness endeavour to then descend into issues that might otherwise touch upon the substantive issues in dispute where - - -

15

HIS HONOUR: Well, I don't think that question - - -

20 MR HAYES: He may very well elect, your Honour – such is the weakness on the case against him on the substantive issues – not to give evidence. And this should not be seen as an opportunity to - - -

HIS HONOUR: Well, you read the - - -

25

MR HAYES: - - - elicit admissions - - -

HIS HONOUR: You read the - - -

30 MR HAYES: - - - as - - -

HIS HONOUR: - - - affidavit, Mr Hayes. And the price of reading an affidavit in support of an application is the ability of someone to cross-examine. And it is relevant in my mind to understand what I can about this man's financial circumstances in order to form a view whether there has been a frank disclosure of what his assets and liabilities are now. Now, in and of itself, who his employer was at 30 June 2020 is only going to have tangential relevance.

35

MR HAYES: I hear your Honour.

40

HIS HONOUR: But I'm not - - -

MR HAYES: I hear your Honour.

45 HIS HONOUR: - - - going to shut down a cross-examination because, together with other material, it may well be relevant. I don't know. I don't think this is really going any further in understanding the general financial circumstances of this man.

MR HAYES: I hear your Honour.

MR GILES: The payer was the Forum Group of Companies Proprietary Limited, wasn't it?---I would need to check that, Mr Giles. But if you say so.

5

If you go to page 27 you've got an ABN Lookup for that same ABN number?---It appears to be the same, yes.

10 So what were the consulting services you were then providing to the Forum Group of Companies – that is, in the year to 30 June 2020?---As previously stated in my affidavit, I used to look after a lot of the property holdings.

15 And what is your present, that is today, income?---I don't have an income from the Forum Group of Companies. It no longer exists, Mr Giles.

What about from someone else? Anyone else?---As I said, the tax return hasn't been done for '21.

20 Well, that - - -?---Or '22 and I've been - - -

HIS HONOUR: He's not asking – Mr Tesoriero, he's not asking you that question?---I – I don't - - -

25 He's not asking about his tax return. He's asking about what your current source of income is. If you could - - -?---I'm sorry, your Honour. I thought he was referring to the tax - - -

30 No – no?---He – Mr Giles was referring to the tax return. I – I don't have an income, Mr Giles. I manage - - -

You had - - -?---I manage the various property holdings that myself and my family have and I – I manage the café business and I – I don't take an income out of those because there isn't sufficient funds at present to take an income.

35 When you say you manage the property holdings – that's the whole of your family's property holdings including the Carlisle Street properties?---No. Not the whole of them.

40 You also work in the café, don't you?---I wouldn't say I work in it but I oversee it, yes.

Ms Pagano works in it?---She does, yes.

45 And she is paid a salary?---Sometimes. When there's enough funds, she is, yes.

And if you go to page 25 in the – of the – back into the 30 June 2020 tax return?---Yes.



You see a distribution at the top of the page – partnerships and trusts declaring a distribution of some \$127,000 odd from the 65 Nelson Street Enterprises Trust?---I can see that, yes.

5 Now – and you did receive that in that amount from the 65 Nelson Street Enterprises Trust in the year to 30 June 2020?---I believe I probably would have, yes. If it's loaded as that, yes.

And that was - - -?---Prior to COVID, yes.

10

That was - - -?---Sorry, if that was your question.

- - - part of the profit generated by the café in the year to 30 June 2020, wasn't it?---Part of it, yes.

15

And I think – are you able to present to the court any financial statements for the 65 Nelson Street Enterprises Trust after – that are dated after 30 June 2020?---I would need to check with my accountant and come back to you on that, Mr Giles.

20 That was a café, was it?---It's a café, yes.

Café. So it wouldn't have - - -?---It was closed for most of 2020.

Yes.

25

MR GILES: Open during 2021, though?---Yes, I believe – yes, it was, yes.

Open this year?---Yes, Mr Giles, yes.

30 Currently trading?---Yes.

Currently generating an income?---Currently generating an income – currently generating revenue.

35 Revenue that exceeds its costs?---No, Mr Giles.

But you don't have any financial statements for 2022, do you?---No, I don't.

40 Do you keep management accounts?---I would need to check with my accountant what management accounts he has at present. But we have all the bank statements which I think have been shared. And you can see that the money sort of comes in and it sort of breaks even at the moment. It sort of hasn't recovered since COVID. You do have a copy of the bank statements for that business, Mr Giles.

45 HIS HONOUR: Where is Nelson Street?---It's in Balaclava, as well.

Balaclava.

MR GILES: Does it operate out of one of the properties owned by your father?---Yes, it does, Mr Giles.

5 Does it pay rent to your father?---It pays rent to my father and his two late sisters' families, as well.

In fact, is it one of the properties own by Haidi Holdings?---Yes, it is. Yes.

10 A property held on trust for, amongst other people, you?---Yes. That's correct.

And you caused the 65 Nelson Street Trust, operating the cafe, to pay rent to the Haidi Trust?---That's correct. Yes.

15 Is there a lease agreement?---There is a lease agreement, yes.

Right. Now, could you put away MFI3 and just take up your affidavit of 12 July 2022 again?---Yes.

20 I just want to ask you about paragraph 29 – sorry, 28?---28, is it, on page 10?

Yes, and particularly 28(e), pages 10 to 11?---Yes, Mr Giles.

25 You see paragraph 28(e)? You refer to the July affidavit. That was your original disclosure affidavit, sworn in July 2021?---Yes.

You say that you unintentionally included rent of \$9000 from 22 High Street, Rushmore – never owned a receipt?---I think that was a – that was an error made by my previous solicitors and wasn't – wasn't noticed by me at the time when the affidavit was signed.

30 Sorry?---That was – that - - -

35 You swore an affidavit saying – an affidavit disclosing your assets and liabilities to this court?---That is correct.

You deposed in that affidavit to owning or having an interest in the property at 22 High Street, Rushmore?---That is correct.

40 And - - ?---That was an error at the time. That wasn't done – wasn't done deliberately, Mr Giles.

Well, did you check the affidavit before swearing it?---Yes, I did, Mr Giles, but there was a lot happening in July 2021, as you know.

45 Did you take care to ensure that you were accurately disclosing assets and liabilities that you had an interest in?---Yes, I did, Mr Giles.

Your evidence is that you have never owned or had an interest in the 22 High Street, Rushmore property?---That – that is correct.

5 How did you – how did it come to your understanding to be in your disclosure affidavit?---Because I placed a deposit on that property, Mr Giles, at that time, and then, due to the freezing orders, I was unable to complete the – the contract, so the property was sold and my deposit was lost. So at the time of July affidavit, that's – that's the – that's what had occurred.

10 But you never received - - -?---That's why it was noted, and I never received any income from that property. No.

15 Well, how did you come to have a figure of \$9000 of rent, then?---Because once it had have settled, that was what the rent was going to be. So I apologise if I overstated my position back in July, but that property does not belong to me, nor has it ever belonged to me, Mr Giles.

20 Why did you disclose as an asset the High Street property, which you hadn't acquired but had a contract to acquire, but you didn't disclose the Natalia Avenue property, which was, as I understand it, the same, namely, you had a contract to acquire it but you hadn't completed?---No. It wasn't the same, Mr Giles. The Natalia Avenue property had been nominated to somebody else. The Rushworth property was still under my contract.

25 Mr Tesoriero, in July 2021, the Natalia avenue property had been nominated to a company of which you were a director and a beneficiary of the trust?---No. That's not correct.

30 That's your evidence, is it?---I'm – I'm fairly certain that is not correct. The property was nominated off to somebody else, and then - - -

That's - - -?---That person had failed to be able to complete, and then – so then we – the contract was given back to me, and then given to a further person to settle.

35 But you – either you personally or the company, 8-12 Natalia Avenue, had a right to be paid by the nominee as the price of the nomination, didn't you?---No. I don't think that - - -

40 There was a fee owing to you?---No. I don't think so.

All right?---I don't think that's correct, Mr Giles.

Nothing further, your Honour.

45 HIS HONOUR: Yes, Mr Hayes.

MR HAYES: Thank you, your Honour.

THE WITNESS: If I can just clarify that one further, Mr Giles. In fact, the deposit was paid back into court for that property, as you know.

5 HIS HONOUR: Anything arising out of that, Mr Giles?

MR GILES: No, your Honour.

HIS HONOUR: Yes, Mr Hayes.

10 THE WITNESS: Thank you, your Honour.

**<RE-EXAMINATION BY MR HAYES**

**[11.25 am]**

15

MR HAYES: Mr Tesoriero, yesterday, in response to some questions from Mr Giles, in particular in respect of a \$24,000 entry in the ANZ accounts at CMM26, page 1 - - -?---Yes. I recall the amount.

20 Do you remember saying to his Honour you couldn't precisely recall or recollect where that \$24,000 was paid to? Do you remember giving evidence to that effect?---That – that's correct. Yes.

25 Why is it that you can't precisely say where that \$24,000 went to?---Because on the document that was presented to me by Mr Giles, it doesn't actually have a reference there, so I would need to check. It's something that can be checked very easily with ANZ, but I - - -

30 All right?---I would need to check that, but, in any case, I believe it has gone internally within ANZ.

Do you recall, yesterday, Mr Giles asking you about some valuations - - -?---Yes, I do.

35 - - - for service stations?---Yes, I do.

And you were requested to produce those valuations overnight?---Yes, I do.

40 And you produced those to your instructing solicitors?---Yes.

And in respect of those valuations for the service stations – just excuse me, your Honour. Just excuse me, your Honour. There were – my learned friend and I - - -

45 HIS HONOUR: No, no.

MR HAYES: We've come up with a means so as not to oppress your Honour with any paper that isn't overtly necessary. We're going to tender, in due course, a table in respect of these service station valuations. Just excuse me, your Honour.

5 MR GILES: What's proposed is, instead of tendering two volumes of documents, there will be a table that identifies the property, the value and the date of the valuation. It doesn't need to be done through this witness, so please explain.

10 MR HAYES: I would like to take – you asked him about it.

MR GILES: No. Okay.

15 HIS HONOUR: Provided both parties agree that that – there's nothing bespoke about the valuations which is – I need to look at. That seems, with respect, a sensible course.

MR HAYES: What it goes to, your Honour, is there were valuations, in fact, in place in respect of the evidence he gave in his disclosure affidavit, and those valuations - - -

20

HIS HONOUR: Is this 2021?

MR HAYES: Sorry?

25 HIS HONOUR: 2021 or 2022?

MR HAYES: Twenty - - -

30 HIS HONOUR: The recent affidavits or the 2021 affidavit?

MR HAYES: Just excuse me, your Honour. It was the twenty - - -

THE WITNESS: I believe it's both, your Honour.

35 MR HAYES: Just excuse me. It is both, isn't it? It's both. Mr Tesoriero is correct again, your Honour. It's both. Just excuse me, your Honour. Just excuse me for a moment, your Honour.

40 HIS HONOUR: Yes, of course. Take your time.

MR HAYES: Your Honour, might you just give us a moment, so we – if I can just have a couple of minutes - - -

45 HIS HONOUR: Sure. Would - - -

MR HAYES: - - - just to identify the document.

HIS HONOUR: Do you want me to come back at - - -

MR HAYES: We could truncate this quite quickly.

5 HIS HONOUR: Should I come back at quarter to? Would that be convenient, or you need - - -

MR HAYES: We wouldn't need any more than that, your Honour.

10 HIS HONOUR: All right. Well, I will adjourn till quarter to.

MR HAYES: Thank you, your Honour.

15 <THE WITNESS WITHDREW [11.30 am]

ADJOURNED [11.30 am]

20 RESUMED [11.47 am]

MR HAYES: Thank you, your Honour. Might Mr Tesoriero be recalled.

25 HIS HONOUR: Yes.

MR HAYES: We appreciate the break, your Honour. It will allow us to truncate things considerably.

30 HIS HONOUR: All right. Not at all.

MR HAYES: Your Honour, I propose to ask Mr Tesoriero a series of questions about the service station valuations and cross-examine it then, and then we will be tendering, before your Honour rises at the end of the day, a table that summarises what I will be putting to Mr Tesoriero in respect of the valuations offered in both of his affidavits, your Honour.

40 <VINCENZO FRANK TESORIERO, RECALLED [11.48 am]

<RE-EXAMINATION BY MR HAYES

45 MR HAYES: Mr Tesoriero, do you recall, yesterday, Mr Giles asking you some questions about the petrol stations and their values?---Yes, I do, Mr Hayes.

And just to refresh your memory, your Honour, might the witness please be taken to court book page 180.

And what I'm showing you at page 180, Mr Tesoriero, is - - -

5

HIS HONOUR: When you say the - - -

MR HAYES: - - - an annexure to your first affidavit - - -?--- ..... thank you.  
Thank you.

10

- - - that you swore on 21 July 2021, about a fortnight after the freezing orders were made against your property?---I don't have the correct book just yet, Mr Hayes, but, yes, I know what you are referring to. Thank you. Thank you.

15

Before I take you into - - -

HIS HONOUR: So when you say "court book 80", I'm not entirely sure what you're referring to.

20

MR HAYES: Court book 180, your Honour. It was the court book which was produced on the prior occasion.

HIS HONOUR: Yes. No. Thank you. I thought you said 80. That's why I was confused.

25

MR HAYES: No. I will try be a little clearer, your Honour.

And just if I can just segue for a moment. You describe to his Honour, and you describe that fortnight between when the freezing order was made and when you first signed this affidavit. What was happening in that fortnight?---The - this is the first one, is it, Mr Hayes?

30

This is your first freezing order affidavit?---There was a lot happening, I guess.

35

When you say, "There was a lot happening," what do you mean by that?---There was - well, there was a lot to digest of what had occurred and freezing orders that were being placed and accounts being frozen and - - -

When you say, "There was a lot to digest," just give a summary of what there was to digest for his Honour?---I don't know. There was - there was a lot - a lot happening - a lot of legal letters that were happening. I had to get legal representation. And so in terms of the time available to complete this affidavit, do you have anything to say about that?---It was done in quite a short period of time.

40

45

All right?---Yes.

And just looking there at paragraph 20 and onwards – sorry, page 180, items 20 and onwards – do you see there - - -?---Yes.

5 - - - for the Cowslip valuation – Cowslip service station – you’ve given a valuation of 3.4 million?---Yes, I do. Yes.

And items 20, 21, 22, 23 - - -?---Yes.

10 - - - and all the way over to items – item 30 - - -?---Yes.

- - - you’ve ascribed values as to those various service stations?---That – that is correct. Yes.

15 I’m going to take you to them in a moment. And then could I next take you, please, to your most recent affidavit of 12 July 2021, which is before his Honour. Do you have that?---Yes, I do. Yes.

20 And would you be so kind to go to page 27 of that affidavit, and, again, do you see from items 20 through until 30 you’ve ascribed a series of values - - -?---Yes, I do. Yes.

- - - to the service stations?---Yes.

25 Do you see that?---Yes, Mr Hayes.

And they’re the same value you’ve ascribed those service stations as your earlier affidavit, that was prepared in those expeditious circumstances, on 21 July?---I believe they are. Yes.

30 Yes?---I haven’t double-checked all of them here with you now, but I believe they are. Yes.

35 I’m going to show you a document, Mr Tesoriero – also hand up a copy to your Honour, one for your Honour’s associate, and one for the witness.

And you’ve just agreed with me that the valuations you’ve attributed to each of the petrol stations are the same in your 20 July affidavit, or 21 July affidavit, 2021, as they are in your 12 July affidavit, 2022. You’ve accepted that proposition?---Yes, I have. Yes.

40 And you gave evidence, yesterday, to a valuation or valuations you obtained shortly before your first affidavit - - -?---Yes.

45 - - - when Mr Giles - - -

HIS HONOUR: Sorry. I will just – I will mark the – I will mark the document that the witness currently has in front of him as MFI4.



## MFI #4 SUMMARY OF SERVICE STATION VALUATIONS

MR HAYES: Thank you, your Honour.

5

MR GILES: I object.

HIS HONOUR: It's only marked as an MFI.

10 MR GILES: No. Sorry, to the question.

HIS HONOUR: Sorry, what was the objection?

MR GILES: The question misstated the evidence that was given yesterday.

15

HIS HONOUR: Sorry?

MR GILES: The question had embedded in it the proposition that, "You gave evidence, yesterday, that the sworn valuations were dated shortly before the July '21 affidavit." I object.

20

MR HAYES: I withdraw the question, your Honour. Mr - - -

HIS HONOUR: Right.

25

MR GILES: That's not the effect of - - -

MR HAYES: Mr Giles has had the advantage of reading the transcript in the break, which I haven't had yet.

30

Do you remember giving evidence about obtaining some valuations - - -?---Yes.

- - - approximate to the time of your first affidavit, or relative to the time of your first affidavit? Do you remember - - -

35

MR GILES: I object.

THE WITNESS: It was prior to my first affidavit.

40 MR HAYES: Do you remember Mr Giles asking you about some valuations?---Yes, I do.

All right. And I've shown you a summary - - -?---Yes.

45 - - - of a series of valuations. Did you produce to your solicitors, reproduced overnight, a series of valuations for each of those petrol stations?---Yes, I did. Yes.

If you have a look at this summary. If I can just take you through them. In respect of the petrol station at Violet Town, did you produce a valuation, dated 5 March 2020, for 3.486 million?---I believe I did, yes.

5 And that was referred to in your affidavit as 3.4 million?---I believe so, yes.

Did you produce a valuation for the service station at Lake Boga, dated 29 April 2020, for 1.8 million?---I believe so, yes.

10 And that affidavit – or that reference in your affidavit to that service station’s value was 1.8 million?---That is correct. Yes.

These will – Mr Giles didn’t take these – you to these. I’m taking – putting you to them now; you understand?---Yes, of course.

15

Yes. Good. And then the service station at Dimboola – there was a valuation dated 30 April 2020?---Yes.

And that valuation was for \$1.050 million?---Yes.

20

And again, in both of your affidavits – same amount?---Yes.

The service station at Morwell – on 13 May 2020 – valuation for \$1.40 million – sorry, \$1.140 million. Again, that figure appeared in both your first and second affidavit, didn’t it?---It did, yes.

25

The service station at Mallacoota – dated 13 May 2020 – there was a valuation - - -?---Yes.

30 - - - for \$1.140 million. Again, in your affidavits you valued that one at \$1.2 million in both affidavits; is that right?---That’s correct. That one, I – I mistaked – maybe slightly higher than it should have been. But - - -

Yes. All right?---Yes.

35

And the one at Maryborough – 30 April 2020 – the valuation - - -?---Yes.

- - - \$1.2 million. Again, in your – both affidavits, \$1.2 million?---Yes.

40 Service Station at Ouyen – valuation dated 30 April 2020 – valuation of \$900,000. And again, the valuation in both of your affidavits of \$900,000?---That is – that is correct, Mr Hayes, yes.

45 Derrinallum – valuation dated 17 March 2020 – and again, valuation dated or that date – the valuation was for \$1.250 million?---Yes.

And again, in both of your affidavits – same amount?---Yes.

The service station at Taradale – valuation dated 5 March 2020 – not so valuable, that one. That was five hundred and sixty two and a half thousand. Again, 560,000 in both your affidavits?---Yes. That’s correct.

5 And then finally, the service station at Golden Square – affidavit dated 5 March 2020 – a valuation of \$3.58 million. And in both of your affidavits \$3.5 million?---That’s correct, yes.

Your Honour, I tender that document.

10

HIS HONOUR: Well, I will receive it under section 50 of the Evidence Act as a summary of the other material and say MFI1 will become exhibit G.

15 **EXHIBIT #G SUMMARY OF SERVICE STATION VALUATIONS**

MR HAYES: When you referred to valuations yesterday when Mr Giles was asking you about these valuations that you say you relied upon in the preparation of your affidavit, are these the valuations you’re referring to?---Yes, they are.

20

Thank you.

HIS HONOUR: Have you moved on from that topic?

25

MR HAYES: Sorry.

HIS HONOUR: Have you moved on from that - - -

30 MR HAYES: I have, yes.

HIS HONOUR: - - - topic, Mr Hayes? Would you mind if I ask a question now, then?

35 MR HAYES: Not at all, your Honour.

HIS HONOUR: The document which has become exhibit G which you just had in front of you identifies both the sworn valuation and the estimate that you’ve given in your - - -?---Yes, your Honour.

40

- - - sworn evidence; you understand?---Yes – yes.

I take it from the fact that, given what you said in your July 2022 affidavit, that you think that the property prices have not materially increased or not materially decreased. Would that be correct?---I – I haven’t – I haven’t gone into getting these revalued at all, your Honour.

45

Yes?---So I haven't - - -

So your estimate would be it would be around the same as - - -?---They – they would  
- - -

5

- - - reflected in - - -?---They could be around the same. They may have increased.  
But I haven't got a sworn valuation to see. The WALEs have decreased a little bit.  
So - - -

10 All right?---The weighted average on them – so - - -

Yes. Thank you. I understand. Now, have you got exhibit C in front of you?---The  
- - -

15 Which is the document with the two spreadsheets?---Yes.

Now, you were asked some questions about the indicative value in respect of the  
regional petrol stations - - -?---Yes.

20 - - - which is on the second page there?---Yes.

And you gave this evidence – this is at transcript 35.5:

25 *You satisfied yourself the indicative value stated in the document was correct –  
were correct?*

Your answer:

30 *It was, indeed. I was satisfied the indicative values were correct. There were  
values that the brokers thought could potentially be had. There was some  
discussion that was had. I don't think it was entirely but - - -*

And then a question:

35 *You don't think it was what; sorry?---I don't think it was entirely possible. We  
didn't have a valuation at the time.*

?---That's correct, yes.

40 I'm just wondering if you could explain to me why it is that you would have – given  
the evidence that you just gave to me concerning these valuations – you were  
satisfied the indicative values were correct in this document?---It's not that I was  
satisfied they were correct, your Honour. We hadn't done valuations for these at this  
point in time. This was values that were suggested by the broker. And so until the  
45 valuations had been conducted - - -

No – no. I'm sorry. I think we're at cross-purposes?---Sorry.

I was trying to ask you to focus on the evidence that you gave about – you were satisfied the indicative values were correct in the light of the evidence that you gave about how your – the values in your sworn evidence were informed by the sworn valuations. I was - - -?---Yes.

5

- - - wondering how you came to satisfy yourself that the indicative value in the second spreadsheet in exhibit C was also correct? I was just wondering if you could explain that. I just - - -?---Yes – no, I’m sorry.

10 - - - need your assistance in relation to that?---Yes – no. I think I clarified – and I could be wrong but I thought I clarified with Mr Giles yesterday, I was referring more to the Elsternwick portfolio of properties. And the ones at James Street and the Sydney residential and the regional petrol stations I noted we didn’t have valuations on. So they were just an indicative. But the Elsternwick ones we did have vals. So  
15 that – that was where that was at.

All right. Well, I - - -?---It was more consistent. But I - - -

20 Is that - - -?---I think I was referring to those - - -

Is that all you want to say about clarifying that aspect of your evidence?---Yes – yes.

Yes. Anything arising from that?

25 MR HAYES: No, your Honour.

Do you recall yesterday, when you were being cross-examined by Mr Giles, he asked you about – on the Judo Bank statements – this is CMM26 at page – from pages 70 through until about 88 – about a series of double payments in April. Do you recall  
30 being - - -?---Yes.

- - - asked about that?---I do, Mr Hayes, yes.

35 And you gave evidence to the effect that your explanation was you definitely weren’t paying interest twice. It could be a catch-up and sometimes there wasn’t enough rent from the petrol stations to pay the interest. Do you recall giving evidence to that effect?---Yes, I do, Mr Hayes, yes.

40 What did you mean by that?---There’s occasions where sometimes rent might be paid twice for a month – so two months – and then it just so happens, then, the other month might be missed by the tenant.

So when you referred to a catch-up, what did you mean by a catch-up?---Catch-up of the interest arrears.

45

And why would there be a catch-up or the need for a catch-up?---Because the interest payment might have been missed in a month prior or somewhere.

All right. And - - -?---But I wasn't entirely certain of that, Mr Hayes. I was – I was  
- - -

No?---Said I would go back and check and clarify that but - - -

5

You weren't shown any interest – you weren't shown any Judo Bank statements for the month preceding or the month after by Mr Giles, were you?---I can't recall, Mr Hayes. I would have to double check that.

10 No. He only took you to the April ones; is that what you recall?---That's what I recall, yes.

15 Yes. All right. You gave some evidence this morning to his Honour about the Balaclava café and 65 Nelson Road and about the income generated by that business?---Yes.

20 Are you able to say – and you were taken to the income that came – I think this is right – in financial year 2020 – are you able to say anything about the income and financial – I will withdraw that. You made reference to the pandemic; you remember - - -?---Yes.

- - - that?---Yes, I did, yes.

25 And in respect of the café in 2020 are you able to say to his Honour the effect that the pandemic had on the income for your cafe?---I think it was – everywhere was pretty much the same. We were closed for most of 2020 other than take-aways. So  
- - -

30 And in twenty - - -?---And closed for a period, as well, completely.

And in 2021 in Melbourne – and perhaps this might be a little bit different to the experience of those in Sydney - - -?---Yes.

35 - - - are you able to say how the pandemic impacted upon that business in calendar year 2021?---It – it hasn't really recovered from 2020.

And what about in 2022? Has the effect of the pandemic on your business in Melbourne recovered in 2022?---No – no, it hasn't, no.

40 And in terms of, you say, the impact on your business, what has been the impact of the pandemic on that business in twenty – in the latter part of 2020, 2021 and 2022?---Just a reduction in revenue, I guess, and an increase in costs.

45 Excuse me, your Honour. Thank you very much, your Honour.

Nothing further, Mr Tesoriero?---Thank you, Mr Hayes.

Might Mr Tesoriero be excused, your Honour.

HIS HONOUR: Yes. That concludes your evidence, Mr Tesoriero?---Thank you, your Honour.

5

You're free to hang around, but that concludes your participation in the proceedings?---Thank you. Thank you, your Honour. Thank you for the opportunity.

10

<THE WITNESS WITHDREW

[12.05 pm]

HIS HONOUR: All right. Now, where do we go from there, Mr Hayes? Do you have any other witnesses that you wish to call, in light of Mr Tesoriero's evidence? If you do have any other witnesses that you do wish to call, then I would be open to that being done by video, if you need to call anyone from Melbourne.

15

MR HAYES: Thank you, your Honour. I note we read the affidavits of Mr Nasimi. He's not required for cross-examination. If I could have the benefit of spending about 10 minutes with Mr Tesoriero in respect of one discrete matter in – that may or may not be necessary to call a further witness - - -

20

HIS HONOUR: Yes.

25

MR HAYES: - - - that fell from Mr Giles' cross-examination. I would like to explore that, if your Honour would indulge me - - -

HIS HONOUR: Yes, certainly.

30

MR HAYES: - - - a short moment to do that.

HIS HONOUR: That's the gentleman involved in the deed of forbearance, I take it.

MR HAYES: Might be.

35

HIS HONOUR: Yes. All right. Yes. I'm more than willing to give you that opportunity. What I might do is take an early luncheon adjournment, if that's suitable.

40

MR HAYES: If your Honour pleases.

HIS HONOUR: Just bear with me a moment. Well, what I might do is come back at quarter past 1. I've indicated that I won't be available to – in respect of that commitment this afternoon, so I would then propose then to sort of sit on to try to conclude this. So if you have any additional witnesses, they could be called at

45

quarter past – at quarter past 1, if that’s convenient. Do you have any further evidentiary material, Mr Giles, apart from tendering MFI3?

5 MR GILES: Other than tendering parts of MFI3, no.

HIS HONOUR: All right. Well, if you might just indicate those parts of MFI3 that you propose to tender. You can do that – you can do that at 1.15.

10 MR GILES: May it please.

HIS HONOUR: And what I will ask be done is if that document, in electronic form, with the documents that have gone into evidence, can be filed electronically, and that will become – that will become exhibit H.

15 MR GILES: May it please.

MR HAYES: Before your Honour rises - - -

20 HIS HONOUR: Sure.

MR HAYES: Might your Honour give an indication as to what time your Honour was going to rise today, just so that we can plan the balance of our day. We’re going to try and finish today, if we can.

25 HIS HONOUR: When we finish.

MR HAYES: Sorry?

30 HIS HONOUR: When we finish.

MR HAYES: I understood your Honour had a commitment this afternoon.

35 HIS HONOUR: Yes. Well, I’ve regrettably said that I won’t be able to fulfil that commitment because of what happened yesterday, because I have no other time to finish this. If I don’t finish this tomorrow, then – today – then, unfortunately, I don’t think I will be in a position to finish it for some time, and I think it needs to be finished. But I will – I would hope we would be able to finish by half past 4 or something like that – another three hours.

40 MR HAYES: We would expect to be – I’m going to be about half an hour.

HIS HONOUR: All right.

45 MR HAYES: I’m not going to be terribly wrong. Your Honour will have read and had the opportunity – if not, hopefully will have the opportunity to do so over lunch – the third respondent’s written submissions.



HIS HONOUR: Yes. I scanned them, but I will have another look at them.

MR HAYES: I don't propose to rehearse them. Repetition doesn't make the written point better.

5

HIS HONOUR: If Westpac wishes – I mean, you've got an hour. I'm not sure. Ms Hamilton-Jewell has probably got nothing better to do over lunch, so she can, no doubt, produce a short document about what - - -

10 MR GILES: Yes.

HIS HONOUR: - - - credit issues you think I should deal with concerning the evidence of Mr Tesoriero, now you have the transcript, and what occurred today, and – in fact, what I will do, I think, in order, realistically, to give both sides the time to think about what they wish to submit, is I will come back at half past 1 instead.

15

MR HAYES: Thank you, your Honour.

MR GILES: May it please.

20

HIS HONOUR: All right. If you would adjourn the court to half past 1, please.

**ADJOURNED**

**[12.10 pm]**

25

**RESUMED**

**[1.30 pm]**

30 HIS HONOUR: I'm sorry about that. Something just came up. Yes.

MR HAYES: Your Honour, we won't be calling any further witnesses. Mr Tesoriero is not in a position to do that today. But there is one discrete matter.

35 HIS HONOUR: Well, if he's not in a position to do it today, I - - -

MR HAYES: We won't be calling any further witnesses, your Honour.

HIS HONOUR: Well, I just want to make it clear that that's – if you did wish to call further corroborating witnesses of Mr Tesoriero then I wouldn't require you to close your case today or - - -

40

MR HAYES: We're grateful for that, your Honour.

45 HIS HONOUR: And if you needed to call someone by video today, then I would give leave for a subpoena to be issued to them - - -

MR HAYES: We won't trouble your Honour with that.

HIS HONOUR: - - - by way of email.

5 MR HAYES: We won't trouble your Honour.

HIS HONOUR: All right.

10 MR HAYES: There is one discrete matter, your Honour, that Mr Tesoriero would like to just take further in re-examination. I didn't canvass that discrete issue. It's a matter relating to the Haidi Trust or Haidi Trust.

HIS HONOUR: No objection, Mr - - -

15 MR GILES: Well, there is because there's no reference to the Haidi Trust in the affidavit. I've established that it – through this cross-examination – that there's a Haidi Trust. He's a beneficiary, albeit that it's a discretionary trust and that it has assets including some of the properties on Carlisle Street in Balaclava. One might have thought that's not something I should have been having to elicit. The difficulty  
20 with seeking to recall Mr Tesoriero and re-examine him - - -

HIS HONOUR: Well, it's not an application to recall in this sense. It is – see, he's not seeking to adduce this material in chief. He's seeking to re-examine and - - -

25 MR GILES: That's true.

HIS HONOUR: - - - the – you say there's nothing to clarify or there's nothing – isn't really a scope of – with re-examination - - -

30 MR GILES: I can't say there's nothing to clarify, your Honour. I mean, in a sense, it has obviously been left unclear what the circumstances are. But the difficulty is, having had to elicit in cross-examination – to have that which should have been, frankly, in chief – hearing about it in re-examination is something which should not be permitted. Should it - - -

35

HIS HONOUR: Well - - -

MR GILES: - - - rather be left in the state it is.

40 HIS HONOUR: I think there is an unfairness in being able to re-examine on that point, given the circumstances in which that evidence has emerged. However, I don't see what the prejudice is if I gave Mr Hayes leave to re-open and adduce that evidence-in-chief which would then give you the opportunity, if you saw fit, to further cross-examine on that point.

45

MR GILES: May it please.

MR HAYES: I hear what your Honour says and - - -

HIS HONOUR: I will give you leave to adduce some additional material by way of examination-in-chief.

5

MR HAYES: If your Honour pleases.

HIS HONOUR: Yes. You can come back to the witness box, Mr Tesoriero.

10 MR HAYES: It effectively will canvass areas where my friend didn't tread in his cross-examination but it's – I hear what your Honour says and I understand the proposition that it's being lead in chief rather than a re-examination. I - - -

HIS HONOUR: Yes.

15

MR HAYES: - - - understand the authority and principles behind it.

HIS HONOUR: So you're on your former oath, Mr Tesoriero. If you just take a seat.

20

**<VINCENZO FRANK TESORIERO, ON FORMER OATH [1.35 pm]**

25 **<EXAMINATION-IN-CHIEF BY MR HAYES**

THE WITNESS: Thank you. Thank you, your Honour.

30 MR HAYES: Mr Tesoriero, do you recall when Mr Giles was asking you some questions this morning about the Haidi Trust?---Yes, I do, Mr Hayes, yes.

35 And that trust – is there anything else you would like to say about it in terms of, firstly, the control of that trust?---The control of the trust, I believe, is with my father and was with his two late sisters but has now passed on to my aunties' children. And I believe what happens is that – I don't have any – you've got to forgive me, your Honour, with the way to explain it but I don't have any grab on that trust until my father passes away.

40 All right?---Is what I understand.

45 And when you say that's what you believe, why do you say that's what you believe? Have you seen a copy of this trust or do you know anything else about it?---I haven't seen a copy of this trust but that's always what has been discussed between the family members. And I've never received any distribution from this trust to date.

Do you know when this trust was established?---I believe it was in the late 1960s or 1970s.

Yes?---Early 1970s.

5

Yes. Nothing further, your Honour.

HIS HONOUR: Yes. Mr Giles.

10

**<CROSS-EXAMINATION BY MR GILES**

**[1.36 pm]**

15 MR GILES: Mr Tesoriero, you've just answered some questions about something our learned friend called the Haidi Trust?---Yes.

In fact, you know, don't you, that Haidi Holdings is the trustee of the John Tesoriero Trust?---That is – that is – I've never – that is correct, yes.

20 Right. And Haidi Holdings, to your understanding, holds all of its assets on the John Tesoriero Family Trust?---It holds a portion of them. A portion of the trust.

HIS HONOUR: Sorry, I thought it was the trustee.

25 MR GILES: That's what I'm – anyway, I'm trying to - - -?---The trustee, I understand, owns the properties unless I'm mistaken.

HIS HONOUR: Well, the trustee owns the property on trust for the trust?---Is that – you've got to forgive me, your Honour, I - - -

30

No. That's all right.

MR GILES: Could I hand to your Honour – and I've just given to my learned friend and to Mr Tesoriero – a copy of the trust deed of the John Tesoriero Family Trust.

35 You see in the top right-hand – have you seen this document before, Mr Tesoriero?---I can't recall, no.

See in the top right-hand corner there's some numbers starting FOG and then a series of - - -?---Yes, I see those, yes.

40

- - - numbers. If you just concentrate on the last four numbers, could you – where you see on page 1, it's page 7135 – could you go over to page 7170, which is right towards the back?---Yes, I can.

45 So when my learned friend was asking you about the Haidi Trust, did you understand that what he was trying to ask you about was the John Tesoriero Family Trust?---No, I don't – didn't.

But Haidi Holdings is the trustee of the John Tesoriero Family Trust?---I believe that's correct, yes.

Right. And you see who the primary beneficiaries are?---All children - - -

5

HIS HONOUR: Sorry, can we clarify - - -?---Yes.

- - - that a moment. I'm a little confused now whether there's more than one trust. It is, of course, possible that Haidi Holdings Proprietary Limited could be the trustee of more than one discretionary trust?

10

MR GILES: I understand.

THE WITNESS: And it is, your Honour.

15

MR GILES: Right. Okay. What trusts is Haidi Holdings the trustee of?---I'm not too sure at this point, Mr Giles. I would have to check and get back to you on that. But there is more than just this one trust that it's trustee - - -

20

But you're unable to tell his Honour how many others?---I – I believe it's two or three.

Who are the – do you know - - -?---But I'm not very familiar with it, to be honest.

25

Right. Do you know whether you're a beneficiary of any of them?---No. I don't believe I am. As I said, this was all – if you see the date on this, Mr Giles, it was made before I was even born. So - - -

30

HIS HONOUR: Sorry. But are you a child of Giovanni Tesoriero or - - -?---Yes. I am, your Honour. Yes.

Is there any reason for you to think that the trustees of the other trusts in respect of which Haidi Holdings Pty Limited as the trustee has different beneficiaries than the John Tesoriero Family Trust?---I – I know for certain that it does, your Honour.

35

You know for certain it does?---That – I know for certain that they do. Yes. They have different beneficiaries.

MR GILES: And how do you know that?

40

HIS HONOUR: No. No. No. No. No. No. No. No. No. No. No. Do you understand that the other trusts of which Haidi Holdings Proprietary Limited as the trustee - - -?---Yes.

45

- - - have a different class of beneficiaries than the John Tesoriero Family Trust?---No. That I'm unsure of.

Right. Is there any reason for you to think that they would have different beneficiaries?---I'm unfamiliar with those other trusts. I would have to clarify.

I see?---Yes.

5

All right. So the answer to my question is "no"?---I – I'm not - - -

You're unfamiliar with them, so you don't know?---I'm familiar with them. Yes. So I don't know. Yes.

10

Right. Thank you.

MR GILES: I think at that stage, your Honour, I might just tender the trust deed.

15

HIS HONOUR: All right. The trust deed of the trust known as the John Tesoriero Family Trust will become exhibit H.

MR GILES: I, I think.

20

HIS HONOUR: I. No. No. J.

**EXHIBIT #J TRUST DEED OF THE TRUST KNOWN AS THE JOHN TESORIERO FAMILY TRUST**

25

HIS HONOUR: There's no exhibit I.

MR GILES: Right. I can understand that.

30

HIS HONOUR: Well, that used to be the tradition in this state.

MR GILES: I – yes. Yes.

35

HIS HONOUR: Yes.

MR GILES: May it please, your Honour.

HIS HONOUR: All right. Anything arising out of that?

40

MR HAYES: No, your Honour.

HIS HONOUR: Yes. You're excused again, Mr Tesoriero?---I can leave the - - -

45

You can leave that there. Yes. Thank you.

5 HIS HONOUR: The bundle of – while we’re dealing with the exhibits, the bundle that you’ve provided of those documents out of MFI3, which were exhibit H, I’ve marked, as well, and if that could be filed electronically, I would be grateful. So is that your case, Mr Hayes?

10 MR HAYES: Yes, your Honour.

HIS HONOUR: Yes. Mr Giles, have you got any evidence in reply?

MR GILES: No. No case in reply, your Honour.

15 HIS HONOUR: All right. Yes, Mr Hayes.

MR HAYES: Thank you, your Honour. Your Honour, I don’t propose to rehearse the submissions I made on 11 July which went to the actual – I will traverse them in some general respects from time to time, but today – having already made those  
20 submissions as to what is necessarily to ensure the fair and equitable defence - - -

HIS HONOUR: Sorry, Mr Hayes.

25 MR HAYES: It’s all right, your Honour.

HIS HONOUR: I’m just trying to get a copy of your submissions, which I think – sorry. I thought I had left it in my chambers, but I hadn’t. Yes. I’ve got those.

30 MR HAYES: Not at all. Your Honour, we – as we say, what is necessary to ensure a fair trial in this matter in order to – for your Honour to make an allocation of funds held in court from the controlled moneys accounts to Mr Tesoriero to ensure a fair trial in this matter for him to properly conduct his defence – we rest on our submissions made on 11 July, and I will traverse them from time to time in some respects, but your Honour having heard me on 11 July and also having had detailed  
35 written submissions as to what we - - -

HIS HONOUR: So you seek an amount of 1.866 million in a lump sum and also ordinary living expenses of \$5000 per week - - -

40 MR HAYES: That’s right.

HIS HONOUR: - - - calculated from September 2021 to date - - -

45 MR HAYES: That’s right.

HIS HONOUR: And future from 1 July 2022 to date of judgment. Can I just - - -

MR HAYES: But there is a carve out, your Honour.

HIS HONOUR: Yes.

5 MR HAYES: We do – for now, we carve out the amount of money that was allocated towards expert witness expenses.

HIS HONOUR: So what it is that you seek, then?

10 MR HAYES: We seek today an amount on behalf of the reasonable legal expenses of 1.496 million - - -

HIS HONOUR: Yes.

15 MR HAYES: - - - bearing in mind that that's not only prospective until the end of trial from today's date, but your Honour should also be mindful that there has been no payment to Mr Tesoriero's legal advisers since December last year, so it's really covering the period from late last year up until the conclusion of the trial. And there is a carve out for the expert witness costs in light of what fell from the exchange with  
20 your Honour on 11 July in that your Honour's views were – didn't see the need for expert evidence in this case. Your Honour - - -

HIS HONOUR: Could you just tell me – I'm sorry. I just want to get - - -

25 MR HAYES: Sure.

HIS HONOUR: Work out what – what is the state of evidence concerning the pre-November legal costs?

30 MR HAYES: The pre-November – last year, your Honour?

HIS HONOUR: Yes. So the 1,496,000 was taking up both the legal costs incurred from November last year to date - - -

35 MR HAYES: That's right.

HIS HONOUR: - - - together with the prospective costs, and I'm wondering about the post-commencement of proceedings pre-November legal costs, which are not caught within that 1.496.

40

MR HAYES: Sure.

HIS HONOUR: What the evidence discloses about those costs.

45 MR HAYES: There's an amount of two hundred and something thousand dollars which was paid to Fortis Law in respect of the costs that Mr Tesoriero incurred with Fortis Law from July 2021 until – I think it might have been August, September,



which – no – September, when Madgwicks replaced Fortis Law and come onto the scene. And then the amount – just excuse me, your Honour – and then, your Honour, the amount of \$270,000 was from September to November. I don't believe this is at all contentious – which was an original allocation that your Honour made just prior –  
5 I think it was in November last year – for the work done by Madgwicks and the current legal team from September to November, over those three months.

HIS HONOUR: So does that mean – and this is the thing I'm unclear about.

10 MR HAYES: Sure.

HIS HONOUR: Does that mean he has paid \$470,000 worth of legal fees?

MR HAYES: It means he has paid 270,000. He hasn't paid Fortis.  
15

HIS HONOUR: I see. You mentioned they paid to Fortis, but that - - -

MR HAYES: I'm sorry, your Honour.

20 HIS HONOUR: No. No. That's all right.

MR HAYES: My loose language is - - -

HIS HONOUR: I had actually thought he hadn't paid those sums.  
25

MR HAYES: He hadn't.

HIS HONOUR: But I was - - -

30 MR HAYES: No.

HIS HONOUR: That's why I was - - -

MR HAYES: No. That's - - -  
35

HIS HONOUR: - - - seeking clarification.

MR HAYES: That's my loose language. I apologise, your Honour.

40 HIS HONOUR: That's all right. So he has an extant liability for an amount of around \$200,000 to Fortis, but that's subject to dispute.

MR HAYES: Subject to dispute and taxation. That's right.

45 HIS HONOUR: And what has happened about – what's the situation with the taxation?

MR HAYES: It's not - - -

HIS HONOUR: Has that been progressed?

5 MR HAYES: - - - completed yet, your Honour. So there's no - - -

HIS HONOUR: Has it started?

MR HAYES: It has. Yes.

10

HIS HONOUR: So they would be required to - - -

MR HAYES: The process - - -

15 HIS HONOUR: They've filed an itemised bill of costs?

MR HAYES: I believe that has happened. Yes. And that has been challenged. And I'm not sure whether there has been a hearing on taxation or assessment. In fact, we're awaiting a decision on it. So it's reserved. So there has been  
20 consideration of it, your Honour, but it hasn't been determined as yet.

HIS HONOUR: So that's administrative – this is an assessment of costs, is it, under the relevant Victorian legislation? Or is this costs incurred - - -

25 MR HAYES: It would be up here, your Honour. Fortis were - - -

HIS HONOUR: It's here. So it's - - -

MR HAYES: Yes.

30

HIS HONOUR: - - - the regime here.

MR HAYES: Yes.

35 HIS HONOUR: I see. So that's with a – that's a taxation – there's a – whatever it's called – a taxation assessment being done but a costs consultant that you're awaiting  
- - -

MR HAYES: A determination of. Yes.

40

HIS HONOUR: Your solicitor is nodding her head, so yes. All right. So do we know how much he has alleged he should get back in relation to that – what his liability should be, what his contention is before the assessor?

45 MR HAYES: Well, we will come back to that, your Honour.

HIS HONOUR: All right.

MR HAYES: But it's - - -

HIS HONOUR: Thank you.

5 MR HAYES: - - - substantially less than what his previous lawyers had - - -

HIS HONOUR: Yes.

10 MR HAYES: - - - rendered over those couple of months. I should also add, your Honour, that there has been no living expenses. He has been getting by on the assistance of friends and family since that time. In terms of the amount, your Honour, in terms of the expert expenses or the amount of money allocated towards the cost of expert evidence - - -

15 HIS HONOUR: Just before we come to that, I just want to get an idea of what relief you're seeking. So you're seeking – in respect to those living expenses, you're seeking the 5000 calculated from September '21 – 2021 to date.

MR HAYES: Yes.

20

HIS HONOUR: That is, a lump sum of 5000 times how many weeks of – there is from September '21 to date; is that right?

MR HAYES: That's right, your Honour. It's about 40 weeks.

25

HIS HONOUR: So – all right.

MR HAYES: We had the calculation - - -

30 HIS HONOUR: So a \$200,000 cash - - -

MR HAYES: Approximately.

35

HIS HONOUR: - - - payment for living expenses.

40 MR HAYES: Whatever it is, yes, and you will see in his most recent affidavit he has sworn up – your Honour, no doubt, has read ..... affidavit which we've read in court. I can take your Honour to the relevant passage where he has given evidence, your Honour, that he has been supported both by family – and that's all dealt with from paragraphs 70 – well, really, 75, where he says that he has been supported financially and emotionally by his family over the last 12 to 18 months and that his family, at this point, is no longer able to support him any further, and his resources have been stretched to the maximum. That's his unchallenged evidence, your Honour. He's - - -

45

HIS HONOUR: Well, I'm not sure it's – I'm not sure how you challenge a hearsay suggestion about – that his father has indicated, "He's unable to support me any

further.” I mean, I saw what the – I saw what the apparent extent of the father’s financial position is. Why should I accept that the father is no longer prepared to provide any financial support in the absence of any evidence from him? Why shouldn’t an inference be drawn that there’s a forensic decision that has been made  
5 not to call his father?

MR HAYES: Well, firstly, your Honour, it’s an interlocutory application.

10 HIS HONOUR: So what?

MR HAYES: Secondly, your Honour, you’ve got the evidence from Mr Tesoriero, and there’s no reason why you shouldn’t accept his evidence to that effect.

15 HIS HONOUR: Why? His father has been – his father has been supporting him to the extent of, presumably, paying money to go to Rockpool and paying money to go to Ferrari events - - -

MR HAYES: Your Honour, there - - -

20 HIS HONOUR: - - - and the like. I mean, why, in the absence of his father saying he’s not going to provide any further funds to him, in the absence of evidence from him, shall I accept that proposition?

25 MR HAYES: Your Honour, two sensationalist questions put to Mr Tesoriero about - - -

HIS HONOUR: What’s sensationalist about it?

30 MR HAYES: - - - going to a Ferrari event and to a restaurant - - -

HIS HONOUR: What’s sensational about - - -

MR HAYES: - - - for his partner’s - - -

35 HIS HONOUR: What’s sensational – sensationalist about it? It’s up to you to convince me, it seems to me, that he doesn’t have access to funds, including his father is not going to support him in relation to his ongoing living expenses.

40 MR HAYES: Well, his lawyers haven’t been paid for eight months, your Honour.

HIS HONOUR: It’s quite different, Mr Hayes.

45 MR HAYES: There’s an inference you can draw from that, and, your Honour, what you’ve got is two occasions in terms of – two occasions of going to an event – whether it’s a Ferrari event, a Volvo event or a Hyundai event, it’s just an event – and going to a restaurant which – for his girlfriend’s birthday. Admittedly, it’s a well-known restaurant, but that’s the – that’s over a 12-month period of time. If my

friend is going to invite your Honour to draw an inference from those two discrete facts that Mr Tesoriero is somehow living the high life, from those two – those two discrete moments - - -

5 HIS HONOUR: No, I think we - - -

MR HAYES: - - - in – over the period of a year, that's - - -

10 HIS HONOUR: I think we're at cross-purposes. I don't – I will wait for Mr Giles' submissions. This arose from your contention to me - - -

MR HAYES: Yes.

15 HIS HONOUR: - - - and your submission to me, based on the evidence, that I should essentially find as a matter of fact that his father is no longer willing to support him. If the evidence in truth – if you wish to make me a finding that the father is no longer prepared to support him, then I asked you why it is that I don't have – I don't have any evidence other than, "My father has indicated that he's  
20 he's financially unable to support him, that he has access to insufficient funds, because his resources have been stretched to the maximum.

MR HAYES: Yes.

25 HIS HONOUR: Now, that, I must say to you, is a conclusion which does seem to me to be one which exhibits – how can I put it – a degree of tension with some of the documents I've seen concerning his financial position.

30 MR HAYES: Well, we would respectfully disagree, your Honour, and we say – and I will take your Honour through some of that in a moment.

HIS HONOUR: Yes.

35 MR HAYES: But we say that it was never put to him squarely that that was not a truthful or a correct statement, and, your Honour, it's – while your Honour might be looking at the possibility of drawing an inference in the absence of Mr Tesoriero to give evidence – and if this was a trial and it was dealing with a substantive issue, that might be a different – I might be in a different position, but this is – this started off, your Honour, as an interlocutory application seeking reliefs of moneys, which  
40 your Honour was almost prepared to grant on 11 July, when we were last before your Honour.

HIS HONOUR: Yes, I was.

45 MR HAYES: And we're now – and I understand your Honour's concerns and anxiety that was provoked by my learned friend's submission at the very end of the hearing on the 11<sup>th</sup>, and that's why we're here today, and this is an inquiry into the –

it's still an interlocutory part-heard application into the level of disclosure, and I'm going to take your Honour through the series of complaints.

5 It may well serve your Honour, to put all of this in context, to take your Honour very  
carefully through the complaints made about the level of disclosure, which I can  
appreciate is causing your Honour some concern, in respect of Mr Tesoriero, and,  
secondly, dealing with the evidence that would – we say doesn't go so far to support  
any positive inference that he has means to be able to properly fund his defence of  
10 this proceeding – in fact, quite the opposite. That's why he's here, seeking to prevail  
upon the use of moneys that are sitting there in a controlled moneys account, which  
he says is his money to be able to fund his proper defence of this proceeding, to  
ensure a fair trial. That's why we're here.

15 HIS HONOUR: No, no. I understand all you're saying, Mr Hayes.

MR HAYES: And - - -

20 HIS HONOUR: And I'm not seeking – I deliberately – what I – I deliberately said  
what I said – was prompted by a specific submission you made concerning his father  
and a specific aspect of part of the evidence. I have no doubt that Mr Tesoriero is –  
because of the financial circumstances he finds himself in, will have difficulty  
funding a defence without a release of funds. I indicated it on the last occasion.

25 MR HAYES: Yes.

30 HIS HONOUR: The point I was making is that you asked me to accept the evidence  
at the end of 75, which – his father is unable by – to support him, by which I reach  
the – by which I read to be has exhausted his financial resources, and I've got  
documents such as exhibit C, which is unexplained, his father having an enormous  
portfolio of property which is unencumbered.

35 MR HAYES: And your Honour has also heard evidence – and I don't think it's a  
matter of controversy in this proceeding. Receivers have been appointed over many  
of his father's properties.

HIS HONOUR: Well, it's a completely unsatisfactory state of the evidence there. I  
have no idea. I really have - - -

40 MR HAYES: Well, Mr Giles - - -

HIS HONOUR: I really have got a great – a very – a great opaqueness about the  
financial position of Mr Tesoriero. It's obviously something which is highly  
complex, with a very – a vast series of family trusts.

45 MR HAYES: Yes.

HIS HONOUR: And to be perfectly frank, I'm left – I mean, even the last evidence, after you recalled him – there are trusts which I have no understanding what all – what property they have – whether he's a beneficiary. It's just a complete blur to me precisely what the financial position is of his father and Mr Tesoriero.

5

MR HAYES: And your Honour would have seen in some respects it's a genuine blur to Mr Tesoriero. I seize upon the word "complex". On any view, your Honour, this is a very complex series of arrangements. In fact, if we have a look for a moment, your Honour, at the annexure to his affidavit – and this is why I was hoping to take your Honour through the alleged – or the supposed – or the complaints about the supposed non-disclosure on the part of Mr Tesoriero, who might not have the level of acuity or sophistication of an investment banker or an accountant but has endeavoured to do his very best to reveal the scope and extent of his interests, your Honour. They have been chipped about by the edges by our learned friends in what is a series of quite voluminous and complex arrangements to suggest, "We've got you on a couple of small things around the periphery, so, therefore, you can't rely upon his evidence," and that's essentially what we say is the case we're responding to.

20 If you look at what he has disclosed, your Honour – and, in substance, we say that while his disclosure has been less than ideal, and a lot of that would reflect upon the nature and the complexity of the arrangements, it's still reasonably good in the circumstances, and what your Honour would have been satisfied of is, given the extent and the complexity of the arrangements and the ongoing disclosure by Mr  
25 Tesoriero, that in substance he has endeavoured, to the best of his ability, to disclose what his interests are and – certainly to the court in his two affidavits, and certainly he hasn't in any way sought to conceal assets or anything of that nature, your Honour. At best, he might have made an error or a mistake here and there, but in the overall scheme of things, when you look at the scale of these assets and the  
30 complexity of these companies, there are a few errors and a couple of omissions, but we say when you look at the bigger picture and what he has actually disclosed, it doesn't amount to terribly much.

35 And if your Honour goes to page 20 of his most recent affidavit – and if I can just take your Honour through this, he initially sets out the key ultimate holdings entities. And he lists six different companies. Then if you go over to 21, he identifies an eye-wateringly large number of properties, 19 of them, all of which are tied up in special-purpose vehicles, trusts, loans, which were all cross-collateralised against other properties, and he has put this together in a table as – which – if your Honour looks  
40 at disclosure evidence – and your Honour has seen plenty of disclosure affidavits – it takes some doing to prepare a table of this kind. Then he has gone down – if your Honour then goes over to 27, he has identified the 10 petrol stations, and we say that your Honour shouldn't be distracted by what your Honour seized upon as an indicative – what he says was an indicative value in terms of his affidavit.

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What he has given to this court is the most reliable evidence in support of those valuations. Don't worry for a moment – what we say, your Honour, is he might have

been painting a more optimistic picture to financiers doing his best trying to refinance his empire, which has been frozen by Westpac, which – he says unjustly frozen. Since his assets have been frozen, it has triggered a series of events where he has been put in dire financial strife, if you like, your Honour, and if he prevails in  
5 this proceeding – and we say that he will. Without pre-empting what your Honour may determine, we say he – the case against him is not at all strong, and that will be dealt with at trial, your Honour. He will find himself in a situation where many of his assets have already been sold.

10 HIS HONOUR: Well - - -

MR HAYES: And - - -

15 HIS HONOUR: - - - with – like any skilled advocate, you’ve fastened upon a phrase to describe what was represented to financiers as a more optimistic picture.

MR HAYES: Yes.

20 HIS HONOUR: I will come back to that in a moment.

MR HAYES: But he hasn’t given your Honour the - - -

25 HIS HONOUR: It – just let me finish. It appears that the indicative figure given in the affidavits in both July 2021 and, more recently, in the last affidavit seems cogently – the valuation has seemed cogently supported by contemporaneous sworn valuations.

MR HAYES: Yes. So what he has told your Honour is - - -

30 HIS HONOUR: So the question is what do I do with the fact that, at least, on one view of it, what might be described – I don’t think unfairly – as staggeringly different values have been represented to financiers, which might go beyond what some people might fairly think as just a more optimistic picture.

35 MR HAYES: We would take issue with the use of the word – or the adjective “staggeringly”, your Honour. But nonetheless, your Honour, we say that what’s important is what he has told this court. He wouldn’t be the first borrower or developer or investor who has painted an optimistic picture to a financier in trying to refinance or borrow. Your Honour’s experience as both prior to and both on the  
40 bench would be well seized of that. The most important thing here, your Honour, is what he has sworn up to in a sworn affidavit and what he has told your Honour. And Mr Giles touched upon it, and then he left it alone, and the valuations squarely support what it is that Mr Tesoriero – not what he’s telling some unknown financier in terms of trying to desperately rescue his empire caused by Mr Giles’ client  
45 freezing his assets when we say the case against him is not sufficient. What he has done is – it’s what he has told you, your Honour, and what he has sworn up to in an



affidavit. And to use evidence, we say, to seek to undermine the reliability of the reliable evidence he has put before this court - - -

5 HIS HONOUR: Well, put another way, what you would say is that faced with the solemn task required by the court of identifying what his true position is, he has conscientiously gone about that task by reference to contemporaneous documents.

MR HAYES: Yes.

10 HIS HONOUR: And the mere fact that he may have had some motivation in inflating the value to a financier when he is in dire financial straits is something which is simply not relevant for present purposes.

MR HAYES: That's right.

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HIS HONOUR: Yes. Understood.

MR HAYES: It's what he has told you, and what he has told you, your Honour, has been corroborated by the valuations that were produced overnight and supported an area where Mr Giles feared to tread yesterday but was clarified today in re-examination. And we say this, your Honour. Again, this brings it back to – and, in fact, even if he were to have inflated the values in this proceeding, that wouldn't have assisted him. So at the end of the day, what he has done, as your Honour has quite elegantly summed up, if I may say so, is, when faced with the solemn task of having to swear up to give evidence, he has taken the more conservative and more reliable approach. And that's the evidence before your Honour. That's – we say that irrespective of what he might have said to a prospective financier, it has very little, if any, impact on the affidavits given that they're supported by the sworn valuations, which are relatively contemporaneous, your Honour. If we then continue to go further – and I should say, your Honour, these annexures – they run – these spreadsheets – there's 25 pages of spreadsheets, and forgive me if I just go through them a little more, but already your Honour is beginning to see that this is quite an onerous task on anyone charged with dealing with this matter. He has then dealt with the café in Balaclava, 65 Nelson Trust. I'm going to return to that later, your Honour.

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Then we go to the bank accounts. And your Honour will see there are 29 bank accounts – 29 bank accounts – where he has had difficulty accessing that information as a result of the freezing orders. I should say, your Honour – and it – I don't know the full extent of it, but in the fullness of candour, I need to bring this to your Honour's attention. It was brought to my attention just as we were coming to court. The National Australia Bank over lunchtime have finally given him access to all of his bank statements, but I understand that they are encrypted, and he is not able to access them, but that has apparently happened over lunchtime, and I can say, your Honour, that once – that will be a task attended to with some expedition, and once those statements can be downloaded, your Honour, they will be properly discovered. But nonetheless, your Honour has heard in - - -

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HIS HONOUR: So they're statements of the current position, are they? Or are they historical?

5 MR HAYES: I believe they're historical. April, May and June. But I should have  
thought to your Honour that if we have April, May and June this year – then that's a  
good start from the NAB. We should have little difficulty in being able to obtain the  
historical statements back to 1 July last year. And they should – which preceded the  
freezing order by a matter of days. And they should be properly discovered and they  
will be. But that has just come to light. But nevertheless, your Honour, he has got  
10 29 accounts where, firstly, he has had – against this complex web of companies and  
trusts and the like – 29 different accounts – from page 32 onwards setting out all of  
those different accounts. Then – which he has had limited access to.

15 And I should say, your Honour, in addition to this, not only is it the complexity but  
it's the lack of resources where he has already given evidence saying that his  
accountant – and this is where he need – it's no wonder he would need the assistance  
of his accountants to be able to make sense of all of this. Obviously, your Honour  
saw Mr Tesoriero give evidence. He's not an accountant. He's not an investment  
banker or anything of that nature. He's a businessman. He has a café and he invests  
20 in property. So it's no small wonder that he would need the assistance of his  
accountant. But herein lies the paradox. He doesn't have the resources. And he has  
done the best he can with very limited resources and within a highly complex  
commercial environment to reveal what we say is, in the circumstances, your  
Honour, a pretty good attempt – he has made a pretty good fist of it in terms of  
25 disclosing what he is able to do under what are significant and onerous  
circumstances.

30 There he goes over the page – to page 35 – and I haven't counted these but there's at  
least 20 companies on each page. That is between 40 and 50 companies he has  
disclosed in which he has shares. And whether – he has gone to the detail of whether  
or not they're trustee companies or whether they're not. It keeps going – annexure B  
– he has then dealt with the property where he receives rents. And this is from the  
petrol stations. And so again, I'm counting about 10, your Honour. He has dealt  
with all of that. Then he has gone over the page and dealt with the CBA properties,  
35 of which there's another 15 odd properties – in fact, more – 15 to 20 properties, shall  
we say. Then there's the service station properties. And then on it goes. And then  
there's a further series of other bank accounts in annexure C which is the NAB bank  
accounts.

40 Now, I'm going to come to the fact that this one in this – and there are balances there  
on these NAB accounts – and I'm going to come to – so what your Honour has seen  
is 25 pages in a spreadsheet of a – to use your Honour's expression – of a  
staggeringly large number of companies, bank accounts, assets – highly complex.  
Where he has had little or no resources in order to comply with his ongoing  
45 obligations to disclosure. And we say that if you have a look at the affidavit and  
compare it – I'm going to take your Honour to one instance in due course – with his  
affidavit of July last year. And your Honour heard evidence this morning. You can

– just for a moment, you can imagine when you’re suddenly hit with a freezing order and a lot of assets which are a lot of your family’s assets – his parents and his family assets are all suddenly put under pressure and his personal assets are frozen.

5 Your Honour is well aware of the chaos that a freezing order can create. And against that backdrop of – or against that chaos, within a couple of weeks – if we can go to the original affidavit – he has done his very best in that very sudden and chaotic environment to disclose – and where he’s getting no assistance at all from the banks – his accounts were frozen. He couldn’t even get access to his National Australia –  
10 to the accounts he had with the National Australia Bank. To be critical of someone – of anyone in those circumstances where their entire world is turned upside down and they’ve done the best they can to disclose what are their assets and comply with the terms of the order, your Honour – we say is perhaps a step too far when it’s not considered properly in context of what’s happening.

15 This is not a large-scale corporation whose assets have been frozen where there’s a term of – or a team of – a CFO and a team of accountants internally and advisors who can go through every single subsidiary and related associated company and every bank account and provide the sort of level of accuracy, your Honour, we might  
20 be accustomed to seeing in high value corporate litigation or that type of thing. This is dealing with a real person who is a property developer and who owns a café. And you have to look at what he does, your Honour; and what he does for a living; what his training is; what his background is; and the very adverse circumstances he has been operating on. And we do concede it’s – his disclosure has not been perfect.  
25 But in terms of substance, your Honour, and in terms of – yes, substantively – it’s – in the circumstances it has been reasonably good.

Your Honour, I’m going to turn for a moment – can I just take your Honour to our written outline of submissions. And we say this ongoing chipping away at his  
30 disclosure by Westpac, we say, has revealed – it hasn’t progressed the matter, we say, with any real degree of meaning or effect. If anything, your Honour, all it has revealed is how desperate Mr Tesoriero’s circumstances really are and the fact that he does have very little in order to fund the proper and fair defence of the case brought against him. And the fact that we say, your Honour, it shouldn’t be made –  
35 he already faces an onerous task. Your Honour has seen the evidence of Mr Naisimi and the sheer volume of material. Westpac has discovered over 35,000 documents. There is a team of at least half a dozen lawyers, counsel and the like. And that’s dealing with the substantive issues.

40 And yet, here he is having to deal with repeated requests regarding disclosure or his disclosure affidavits which he has endeavoured to faithfully respond to as best as he is able to in the circumstances. In paragraph 10 of our most recent set of submissions, your Honour – and I’m not going to rehearse them. But every single complaint – all twenty – with one exception on 24 June – item 24. But all 28  
45 complaints – these rolling, if you like, sniping attacks at his disclosure that he has had to endure, distracting him from being able to focus on the substantive aspects of

the case which commenced on 27 July 2021 and continued all the way to 1 July this year. This is what he has had to deal with for over a year, your Honour.

5 Firstly, we deal with each complaint separately. Every single time there has been a complaint, it has been addressed. And I'm not going to rehearse the submissions. But initially, the first one started off saying he didn't disclose any interest in the Forum race car team. Well, that was dealt with and your Honour will see the reference to a response. And our submission is he never ever had an interest in a race car team. And we see this constant jumping at shadows and speculation as to what may or may not be about his defences – or sorry, about his resources. And what was interesting – or I should say, what was notable about what was the cross-examination of Mr Tesoriero – at no stage was it ever put to him – say – well, here's a big pot of gold – here's an asset – a really big asset that you can use to fund your litigation that you didn't disclose, nothing like that at all.

15 It's all of these little, "You haven't quite put this right," or you haven't – you know, "You're out by \$24,000 here." Therefore, your Honour – and I imagine the case against me .... because of these what we say are ragged edges of his disclosure it's going to be put to your Honour that he's not a reliable witness and you shouldn't accept his evidence. But there's no evidence before your Honour, not a skerrick of evidence to suggest that there is this large pot of gold that can otherwise support his defence to this case, and on it goes. I'm not going to go through each of them, your Honour. But your Honour can read them in the - - -

25 HIS HONOUR: I mean, it seems to me, without anticipating what Mr Giles is going to submit – but I presume that what is going to be – given the way he was cross-examined and what was put to him and what was not put to him, including the point that you just made - - -

30 MR HAYES: Yes.

HIS HONOUR: - - - it's not as to say that because of what you described as the ragged edges or the less-than-ideal aspects of the disclosure which you've made reference to being at the margins. The point to be made against that is, look, at the end of the day I need to be satisfied that I have obtained a complete and frank picture of his financial position before I exercise the discretion, and on the evidence I could have no real confidence in the accuracy of the material. That's, I think, the highest it could be put.

40 MR HAYES: We would say that would be overstating it if it was put on those terms. It would be a gross overstatement.

HIS HONOUR: Be that as it may, (1) you'd say it's a gross overstatement and, secondly, I presume what you would say or what you're saying is, "Look, this isn't a .... of perfection given the circumstances which you've raised. Although we accept there's ragged edges and it has been less than ideal in some respects, looked in the

broad and as a matter of substance he has obviously tried to do his best given the limitations he was – he has been under.

MR HAYES: That's right.

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HIS HONOUR: But in any event, in the absence of me being affirmatively satisfied that there is some undisclosed amount the interests of justice require this man has access to significant funds in order to properly defend the proceedings.

10 MR HAYES: Yes. Yes.

HIS HONOUR: Which leads me to this point – and I say this to you. One aspect of this which troubles me somewhat – and I understand the force of what you've said – is some aspects of the evidence where I think things are just put too highly or a good example is the one that we started with, the direness of the father's financial situation or the fact that 150,000 could not be an asset or because - - -

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MR HAYES: I'm going to come to the 150, your Honour.

20 HIS HONOUR: No. No. But those sort of - - -

MR HAYES: Yes.

HIS HONOUR: Those sort of aspects of the evidence which in one sense are a little troubling. But I must say – and this is as much a comment for Mr Giles' benefit as yours – even if I had some misgivings about aspects of that evidence, it doesn't really matter for present purposes - - -

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MR HAYES: That's right.

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HIS HONOUR: - - - because at the end of the day what I have to do is ensure that there's a fair trial - - -

MR HAYES: That's it.

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HIS HONOUR: - - - that he has access to adequate resources.

MR HAYES: That's where I was going to finish, your Honour. That's exactly the point, and we say that using that – that's – your Honour is ahead of me. That's where I was going to finish. That's exactly the point, and we say that, drawing upon what your Honour said using those two illustrations – we say that in some respects it betrays a lack of sophistication on the part of Ms Tesoriero in ..... your Honour looks at the 150,000, and I'm going to take your Honour through that in a moment cause I do wish to unpick that. And I – it will – I won't be long with it. But I do wish to put that in context, and we say that lack of sophistication on his part combined with the complexity and the onerous circumstances he's under explains why his disclosure

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could be seen with a very well-armed and big legal team against him – it can be seen as raggedy around the edges when its' chipped away at the way in which it is.

5 Your Honour, just dealing with that point, I will just get straight to the point on the 150,000. When you look at that carefully, your Honour – is – it starts out – and – yes. The fact that he didn't see the \$150,000 in the account at the moment in time as an asset – I can see why that's a matter of concern for your Honour, but it also betrays a lack of sophistication on the part of Mr Tesoriero in that sense, because what he has done, your Honour – there has been no act of concealment. He has 10 given evidence to your Honour – admittedly, it's not strictly correct that it wasn't an error. He's in error about that. But his understanding of it was it was a transactional account. And when your Honour goes through it, what's really important is that in his first affidavit – and this is – the criticism made of him is – if your Honour goes to his recent affidavit on 12 July at page 33 – and all this does – it underscores the 15 almost herculean task that he has been before him without full access to – with limited resources for his lawyers and accountants to deal with this. But if you look at line 23 - - -

20 HIS HONOUR: Sorry. This is page 33?

MR HAYES: 33 of his affidavit. It's in the spreadsheet. It's item 23. And this is a point that I expect will be made against me on the ANZ 14 Kirwin Road account in Morwell – this was the passage of cross-examination yesterday that dealt with the \$150,000 point, which – Mr Tesoriero erroneously, rightly or wrongly, said he didn't 25 consider it to be an asset.

HIS HONOUR: Well, I don't think there's much doubt whether it's rightly or wrongly.

30 MR HAYES: Well, rightly or wrongly for him. Your Honour, he's – I suspect he's not going to bed reading AASB 18 every night. But nonetheless, your Honour, he was in error about that. But his understanding – and this is what it revealed. His relatively unsophisticated understanding was that this was a transactional account, and if you go to - - -

35 HIS HONOUR: Well, I suppose your point is he has listed the account.

MR HAYES: He has listed the account secondly.

40 HIS HONOUR: And if you were playing a game of hide the sausage, why would you even refer to the account?

MR HAYES: Well, he has even got the name of the account wrong. He has got the account number right. But it just exposes the difficulties he has operated – been 45 operating under. The sausage is there, your Honour, and he was – the sausage was grilled by Mr Giles. But we say Mr Giles burnt the sausage, and it's not worth a look, because if your Honour goes back to his earlier affidavit – and your Honour

will see that, in the court book, at page 186 – and this is the affidavit he did under pressure after two weeks. And this exposes how badly the sausage was burnt. Allow me to find it, your Honour. Your Honour will see there – I’m sorry. His first affidavit at page 33. My apologies, your Honour.

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HIS HONOUR: Yes.

MR HAYES: Your Honour will see the very thing he was criticised of he actually did in that affidavit. I’m just looking for the – I will find it. I did have it.

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HIS HONOUR: I think - - -

MR HAYES: But your Honour will see he actually disclosed a balance in there – so what this document here at 33 doesn’t have - - -

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HIS HONOUR: \$32,141.56.

MR HAYES: That’s the one. 33,000, so he has - - -

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HIS HONOUR: Page 17 in annexure B.

MR HAYES: He has disclosed the balance. Sorry, it wasn’t his first affidavit. It was the one he filed a month ago.

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HIS HONOUR: Yes.

MR HAYES: So four weeks earlier on, he disclosed the balance. He has then – that column somehow has gone missing in this one, but nonetheless there was a balance in that account four weeks ago. The account is there. It’s wrongly labelled, and then in his understanding – and, indeed, what was apparent was the 150,000, in some respects, is an illusory figure, because approximately \$100,000 comes out of that account each month on interests payments.

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HIS HONOUR: Yes.

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MR HAYES: 80 to 100 thousand. I don’t know the exact number, your Honour, but whatever it is that leaves you with a balance of around \$65,000, which is what was being put to Mr Tesoriero by Mr Giles, that as of the time of this affidavit, sworn a month later or three weeks later, in that account, where there was once \$32,000, there should have been a balance of about – either 150 or then, after interest payments are taken out, \$65,000. So we say that, really, if you look at it in that sense, your Honour, and you look at it in context, the cross-examination really goes nowhere.

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It doesn’t really assist your Honour terribly much in what your Honour is charged with adjudicating today, on the release of an appropriate amount of moneys to allow the fair trial of – or to allow the fair trial for Mr Tesoriero to defend the case that’s

brought against him. Your Honour, likewise, the \$24,000 payment in respect of the ANZ statement – there was – we say that, in the overall scheme of things, it’s an anomaly. He wasn’t able to explain it and, again, he hasn’t had full access to his material or anything of that nature, your Honour, but, again, you heard how he was  
5 re-examined on that issue and as to how he dealt with it and, effectively, your Honour, there are multiple property accounts and assets and multiples companies, but the one thing your Honour can be sure about is that 24,000.

10 No evidence at all that he has been using that money for his own personal benefit or anything of that nature, your Honour – nothing at all. It’s just a transaction that he wasn’t able to – he said – his best explanation, your Honour, was, “It must be for interest, and I would say it’s the ANZ,” and he has given that answer where, effectively, he has given evidence about there being debtor accounts and how the ANZ, I think his words were, does all of the debits and transfers themselves.

15 HIS HONOUR: I understand what you say about those things, I think. Can I just raise - - -

MR HAYES: Yes, your Honour.

20 HIS HONOUR: - - - two other aspects of the evidence - - -

MR HAYES: Yes, your Honour.

25 HIS HONOUR: - - - and get your submission about what I should do with them and whether you think it’s necessary for me to deal with them at all.

MR HAYES: Certainly.

30 HIS HONOUR: One is the Judo Bank evidence relating to the deed of forbearance. The other is the cross-examination concerning exhibit F and page 366 of his exhibit, concerning the email from Mr Mitchell. My inclination, subject to anything Mr Giles says, is that it’s unnecessary for me to make – one of the things that occurs to me is, in circumstances where I may well have to hear Mr Tesoriero give evidence  
35 again – I may or may not – I should be somewhat circumspect in dealing with any issues of credit at this stage.

It’s quite an interesting – it’s something I’ve thought about in other cases where one has cross-examination in interlocutory hearing and one is going to be a trial judge.  
40 In a sense, it’s difficult to prevent oneself making – forming assessments in relation to matters after you’ve heard someone being cross-examined. Is it better to be transparent about your findings in relation to those things, even though it may not be necessary for the disposition of the case, so that people understand how – what views one has formed, or is it best not to make those findings? I would be interested in  
45 both parties’ submissions in relation to that.



MR HAYES: We say two things, your Honour. Firstly, there's no need for you to make any finding in respect of exhibit F, because it's not going to assist your Honour.

5 HIS HONOUR: Well, in a sense, with exhibit F, I think I'm – in the absence of expert evidence, in a way, I mean, I – for all I know, there might be different printouts, but by – if it's in different – if it was forwarded to different recipients – I mean, I – if it was taken from the mailbox of different recipients. I don't really know, one way or the other, in the absence of some – particularly a finding of that  
10 seriousness.

MR HAYES: Sure.

15 HIS HONOUR: That there would be an insecure evidentiary foundation, at this stage, I would have thought, to make it.

MR HAYES: That's right. It would be premature, and - - -

20 HIS HONOUR: There is no case in reply in relation to that.

MR HAYES: Well, we would say it's premature. Secondly, there's no reason – there's three things. Firstly, it's premature. Secondly, there's no reason to make a finding of credit on that discrete issue, because what it won't do in terms of weight – it won't disturb the overwhelming weight of the evidence, if one looks at everything  
25 he has disclosed, the fact that he has got little or no resources to fund his case. So it doesn't really tip the scales on – when you look at the extent of his ongoing disclosure to the best of his ability, less than perfect as it is. It doesn't – it raises no more than, perhaps, a quizzical eyebrow of concern, and that would be well-placed. I shouldn't say that, your Honour. That would be – it would be easy to understand if  
30 that were to occur.

35 And the third point, your Honour, is that in terms of the discrete issue itself, there may well be an explanation, and this isn't a trial. It has got to be remembered it's an interlocutory application, and even in the absence of an explanation, your Honour, there are – it doesn't – it doesn't pull down the whole house of cards. There are plenty of cases that your Honour has, no doubt, heard and participated in where witnesses can be accepted on all of their evidence except one discrete matter, and they're either in error – and there has been no real opportunity to explain it.

40 HIS HONOUR: No, no. I understand that point. Perhaps I expressed myself poorly.

MR HAYES: Yes.

45 HIS HONOUR: I'm not really concerned about that, because, to be perfectly frank, I don't think – my current view, subject to hearing Mr Giles, is it's really not material in my decision-making process relating to the issue.

MR HAYES: That's right.

HIS HONOUR: What I'm saying to you, in all candour, is that one forms a view.  
It's whether you wish me to express that view or whether it's best for me to be  
5 circumspect in a situation where I'm also slated to be the trial judge.

MR HAYES: If you're going to be the trial judge, your Honour, we would say  
discretion would be the - - -

10 HIS HONOUR: All right. Well, as long as it's not - - -

MR HAYES: Yes.

HIS HONOUR: - - - suggested at some other place that – for example, that you say  
15 that I should have expressed my view, because otherwise you could then have  
formed a view whether or not you thought it was appropriate that I ought disqualify  
myself from hearing the trial.

MR HAYES: No.  
20

HIS HONOUR: All right.

MR HAYES: Because we say – and we understand where your Honour is - - -

25 HIS HONOUR: I just wanted to say that to you, because I think it's - - -

MR HAYES: We're grateful for that, your Honour.

HIS HONOUR: Look, I think there are a lot of advantages to the docket system, but  
30 that's one of the potential downsides to a docket system – is the fact that - - -

MR HAYES: We would say two things, and we're grateful to your - - -

HIS HONOUR: And I'm not suggesting I've formed a view one way or the other.  
35

MR HAYES: No.

HIS HONOUR: But all I'm saying is, if the parties wish me to do so, I would reflect  
40 on that.

MR HAYES: Well, there are three things that – and we're grateful for your Honour  
raising it. There are three things that arise from it. Firstly, even if it was material –  
and it isn't – that kernel of evidence does not bring down the house of cards.

45 HIS HONOUR: No. I understand what you say about that.

MR HAYES: Secondly, your Honour, witnesses can be accepted on all of their evidence but not on a very narrow part of it or parts of it. And, thirdly, your Honour saw evidence given by Mr Tesoriero, and there are – I dare say, your Honour, there is much of what he has given evidence before your Honour over the last two days that  
5 you would accept, and where he has been able to support what has been a rather cynical and suspicious approach to what he has disclosed by the applicant. You look no further than the petrol stations and – where he has been able to support the valuations given as what he has disclosed to your Honour. So there are many aspects of his evidence that you – and a large part of his evidence, your Honour, that you  
10 wouldn't be troubled by. So in those circumstances, your Honour, we wouldn't ask or invite your Honour to make any specific finding and nor should you.

HIS HONOUR: All right. I understand.

15 MR HAYES: Thank you, your Honour.

HIS HONOUR: Thank you.

MR HAYES: I think that deals with exhibit F. The forbearance deed, your Honour,  
20 is - - -

HIS HONOUR: Pretty much the same boat.

MR HAYES: Same boat, yes. And the evidence really only showed double  
25 payments in April. He has given evidence about getting behind and catch-ups and where rents can get behind. That's perfectly plausible. There's – there is – and that's where the evidence is – there's evidence on either – unremarkable on either side of that. And look, the worst it gets for him is that even – he's either catching up a month behind or he's a month in front. That's – at the end of the day, it's  
30 discharging a liability. And the best it gets for Mr Giles is he has got a month in front. On Mr Tesoriero's evidence, he's catching up for a month behind. So again, it really goes nowhere in terms of his overall wealth. That being the case, your Honour, I will just see that I've dealt with those matters. But I should have thought, subject to your Honour's concerns, I – does your Honour have any other matters you  
35 would like to hear me on in response to Mr Tesoriero's evidence under cross-examination?

HIS HONOUR: No. That's fine. There's no particular questions I have.

40 MR HAYES: That brings us back then, your Honour, to where we are here. We say that your Honour should - - -

HIS HONOUR: Yes. I'm sorry.

45 MR HAYES: And, your Honour, I perhaps - - -

HIS HONOUR: Did you want to say anything about that figure that I indicated at page 16 on 1 July 2022?

MR HAYES: Sorry, page 16 on the - - -

5

HIS HONOUR: On the 1<sup>st</sup> – I – on 1 July I indicated I would have thought on those figures an amount of 1.25 – that’s leaving to one side the Fortis Law material. And you said something at – “1.25 – in that ball park, your Honour. Yes, maybe that would be getting close to the amount, I would think.” Is there anything else you wanted to say about that?

10

MR HAYES: It’s getting close, your Honour, but it’s not there, we say.

HIS HONOUR: I thought you might say that. All right.

15

MR HAYES: I will take it, your Honour. But we say - - -

HIS HONOUR: No. I understand.

MR HAYES: We say the amount is 1.5 or 1.496. And I did perhaps – the position – I overstated it, your Honour. My instructors were not paid – or there has not been \$270,000 paid up until November. The position is worse – it was \$180,000 that was paid up until November last year. So – and that’s dealt with in - - -

20

HIS HONOUR: \$180,000, yes.

25

MR HAYES: Yes. It’s dealt with in the 17 June affidavit.

HIS HONOUR: That’s September – November.

30

MR HAYES: Yes.

HIS HONOUR: Yes.

MR HAYES: So it’s – the position is far worse.

35

HIS HONOUR: But that’s – your solicitors came on in September.

MR HAYES: I think that’s right. September – October, wasn’t it? I’m told October, your Honour. Well, there’s – I think it was late September is my recollection, your Honour. There was - - -

40

HIS HONOUR: All right.

MR HAYES: It was – certainly, counsel – we came on board in – I think it would have been mid to late October. And I think the change of team started in September. So, your Honour, we say that – and this brings us back to the expert allocation - - -

45

HIS HONOUR: Now, well, what - - -

MR HAYES: Your Honour said - - -

5 HIS HONOUR: Yes, I saw a reference to that. What is the expert evidence that you were suggesting that you might adduce?

MR HAYES: The expert evidence, if it is lead – if he goes into evidence is – we think that there are other ways to deal with this issue because it shouldn't be as a  
10 matter of controversy that Mr Tesoriero invested a substantial amount of money in Forum. And we will endeavour to deal with that prior to the trial through other processes where we need not trouble your Honour with that at the trial. And I'm thinking with – through the mechanism of the court's processes of notices to admit facts and documents – that we can deal with it that way. Your Honour, the - - -

15

HIS HONOUR: Well, can I say to you I'm intent in relation to this hearing to try to run it in accordance with the overarching purpose.

MR HAYES: Yes.

20

HIS HONOUR: And I see no reason why this case should be different from any other case in my docket where I require the junior counsel to sit down in a room together and prepare an agreed narrative – background facts – which are either admitted or not in dispute. And I would have thought the vast amount of the  
25 adjectival material in this case would not be the subject of dispute. And the quicker that task happens, the better. I don't want to receive from Westpac volumes and volumes and volumes and volumes of documents. It's just not the way the litigation should occur in 2022.

30 MR HAYES: We would concur with everything your Honour has said with the added caveat that the room have natural light and air-conditioning for junior counsel. Your Honour, that of course, requires resources for that to occur.

HIS HONOUR: Well, I'm not sure whether that first submission is one I necessarily  
35 agree with. There was a reason why 17<sup>th</sup> century judges locked up juries without bread and water. To make sure that they actually did the task to escape. So perhaps on that - - -

MR HAYES: Well, relative to me, your Honour, Dr Turner certainly needs to eat  
40 more bread. But nonetheless, your Honour, we would like or we would hope that there would be – with – as part of the proper preparation of this matter, Dr Turner and Ms Hamilton-Jewell – Mr O'Haire – my other junior.

HIS HONOUR: Liquidators have pored over Forum Finance presumably in great  
45 detail.

MR HAYES: Yes.

HIS HONOUR: No doubt, a vast amount of money has been spent by the liquidators and by the solicitors acting for the liquidators.

MR HAYES: And by the applicant.

5

HIS HONOUR: I don't understand why it is that the key propositions that Westpac wish to establish around the hinterland of the case – but are important adjectival material – isn't able to be extracted and be the subject of being presented to me in a narrative form.

10

MR HAYES: Well, we would - - -

HIS HONOUR: If material is put bona fide in dispute by your client, which ought not to be put bona fide in dispute, then that's what the obligations on your solicitors and counsel is meant to prevent. And there's conscientious people on all sides in this case. And I'm sure people will approach it in the right way. But I really want to get to that stage. So the whole idea that I could – that expert evidence of that nature could even be talked about – is just something which I don't understand.

20

MR HAYES: Well, we would share that hope, your Honour. And which is why we would say – which is why we've carved out the \$370,000 provision for expert evidence. That we would only seek a release of that money – of that \$370,000 for expert evidence if we made an application to your Honour for leave to adduce expert evidence. Because on the previous occasion, your Honour, I think, indicated that you wouldn't entertain expert evidence without an application for leave being made. And so we're not going to trouble your Honour with that \$370,000 expert allocation today because we also, in light of what has fallen from your Honour's – from the bench today, your Honour – in respect of – if Mr Tesoriero's case is appropriately resourced, then we would share that hope that that discrete issue and those types of issues, your Honour, could result in agreed facts and an agreed bundle of documents, if necessary. So that's something that junior counsel and our instructors should be able to address. Which is why we don't press today for that \$370,000 because we're similarly optimistic, your Honour, that if we have the resources to do that, then that would avoid the need to draw down on those funds.

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30

35

HIS HONOUR: All right.

MR HAYES: And while, your Honour, before – I don't want to get involved in horse trading with your Honour or anything – your Honour had in mind a figure of 1.25 million or something of that nature. I said it would take a little bit more. We do press for the 1.496. Your Honour will see how that's set out in Mr Nasimi's affidavit, and we say that relative - - -

40

HIS HONOUR: Just give me – could you just give me a reference to where best part - - -

45

MR HAYES: Sure.

HIS HONOUR: - - - best place I see that.

MR HAYES: Yes, your Honour. Your Honour will see that in the court book. Mr  
5 Nasimi's affidavit, your Honour, sets that out in his 28 June affidavit, which is set  
out at 562A to 616A of the court book.

HIS HONOUR: Five - - -

MR HAYES: 562A - - -

10 HIS HONOUR: 562A.

MR HAYES: - - - to 616A of the court book. And it's also addressed in Mr  
15 Tesoriero's affidavit of 17 June 2022, which is at 492 to 562.

HIS HONOUR: So reply to – yes, I – I've got a box there which is what I used  
before. This is what I've marked up before.

MR HAYES: Yes. So we say, your Honour, that – and then important thing in  
20 considering that, we say it's not an ambitious figure or anything of that nature. It's a  
realistic one, and your Honour can take comfort from that by looking at – if one, for  
a moment, considers the equality of arms principle – and look, you have a very  
apparent what Mr Tesoriero was up against having seen what he has had to face in  
the last two days, your Honour, in terms of a quality of arms and relativity of  
25 resources. Even where fully afforded what we say is a proper grant from your  
Honour to afford a fair trial to Mr Tesoriero, it would be a relatively small amount  
compared to what both Westpac and the liquidator have already spent on this  
proceeding to date.

30 HIS HONOUR: Yes, thank you.

MR HAYES: If your Honour pleases.

HIS HONOUR: Mr Giles.

35 MR GILES: Your Honour, we prepared the short note as - - -

HIS HONOUR: Thank you, I'm grateful.

40 MR GILES: Foreshadowed, requested, suggested.

HIS HONOUR: Hope you didn't impose too much on Ms Hamilton .....

MR GILES: Your Honour, it was already underway. We will have one filed on the  
45 court file electronically as well.

HIS HONOUR: Should I read that before you commence, Mr Giles? Should I read that, Mr Giles?

5 MR GILES: I think just, yes, quickly cast – yes, your Honour. I do want to say a couple of things by way of preamble, but having read it .....

HIS HONOUR: Yes, thank you. That's useful.

10 MR GILES: I'm grateful, your Honour.

HIS HONOUR: I think, at the end of the day – I mean, I understand the force of what has been submitted here. I note what you put in respect of Westpac does not oppose a variation of the freezing orders to increase the exception provided for reasonable legal expenses the amount of 1.250, reflecting what I said on the last  
15 occasion. But then, in paragraph 3, it says, well, that's fine in respect of the \$462,511.65, which is in the controlled moneys account. Does that mean that you accept that there should be an increase provided for in the legal expenses up to 1.250, but there – but, sorry - - -

20 MR GILES: I should explain.

HIS HONOUR: - - - there's no way – yes, can you explain how that works.

25 MR GILES: Of course. There are three aspects, too, by way of preamble, your Honour, and also to answer your Honour's question. There are three aspects to this application. There is the living expenses, including the historical living expenses, aspect.

30 HIS HONOUR: So that's \$200,000 plus \$5000 per week?

MR GILES: Right, \$5000 per week is already allowed.

HIS HONOUR: Already allowed, \$5000.

35 MR GILES: Always has been.

HIS HONOUR: I see.

40 MR GILES: I say always has been. I might be wrong about the first week or two, but - - -

HIS HONOUR: Yes, yes.

45 MR GILES: - - - always has been. It has been met presumably. I mean, your Honour knows the evidence that Mr Tesoriero's parents have been supporting. Now, that doesn't mean that he gets the historical amounts back.



HIS HONOUR: This is what I was trying to understand, because what happens, as you no doubt are aware, when the court makes a freezing order, is that the banks often over-comply in the sense that they really do prevent any access to the account at all.

5

MR GILES: For a period of time.

HIS HONOUR: And I think what has occurred is that even though he has been allowed access for \$5000 per month, the bank has prevented – the bank has not allowed the withdrawal of five – withdrawal of any money including at \$5000 per month. Am I – have I captured what I think the issue is, or you don't know?

10

MR GILES: Well, yes. I think that's the issue.

15 HIS HONOUR: Yes.

MR GILES: That's said to be the issue. Now, as your Honour was putting ..... though, the banks react in a manner which is conservative, over-compliant. Of course, talking about banks other than my client at the moment. Don't think that your Honour experienced tells that they do so for a period of a year and plus normally. It can be – there is no doubt it can be a short term problem, and it's a real problem with freezing orders on an operating business.

20

HIS HONOUR: Well, usually a – usually there's a solicitor at the bank.

25

MR GILES: ..... sort it out.

HIS HONOUR: Because usually a solicitor's letter to – well, it used to, in days when banks had in house legal departments.

30

MR GILES: They still do.

HIS HONOUR: You would go to someone like Les Taylor who would say, read the court order, and it would be sorted out. But banks don't seem to have in house legal departments anymore, so it might make it slightly more complicated.

35

MR GILES: Well, I'm not sure about the first, your Honour. Well, in fact, I'm sure they do. But - - -

HIS HONOUR: Well, they don't have in house legal departments like they used to have.

40

MR GILES: But the point is this, your Honour: On that, the lack of clarity of – well, there are two points. First of all, the blur as to what has happened, what's at port, where money has come from, where the money that was disclosed in the first affidavit is – that is, the July '21 affidavit has gone. What he doesn't need is to be – what there is no entitlement to (a) the lump sum backwards, and - - -

45

HIS HONOUR: No, I understand that. But just looking forward, I hear what you say about what has occurred in the past. Looking forward, though, what do I do to secure the outcome anticipated by my former order?

5 MR GILES: Yes.

HIS HONOUR: Do I vary the order to make it more express that he's entitled to get the \$5000? I mean, one of the things that I heard, which – today is that he couldn't get access to the NAB bank statements except in an encrypted form. Why?

10

MR GILES: As I say, I don't know other than this: the NAB did actually produce bank statements when produced to the court with an – in an encrypted form but with a password on the subpoenas where the - - -

15 HIS HONOUR: Why? Well, what right of the bank is not to comply with an order of the court to produce statements and put encryptions on material? I mean - - -

MR GILES: Well - - -

20 HIS HONOUR: If I had been aware about that, I would have got the proper officer to come along and explain why there hadn't been proper compliance with the subpoena.

MR GILES: Well, I'm not sure that it – I must say, I'm not here for the NAB today, but I'm not sure that that's – other than where the code is produced to the court at the same time, it has a point that only people who are meant to get it get access to it.

25

HIS HONOUR: That's not the bank's business. It's the court's business.

30 MR GILES: Well, I'm not here - - -

HIS HONOUR: They should produce documents in compliance with the orders of the court, that is, a document which records the information in a readable form, and if they're concerned about other people getting access to it, then that's the reason why the implied undertaking exists.

35

MR GILES: As I say, I'm not here for the NAB today, your Honour.

HIS HONOUR: No, I know, but the - - -

40

MR GILES: But, I mean, I - - -

HIS HONOUR: But the point I'm making, Mr Giles, is I can't fail to recognise that, often, there's a disconnect between what the court endeavours to preserve, that is, a tempered regime which allows access to funds for living expenses and a freezing – indiscriminate freezing of bank accounts, non-provision of statements and various other things, and that's what I'm – I think what I would like is your assistance in

45

what I can do in order to make sure – and I’m not being overly critical, because these things are complicated, these orders that people get, but something that can be done, and perhaps it’s a joint letter from the solicitors or something to the bank, in order to ensure that the intent of the order is followed.

5

MR GILES: Might I say, there’s no difficulty from our end, with respect to the bank that I’m here for today - - -

HIS HONOUR: Sure, sure.

10

MR GILES: - - - about that. I mean, if one were to ask the question at a more policy-based level, there is already, one knows, a direction – a note to the order – the standard form order that - - -

15 HIS HONOUR: Yes, yes.

MR GILES: Yes. At a more policy-based level, that is something which will be sensibly the subject of discussion by a rules committee or whoever promulgates that.

20 HIS HONOUR: Yes.

MR GILES: Because it’s obvious what it’s intended to do. Standing where I stand and as your Honour sits where your Honour sits, it’s pretty clear.

25 HIS HONOUR: Yes.

MR GILES: But having said that, we all know that it hasn’t quite achieved what it should do.

30 HIS HONOUR: Yes.

MR GILES: Could I say, returning to the present, there is no difficulty and never has been a difficulty with \$5000 a week - - -

35 HIS HONOUR: Going forward, yes.

MR GILES: - - - coming out. Now, there’s one caveat. Of course, where does it come from? Does it come from funds over which we claim proprietary relief?

40 HIS HONOUR: Well, if it doesn’t come from those funds, where does it come from?

MR GILES: Well, that’s the point. That’s the blur, your Honour. Where does it come from? The point about the four – the sum that we have identified in paragraph 3 is that that sum is up – that is the sum of money which is in one of these funds, the Margaret – the one produced on the sale of the 23 Margaret Street property, over which no one claims proprietary relief. That’s - - -

45

HIS HONOUR: At 462?

MR GILES: Quite.

5 HIS HONOUR: Yes, yes, yes.

MR GILES: So that – the point – our point is this. No problem going forward at \$5000 a week.

10 HIS HONOUR: Yes.

MR GILES: I accepted that I wouldn't quibble about \$1.25 million.

HIS HONOUR: Yes.

15

MR GILES: Your Honour will – may remember or may have a note on page - - -

HIS HONOUR: Yes. No, no.

20 MR GILES: .....

HIS HONOUR: I've reacquainted myself.

MR GILES: Yes, because there's not going to be an affidavit-in-chief.

25

HIS HONOUR: As often as is the case, I've come round to thinking that what I suggested may not be a bad idea. Call me old-fashioned, but - - -

30 MR GILES: Yes. No, no. I won't say anything more. That brings us to the third issue. Does that money come from a fund over which - - -

HIS HONOUR: No. I understand.

35 MR GILES: - - - our clients and our learned friends' clients claim proprietary relief? And that's important on the onus point that we make.

40 HIS HONOUR: Yes. So it has really come down to that, hasn't it? May I – because this is what I thought when I read this helpful document which you just handed up. This has really come down to – I will leave aside Mr Hayes thinking that I should go above that preliminary indication that I gave, but the real dispute is that you say there's no issue in respect of 462,000 and the 1.25 – no issue in respect of the \$5000 going forward. The issue is that I need to be satisfied on the – that I have got the full picture of what Mr Tesoriero's financial position is. I haven't, hence he hasn't discharged his onus of persuading me that there isn't any other assets available  
45 in respect of which the legal expenses could be paid. It's really - - -

MR GILES: Quite, quite.

HIS HONOUR: That's really the beginning and end of it, really.

MR GILES: That's the beginning and the end of it.

5 HIS HONOUR: Yes.

MR GILES: Discussion about whether the July '21 affidavit was done in a hurry or the circumstances of it is not today's point.

10 HIS HONOUR: Yes.

MR GILES: This is not a contempt motion. This is has he persuaded your Honour today to exercise that discretion.

15 HIS HONOUR: I just simply have no idea what this man owns and what he doesn't own - - -

MR GILES: Quite.

20 HIS HONOUR: - - - because, apart from anything else, it's labyrinthine, and perhaps that's a - perhaps that's a consequence of arranging your affairs in such an extraordinarily complex way - - -

MR GILES: Yes.

25

HIS HONOUR: - - - presumably, as a perceived financial ..... there's a perceived financial benefit in complexity, but this is one of the downsides of it.

MR GILES: Quite.

30

HIS HONOUR: I understand.

MR GILES: Your Honour has no idea. At least, your Honour has the John Tesoriero Family Trust now - deed, but your Honour knows nothing more than -  
35 about that. We don't know about Haidi, other than, apparently - - -

HIS HONOUR: Yes, two or three other trusts - - -

MR GILES: - - - two or three other trusts that - - -

40

HIS HONOUR: - - - which may or may not - which - in respect of which it may or may not be a beneficiary.

MR GILES: Quite. Just doesn't know. Could have been done or, at least, even if -  
45 and it's difficult to do and, as your Honour says, it's a consequence of the arrangements that were made at an earlier time for, no doubt, perceived good commercial reason.

HIS HONOUR: Yes.

MR GILES: To which – could I then just tease out one or two points, very briefly.  
Property valuations – the chronology, of course, is important. The valuations  
5 your Honour knows from exhibit G, dated between March and the end of April 2000.  
True is it that one may have understood them being used in July 2001 – July - - -

HIS HONOUR: 2021.

10 MR GILES: 2021.

HIS HONOUR: 2021, they were probably pretty conservative. 2022, they may not  
be looking as conservative.

15 MR GILES: Maybe not in July 2022.

HIS HONOUR: They may have - - -

MR GILES: But, I mean, that's all just speculation, your Honour.  
20

HIS HONOUR: July 2022, yes.

MR GILES: What your Honour has got is a chronology of valuation,  
March/April 2020; an affidavit based on that a year – just over a year later, in  
25 July '21; April '22, what is put to the financier, very substantially higher; and then  
July '22, where there's no difficulty, might I say, in terms of pressure of time or the  
like - - -

HIS HONOUR: Yes.  
30

MR GILES: - - - returning to - - -

HIS HONOUR: When did lockdown commence in – these are all – these are – the  
properties the subject of exhibit G – they're all – am I confusing this? They're all  
35 petrol stations?

MR GILES: They are. They are country petrol stations.

HIS HONOUR: Yes. You wouldn't - - -  
40

MR GILES: Well, could I say, non-suburban.

HIS HONOUR: Country petrol stations, not properties that – perhaps it's not  
unduly stretching the bounds of section 144 of the Evidence Act to reach the  
45 conclusion that country petrol stations may not be as affected by COVID-style  
fluctuations as other commercial property, potentially.

MR GILES: Quite.

HIS HONOUR: Yes. 18 June, I'm told, was the date of the lockdowns commencing in Victoria, but I don't really think that matters for present purposes.

5

MR HAYES: No, April, your Honour. There were six lockdowns in Victoria. The first one happened in April. There were instances where the entire state was locked down and then instances where the so-called ring of steel around Melbourne locked down the city but didn't lock down rural Melbourne. So country Victoria was very much affected, your Honour. It was a very different proposition in Victoria to what it was in New South Wales.

10

HIS HONOUR: Yes.

15 MR HAYES: And I do say that with some bitterness, your Honour

MR GILES: That just adds to rather than detracts from the lack of clarity. The – this is just in the order that it was arranged. The forbearance deed, of course, goes to the income. Your Honour might have thought that you would know what his income is – monthly income and liabilities were. Now, I – the affidavit evidence would lead you thinking that he was paying \$58,000 on Berkeley Street.

20

HIS HONOUR: On?

25 MR GILES: The Berkeley Street property, 33 plus 25.

HIS HONOUR: I must say to you, there's a lot about the evidence that – to use a neutral term – put it this way. I don't think Mr Hayes was engaging in his – in any degree of overstatement by saying it's a little ragged around the edges when it comes to disclosure.

30

MR GILES: Yes, your Honour.

HIS HONOUR: I accept that. And there's some aspects of it which, without going further than it's necessary for me to go, are troubling. I didn't come down in the last shower. Having said that, the fundamental issue, it seems to me, Mr Giles, if we can cut to the chase – and why don't we – is you're instructed by a large firm with very large resources. The amount of correspondence that I have seen in relation to this matter is huge. Look at these letters. Look at the – I mean, is there any suggestion that that table in the supplementary submissions of Mr Tesoriero isn't a correct statement of the interrogation about these various topics?

40

MR GILES: ..... put any evidence - - -

45 HIS HONOUR: That is, those 28 - - -

MR GILES: No.

HIS HONOUR: - - - issues.

MR GILES: No. That's true. I mean, some of them, by the way - - -

5 HIS HONOUR: But this court – but this - - -

MR GILES: It's – that has been accepted.

10 HIS HONOUR: I understand that, and I understand why people – but this causes individuals to have to spend money and solicitors to have to spend money.

MR GILES: We accept that.

15 HIS HONOUR: Your solicitors to spend money, their solicitors to spend more responding. And, I mean, I'm not being critical of anyone. All I'm saying is that it – there's a lot of process costs which are easy for your client to absorb.

MR GILES: Well, it has got the money to do it.

20 HIS HONOUR: Well, it has got the money to do it.

MR GILES: It has got the money to do it. I don't know that we – and - - -

25 HIS HONOUR: As – being the recipient of - - -

MR GILES: I've got to say, it has got the money to do it. Whether it's - - -

HIS HONOUR: - - - payments in - - -

30 MR GILES: - - - easy to do it in - - -

35 HIS HONOUR: - - - response to memoranda of fees I've sent to large financial institutions, I can – I understand that they probably didn't – the banks didn't pay those necessarily happily, but they paid them, and - - -

MR GILES: Well, it's an allocation of resources that, at the end of the day, depletes that which goes to the shareholders.

40 HIS HONOUR: All right.

MR GILES: But – yes. They can pay it.

45 HIS HONOUR: But the fact is that the trial – there is something important in the administration of justice that it be – that there be an equality of arms and – within limits, that is, within limits – equality of arms doesn't mean there's a perfect balance. What it means, though, is someone has the ability to obtain a fair trial. That's really it means. Put it - - -



MR GILES: Adequate arms rather than equality, if one were to - - -

HIS HONOUR: Yes.

5 MR GILES: - - - actually - - -

HIS HONOUR: Yes.

10 MR GILES: - - - use a better way of putting it.

HIS HONOUR: Well, I mean, that's Lord Woolf's expression in a slightly different context.

15 MR GILES: Quite.

HIS HONOUR: But what really matters is that I need to ensure that Mr Tesoriero gets a trial according to law and a fair trial and has sufficient resources given the scope and nature of the case in order to run that trial, and it seems to me that that sort of figure that I'm talking about – that I've talked about – that you agreed is that amount.

20 MR GILES: I'm not debating the figure.

HIS HONOUR: Now – but the only question is – the only question then becomes the onus question.

25 MR GILES: Quite.

HIS HONOUR: Whether or not that trumps the fact that you've got and others have got a proprietary claim in respect to some of these properties of which there be a diminution. That's really what it comes down to.

30 MR GILES: Quite. That's precisely what it comes down to. We've left the \$24,000 out of the note not because we wanted to deprecate it. It was just doing the note quickly. And your Honour knows it's page 1 - - -

35 HIS HONOUR: No. No. No. I see.

40 MR GILES: - - - of CMM26. Otherwise, yes. It's the onus point. It's just not there. Your Honour doesn't know, and I have to keep – quite frankly – true it is those who instruct me have written asking questions yet I am today on this application to get money from funds which we claim we have proprietary relief over – I've got to ask absolutely blind questions of this man about what his assets are – guess – and we just don't know. That's the point. Your Honour need make no finding about the - - -

45 HIS HONOUR: Has there been a liquidator's examination of Mr Tesoriero?

MR GILES: I don't believe so.

HIS HONOUR: Yes. All right. Well, I think I understand the way you put it.

5 MR GILES: Your Honour doesn't need to make a finding about page 366. If I might have one second, your Honour. No. There's nothing further, your Honour.

HIS HONOUR: Ms Beechey?

10 MS BEECHEY: Just a few sentences, your Honour. I gratefully adopt Westpac's written submissions both of 30 June and those handed up today, and I also rely on my written submissions dated 18 July, if your Honour has had an opportunity to see those.

15 HIS HONOUR: 18 July. Let me – yes. I have seen those. Just let me reacquaint myself. I looked at them the other day. Just bear with me. You're really concerned about 23 Margaret Street.

MS BEECHEY: Yes, your Honour.

20

HIS HONOUR: Now – in respect of which Westpac has a proprietary claim for 67,638.

25 MS BEECHEY: We might be able to assist with the figures, your Honour. The figure to which both Westpac and my client consent to have released from the controlled moneys account was 462-odd thousand. The gap between that and the figure of 1.25 million, which your Honour has mentioned today, is a gap of \$787,488.35. In my submission, this should be dealt with by considering what Mr  
30 Giles described as the onus question or the blur. If we just take the simple fact that there was \$65,000 in the bank account – at least \$65,000 in the bank account of 14 Kirwin Road that wasn't disclosed and we multiply that by the 29 accounts of – in which Mr Tesoriero has an interest, even that comes to over \$1.8 million. The extent of the blur is far more than \$787,000. So in my submission, Mr Tesoriero can find in  
35 his own resources, if the freezing order is varied to allow him to do so, sufficient funds to meet his legal expenses. And - - -

HIS HONOUR: Can I ask – sorry. I didn't mean to interrupt you. Go ahead.

40 MS BEECHEY: And my only interest in that is to the extent that the funds of 23 Margaret Street would be affected if your Honour made an order otherwise.

HIS HONOUR: If I were to form the view that in that – he should have access to this 787,000-odd figure, what in the overall justice of the case would be the best way of devising that as between the various persons who have proprietary claims? That  
45 is, there would have to be some sort of pari passu type mechanism which would mean that it would diminish people's proprietary claims in some sort of equitable

way depending upon the extent of their proprietary claims. Is that something that could be worked out?

MR GILES: Yes.

5

MS BEECHEY: I will let Mr Giles address that first, I think.

HIS HONOUR: Yes.

10 MR GILES: It can be worked out.

HIS HONOUR: Yes. Yes. Okay. Yes. Thanks.

MS BEECHEY: We already know the proportions. That's all I have to say.

15

HIS HONOUR: Thank you, Ms Beechey. Yes, Mr Jameson.

MR JAMESON: Thank you, your Honour. Just two very brief points. The first is that I rely on the written submissions of the liquidators dated 1 July 2022. The limited purpose of those submissions is simply to identify that the source of the funds available, obviously, can't be funds owned by companies in liquidation, it's a matter Westpac has raised in their written submissions, or the subject of a receivership. Other than that, I don't wish to add anything further to what I have said in writing.

20  
25 HIS HONOUR: Can you give me an indication of what that would stop particularly – or the – the external administration of the companies is before me.

MR JAMESON: Sorry, your Honour?

30 HIS HONOUR: The external administration is before me, it's on my docket, isn't it?

MR JAMESON: Yes.

35 HIS HONOUR: Yes. It's separate from the matter that is listed – sorry, that matter is listed today. It's NSD 947 of 2021, I think.

MR JAMESON: That's 747.

40 HIS HONOUR: But can you – while you're on your feet, can you give me an update of where you're at?

MR JAMESON: ..... information in respect of which particular entity? There's multiple - - -

45

HIS HONOUR: Well, generally.

MR JAMESON: Can I take you to Mr Ireland's affidavit which - - -

HIS HONOUR: Just summarise it to me, that's fine.

5 MR JAMESON: - - - summarises it. I might have to take some instructions on where it's at, but there is actually multiple places of where it's at amongst all the various entities. We're appointed over a number of entities. One of the main steps that is being taken currently are a series of statutory demands that have been issued to a number of entities associated with, indeed, Mr Tesoriero.

10 HIS HONOUR: Right.

MR JAMESON: The next application in respect of those entities is actually before the court tomorrow. One of those entities, as it turns out, is 23 Margaret Street.  
15 There's a winding up application on in respect of that entity and a number of other entities of Mr Tesoriero. There is a dispute about whether that winding up application can take place because there's a dispute as to the legitimacy of the statutory demands and annexed an application to set aside those demands listed before a judge in Victoria – the Federal Court registry in Victoria in late August.  
20 There's – McEvoy J.

HIS HONOUR: Sorry, why is that being allocated in that way? Was there a separate proceeding commenced?

25 MR JAMESON: There was an application brought by Mr Tesoriero to set aside the statutory demands that the liquidators issued. That application was filed in the Victorian registry.

30 HIS HONOUR: Well, did the liquidators think it might be a good idea to contact my associate about that?

MR JAMESON: It was Mr Tesoriero's application and it was being heard and progressed through by a registrar of the Federal Court in Victoria.

35 HIS HONOUR: But the external administration of all these companies is on my docket.

MR JAMESON: Sorry, not in respect of those entities, your Honour. Those entities are not subject to external administration - - -

40 HIS HONOUR: No, it's Mr Tesoriero's company, I understand that, but it's connected to these matters, surely. I'm quite happy for someone else to have to deal with it, but I would just like to know what's going on in respect of the liquidation generally. As far as I'm concerned, another judge can deal with the whole of it, but I  
45 don't think that's – I've got enough to deal with. But – so that is happening at the moment. All right. And that's – so McEvoy J has got a hearing in relation to that when?

MR JAMESON: That's at the end of August. However, there has been some correspondence trying to bring that forward because of an issue we say exists in the nature of the application and the timing under the Corporations Act which would see that be disposed of sooner rather than later. I understand that's disputed, but we're  
5 hoping that's brought forward. The initial application was heard some months ago. There was a review of the decision of the registrar. A winding up application has nonetheless been filed because of the nature of the application. There was an issue – on our case, the statutory demands – the application to set aside the statutory  
10 demands, on our case, did not engage the court's jurisdiction of the Corporations Act. That then triggered a series of timing requirements - - -

HIS HONOUR: So an application to set aside the statutory demands doesn't engage the court's jurisdiction?

15 MR JAMESON: In the form that it was made. The case that the liquidators put in response to the application was that it did not engage the court's jurisdiction by virtue of the form of the application. That was an argument successful before the registrar. What happened in substance, your Honour, was a number of statutory  
20 demands are issued. One application was made to set aside those statutory demands. There is a series of cases which deal with the extent to which one application wound up and seeking a rolled up relief can set aside those demands engages the court's jurisdiction. Our case was it did not and that was successful at first instance.

25 There has been a review of that decision, but because the application on our case did not engage the jurisdiction, the timing under the Corporations Act ran and the liquidators then filed winding up applications to ensure they didn't lose their entitlement to do so for the ..... comply with a statutory demand. It's a long way of saying that it's still yet to be determined by a judge of the court at the end of August, but that's the summary of the issue.

30 HIS HONOUR: All right. Thank you. My associate has received a communication a few hours ago saying, "We act for Aksara Holdings, the interested party in the proceeding, Westpac, and Forum Finance," understanding there's a final hearing for winding applications related to the main proceeding is listed tomorrow, and asking  
35 my associate about it.

MR JAMESON: Can I - - -

40 HIS HONOUR: Well, at least someone thought it appropriate to draw it to my attention belatedly this morning. Not the liquidator, though.

MR JAMESON: I apologise, your Honour. The hearing tomorrow is being adjourned. The reason it's being adjourned is because there's a review application before McEvoy J in respect of an application to set aside - - -

45 HIS HONOUR: But are these – these are all New South Wales file numbers, NSD 234 of 2022, NSD 225, 226, 227, 228, 229, 230, 231, and 232 of 2022.

MR JAMESON: I understand the winding up applications, which are yet to be determined, are listed before the registry of the New South Wales registry of the Federal Court - - -

5 HIS HONOUR: They're listed before a registrar tomorrow?

MR JAMESON: It is, as I understand it. And it's not proceeding because of the extant issue about whether the statutory demands were properly set aside or not. It would be premature for us to progress a winding up application based on a failure to  
10 comply with that statutory demand. And so tomorrow's - - -

HIS HONOUR: So Aksara Holdings is, what, a supporting creditor in respect to some of the winding up of these companies, is it?

15 MR JAMESON: I'm not sure if they have filed a supporting – could your Honour pardon me one moment.

HIS HONOUR: They say they're an interested party though.

20 MR JAMESON: They're an interested party because they're second-ranking creditors.

HIS HONOUR: Yes. Secure creditors.

25 MR JAMESON: Unsecured creditors. I'm told of the petrol stations. They will be interested in those entities for that purpose, but tomorrow's hearing is directions only. There has been some timetabling orders exchanged with Mr Tesoriero's instructing solicitors to progress the winding up applications, but, once again, it's not  
30 a final hearing tomorrow because of the need to determine the issue with the statutory demands.

HIS HONOUR: So this is – so what litigation has Mr Tesoriero commenced? He has commenced applications to set aside – how many statutory demands?

35 MR JAMESON: Nine.

HIS HONOUR: Nine statutory demands directed to nine different Tesoriero-controlled entities.

40 MR JAMESON: Yes, issued by Forum Group Financial Services.

HIS HONOUR: Unsuccessful at first instance before a registrar subject to him then commencing a proceeding seeking a review by a judge of the determination of the registrar.

45

MR JAMESON: Yes, your Honour.

HIS HONOUR: This is – these files are the winding up of the same companies, being proceedings commenced in the New South Wales registry by your client.

MR JAMESON: Yes, your Honour.

5

HIS HONOUR: So we've got proceedings in Victoria, proceedings in New South Wales, this before a registrar, not before the same judge.

MR JAMESON: Indeed.

10

HIS HONOUR: It's a mess, isn't it?

MR JAMESON: Indeed. And it's a mess, and the reason that the winding up application - - -

15

HIS HONOUR: It seems like a lot of money being spent for not a great deal of - - -

MR JAMESON: Well - - -

20

HIS HONOUR: - - - useful purpose, if I may say so.

MR JAMESON: With respect, your Honour, the NSD applications were commenced for the sole purpose of ensuring that moneys were not wasted on the statutory demands, because if we're correct on our construction of the Corporations Act, if we didn't commence the NSD proceedings, we would have lost the statutory presumption of insolvency under the Corporations Act, and the consequence of that would have been - - -

25

HIS HONOUR: Why was that dealt with by a registrar in the first place when the unsuccessful person has a right to a statutory review?

30

MR JAMESON: It was - - -

HIS HONOUR: If it had have been brought to my attention, I would have listed it and probably dealt with it in 15 minutes months ago.

35

MR JAMESON: That proposition - - -

HIS HONOUR: Honestly, I am not going to allow wasted costs to be spent in this liquidation. If issues like that happened before, they are – the liquidator is an officer of the court. They've got to start thinking about what is the quickest and cheapest way of doing that, and the quickest and cheapest way of doing that is not engaging in this prolonged process before another judge of the court – before a registrar. Having hearings before a registrar, which – all it's going to mean is the disappointed party is going to go to a judge.

45

MR JAMESON: I hear your Honour. Can I just – in relation to the application in Victoria, that was not an application filed by the liquidator. In relation to that application, there was a request made to the registrar, I believe – I’m just confirming my instructions – to have that determined by a judge by my client. That request was  
5 not accepted, and it proceeded before a registrar. But I hear what your Honour says and - - -

HIS HONOUR: But that’s why you bring it to a judge to have it case managed, the judge who is actually dealing with the external administration. I’m not being critical  
10 of the registrar. I’m not being critical – I mean, these things happen, and, look, the last thing you want is a judge with – not having a full picture of things being critical of anyone, and I’m not seeking to be critical of your solicitors at all. All I’m saying is please just bring these things to my attention, because I do want to try to stop unnecessary expenditure and try to make sure this is dealt with as efficiently as  
15 possible, and bifurcating it in different registries – and I know that’s not your - - -

MR JAMESON: I understand.

HIS HONOUR: I don’t know – is Madgwicks acting in this?  
20

MR JAMESON: Yes.

HIS HONOUR: Yes. Why did your solicitors commence proceeding in the Victorian registry when the external administration is in New South Wales? Mr  
25 Hayes, do you know?

MR HAYES: I’m not sure, your Honour. Mr O’Haire of counsel appeared on the previous - - -

30 HIS HONOUR: Well, anyway, I just want to make sure - - -

MR HAYES: My other junior in the matter, Mr O’Haire, appeared.

HIS HONOUR: And – well, I mean, I hadn’t realised that your client was actually  
35 spending money on legal expenses in pursuing litigation in the court.

MR HAYES: I’m not sure he spent money on that either, your Honour.

HIS HONOUR: Well, he must have in order to file the proceeding, doesn’t he?  
40 And presumably, this was – the companies were represented in front of the registrar.

MR HAYES: My apprehension, your Honour, is that the aggressive pursuit of these winding up applications by the liquidator prior to the determination of this proceeding, your Honour, would otherwise render his defence of this matter nugatory  
45 if those companies are otherwise wound up. That’s – but I – that’s - - -



HIS HONOUR: All right. Well, perhaps I – I don't want to get too much off the track.

MR HAYES: But I'm not directly involved with those matters, your Honour.

5

HIS HONOUR: I do want to keep control of this. Has it been – leaving aside your point concerning – is it the submission that Mr Tesoriero's companies in relation to those proceedings be adjourned until after the determination of this proceeding?

10 MR JAMESON: Not this proceeding. Not the Westpac proceedings. The issue - - -

HIS HONOUR: These are statutory demands based on, what, loan accounts or something, are they?

15 MR JAMESON: That's correct.

HIS HONOUR: Demands.

MR JAMESON: Demands. The loan accounts held by FGFS in respect of those  
20 entities.

HIS HONOUR: Yes. Okay.

MR JAMESON: It's a narrow issue, but I'm grateful for what your Honour has  
25 indicated to me today.

HIS HONOUR: That's all right. Yes. So as far as you're aware, Madgwicks are not saying these things need to be deferred, so they can be dealt with immediately, as far as you're aware.

30

MR JAMESON: The deferral relates to the statutory demand issue, which pre-dates them, but that's - - -

HIS HONOUR: Which is just simply a question of statutory construction.

35

MR JAMESON: Quite. Statutory construction and a series of cases that deal with it, including the Full Court and ..... jurisdictions.

HIS HONOUR: All right. Can your solicitors perhaps give me a list of the file  
40 numbers – Victorian file numbers, so I can work out what should happen in relation to in consultation with the - - -

MR HAYES: Your Honour, having - - -

45 HIS HONOUR: - - - docket judge.

MR HAYES: Having had the benefit of hearing of this exchange, it probably should be – those matters probably should be adjourned until after the determination of this proceeding. It's only a matter of – it's only three months.

5 HIS HONOUR: Well, they're not before me. They're not before me, and there may be very good - - -

MR HAYES: Well, I expect - - -

10 HIS HONOUR: There may be very reasons why that's not the case. I don't want to ..... that. I'm just - - -

MR HAYES: Well, I expect there might be some correspondence about that tonight, your Honour.

15

HIS HONOUR: I'm just concerned about trying to ensure that these things are coordinated in some sensible way. If it's a discrete point, I can't understand why it can't be dealt with immediately.

20 MR HAYES: Thank you, your Honour.

HIS HONOUR: Anyway – rather than – yes. VID778 of 2021; does that ring a bell to your solicitor?

25 MR JAMESON: That's it, your Honour.

HIS HONOUR: All right. Well, I will have a chat to McEvoy J about it. Yes. Anything in reply, Mr Hayes?

30 MR HAYES: Just very briefly, your Honour. Your Honour won't – I'm sure your Honour won't wish me to elaborate on the grounds, but we would urge you to reject what was an extraordinary submission by Ms Beechey about the 29 – speculating on 29 times 65,000. Your Honour should pay no attention to that submission at all. Your Honour, just turning very briefly to what my learned friends said, the short  
35 point – or the short response to the onus question is this. As your Honour said, it's not a ..... of affection, but in this instance, Mr Tesoriero has made substantial and, we say, sufficient disclosure, sufficient to satisfy your Honour that he doesn't have the available means to properly fund this proceeding. It's all very well for my friend to  
40 talk about blind cross-examination on documents and second-guessing or speculating on what's being produced, but all that can be done is for Mr Tesoriero to swear a series of affidavits, and all that has been done in response to that is chipping around the ragged edges – as what Mr Giles has effectively done.

45 He hasn't disturbed in substance what Mr Tesoriero has put before the court, and what we say, your Honour, in this instance, is that it didn't expose in any way a material or substantial flaw in the disclosure, and he can only disclose what he can do to the best of his ability. And your Honour will see that, that every shadow that

Westpac has jumped at, set out in the table at paragraph 10 of our supplementary submission, has been very earnestly and promptly responded to by Mr Tesoriero, and we say while there are ragged edges, and Mr Giles and Westpac can always speculate and test things and jump at the disclosure and wonder whether or not there has been  
5 sufficient or adequate disclosure, the disclosure is what it is, and, in substance, we say he has – overall, he has made substantial and sufficient disclosure to discharge the onus for your Honour to properly exercise your Honour’s discretion that there be a release of funds from the controlled moneys account for him to be able to fairly conduct his defence in response to a claim brought against him by Westpac.

10 And we would say while 125 – or \$1.25 million, in terms of the amount – we are grateful for – the proper concession made by our friends is sufficient. Again, your Honour, dealing with that question, I – as I alluded to on the previous occasion, I am going to adopt the role of Oliver and ask for a little bit more, and we say that there’s  
15 no reason to penalise – if your Honour had some concerns about the evidence, we say that to even detract from what his solicitor Ms Nasimi says – and there’s no reason to – for a moment to have any doubt that what he says is necessary to conduct the proper defence of this matter. His evidence is unchallenged as to the amount – then the amount of 1.496 million is an appropriate amount to be released to enable  
20 the proper conduct of his defence. To release less, your Honour – it may well have the effect of unfairly handicapping Mr Tesoriero and the way in which he conducts his defence, and I will leave it at that, your Honour. I have no further submissions to make on that point.

25 HIS HONOUR: Yes. All right. Thank you.

### **JUDGMENT DELIVERED**

30 MR HAYES: Would your Honour be prepared to consider costs be costs in the cause?

MR GILES: Sure.

35 HIS HONOUR: Yes.

MR HAYES: When we get our - - -

40 HIS HONOUR: Well, what I will do is I will put, yes, that the costs will be costs in the cause.

MR GILES: No worries.

45 HIS HONOUR: And I will - - -

MR HAYES: In the event that Mr Tesoriero prevails, he will ultimately get his costs back.

HIS HONOUR: Yes, yes.

5

MR GILES: And I will get my costs when I prevail.

HIS HONOUR: And vice versa. No. I'm happy for that. Now, could I then move – having dealt with that, can I then move to where we go from here.

10

MR HAYES: Did your Honour prepare to address the living – was prepared to address the living expenses?

HIS HONOUR: No. You can – sorry. I will give some reasons about that.

15

MR HAYES: If your Honour pleases.

### **JUDGMENT DELIVERED**

20

MR HAYES: Thank you.

MR GILES: May it please.

25

MR HAYES: Thank you, your Honour.

HIS HONOUR: All right.

30 MR HAYES: It might also assist, your Honour, if that letter also includes a copy of your Honour – of the transcript of your Honour's remarks just then.

HIS HONOUR: I will leave that to the solicitors.

35 MR HAYES: And if your Honour could direct that those moneys be released expeditiously, if possible, or as expeditiously as possible, those being - - -

HIS HONOUR: No. I will make an order. When - - -

40 MR HAYES: If your Honour pleases.

HIS HONOUR: When the short minutes come up, I will make an order, and I don't expect that anyone will do anything other than obey with the order in a timely fashion, as is not always characterised what has occurred to date.

45

MR HAYES: Thank you, your Honour. We're grateful for that, your Honour.

HIS HONOUR: And I hope that changes in the future. All right. Now, can I just go back to where we are – the current orders. Where are the current – are they 1 April or - - -

5 MR GILES: 10 March. Someone has just given me - - -

HIS HONOUR: 10 March.

10 MR GILES: Ms Hamilton-Jewell has just given me 10 March.

HIS HONOUR: All right. No, I've got that. Sorry, the twenty – so by 27 March 2022, the active respondents were to file and serve the affidavit evidence upon which they rely. Now, did I amend that order? I thought I amended that.

15 MR GILES: Yes, you did, and, in fact, there was a debate about that. Your Honour amended the order with respect to Mr Tesoriero.

HIS HONOUR: Yes.

20 MR GILES: His solicitors also act for Mr Tesoriero Senior and have taken that to include Mr Tesoriero Senior. We didn't think your Honour meant that, but - - -

HIS HONOUR: No, I didn't. I didn't.

25 MR GILES: No.

HIS HONOUR: Just Mr Tesoriero's affidavit.

30 MR GILES: That's what I thought.

HIS HONOUR: The other material should be filed and served.

35 MR HAYES: I'm sorry, your Honour. I was getting some instructions on the matter when – I missed what fell from your Honour. I just came in on the end of it.

HIS HONOUR: I was just saying, the variation of the order I made about filing and serving any affidavit evidence by 27 May 2022 ran to Mr Tesoriero's evidence - - -

40 MR HAYES: Yes.

HIS HONOUR: - - - not to the evidence of any other witnesses the respondents wished to call.

45 MR HAYES: No, no. My instructors also ask for his father, Mr – who – Mr Giovanni Tesoriero or Mr John Tesoriero, who is a respondent - - -

MR GILES: Yes.

MR HAYES: - - - to this proceeding. Yes.

HIS HONOUR: Yes. So he should file his affidavit - - -

5 MR HAYES: If he – yes.

HIS HONOUR: - - - if you propose to call him.

MR HAYES: If we propose to call him.

10

HIS HONOUR: Yes.

MR HAYES: If we could do so, your Honour – what’s today’s date? If we could have three weeks to consider that, your Honour.

15

HIS HONOUR: All right.

MR GILES: Well, to do it.

20 MR HAYES: Sorry?

MR GILES: To do it. Not three weeks to make up your mind. Three weeks to do it or not do it.

25 MR HAYES: If we do it, yes.

HIS HONOUR: Yes.

MR HAYES: That’s right.

30

HIS HONOUR: All right. Well, that can be put in some short minutes of order, that the – any affidavit – any – the time for the filing of any affidavits proposed to be called by the active respondents, other than an affidavit of Mr Vincenzo Tesoriero, be filed and served by three weeks today. Now, there was an order:

35

*...by 4 pm on 27 May 2022, the liquidators of the Forum companies serve any material which constitutes opinion accounting evidence –*

did that happen?

40

MR JAMESON: That has occurred.

HIS HONOUR: And what does that look like? That’s - - -

45 MR GILES: That’s actually what is colloquially called, in our camp, tracing evidence – is following the money, but that has now been – because it had to be done

in order to do it. That has now been summarised – that’s a good word – I’m grateful to Ms Hamilton-Jewell – in the section 50 material, which was order 9.

5 HIS HONOUR: Right. I was about to just ask that. So the section 50 material has now been served.

10 MR GILES: The vast bulk of it has. There are three – there is the tracing in relation to three companies: Forum Group, 26 Edmondstone, and Mazcon, which are ..... but everything else has been done either on time, or it was over – either on Friday or some trickled in over the weekend.

HIS HONOUR: And – all right. Now, when can the – when can counsel for both parties meet concerning this – preparation of this - - -

15 MR GILES: I think some orders have been made for that.

HIS HONOUR: It’s already ordered there. Right, 1 August. I didn’t make a change to that.

20 MR GILES: Paragraph 13, is it, order 13.

25 HIS HONOUR: 13 was the issues document principle contested facts in issue and contested legal and submission template. I was talking about the narrative document, the agreed background facts document.

MR GILES: I thought that – I have to say, I thought your Honour had directed that in part of the same process.

30 HIS HONOUR: No, it doesn’t look like it got there. So unless it was in the - - -

MR GILES: Maybe it’s embedded in (a)(i).

35 HIS HONOUR: Unless I note it in July, did I? No, it appears to have slipped out somehow. Well, how - - -

MR GILES: We will just vary it to add – sorry, I was going to say, from my perspective we would just vary it to add – come up with the form of words to add - - -

40 HIS HONOUR: Well, I think that should start now rather than waiting till then.

45 MS BEECHEY: Your Honour, I was just going to say, my recollection is there was discussion of that at the previous case management hearing. But the fact that Mr Papas remains a defendant – although perhaps not an active defendant – I understood your Honour to move to the idea of section 50 summaries which could then be served on the defendants and their agreements sought, rather than attempting to come up with agreed facts with just Mr Tesoriero and his companies without - - -

MR GILES: I think that's right.

MS BEECHEY: - - - Mr Papas being party to that process.

5 HIS HONOUR: Was that before I – just remind me: did I make an order for a separate trial in relation to this trial only proceeding against the active respondents? I did. And why didn't I do that?

10 MR GILES: Sorry. I didn't want your Honour to do that, because I've got to prove the case against Mr Papas as a starting point for the case against everyone else.

HIS HONOUR: And he was served.

15 MR GILES: Yes.

HIS HONOUR: So you're going to – you were moving and seeking judgment against him, I see. Yes, well that makes what Ms Beechey says make sense.

20 MR GILES: Yes.

HIS HONOUR: Yes. So you have to prove it that way, yes.

MR GILES: Yes.

25 HIS HONOUR: All right. Rather than that document being – or what I would like you to do, though, is work out amongst yourselves if I could get some sort of narrative which won't be an evidentiary – but I know what's not in dispute between you two. I won't make it a formal order, that effect, and it won't have any evidentiary value. You will have to tender, still, the section 50 notices, but at least  
30 I've got a narrative form in some type of coherent way. It should be quite useful. So I won't make any orders about it, but I do understand why I came to the view that I came to.

35 MR GILES: Yes.

HIS HONOUR: Yes.

MR GILES: If the court please.

40 HIS HONOUR: All right. Well, if someone could send – is there anything else that needs to be done?

45 MR HAYES: Your Honour, I think Mr – I think Dr Turner and Ms Hamilton-Jewel can sort these out overnight, if your Honour would indulge us that time. And we will endeavour to have some agreed short minutes of order to your Honour's associate before lunchtime tomorrow, if your Honour would permit us that time.



HIS HONOUR: Yes, yes. Yes, that's – no.

5 MR JAMESON: Your Honour, there's one matter. I think in answer to your Honour's question earlier, your Honour asked me whether Aksara was secured or unsecured. I've just been thinking, I think I answered your Honour they were unsecured. What I meant to say was they are unregistered second ranking mortgage. So just to correct.

10 HIS HONOUR: All right. Well, if there's nothing further, I will now adjourn.

**MATTER ADJOURNED at 4.31 pm ACCORDINGLY**

## **Index of Witness Events**

VINCENZO FRANK TESORIERO, RESWORN CROSS-EXAMINATION BY MR GILES THE WITNESS WITHDREW	P-64 P-64 P-69
VINCENZO FRANK TESORIERO, RECALLED CROSS-EXAMINATION BY MR GILES THE WITNESS WITHDREW	P-71 P-71 P-76
VINCENZO FRANK TESORIERO, RECALLED CROSS-EXAMINATION BY MR GILES RE-EXAMINATION BY MR HAYES THE WITNESS WITHDREW	P-79 P-80 P-103 P-105
VINCENZO FRANK TESORIERO, RECALLED RE-EXAMINATION BY MR HAYES THE WITNESS WITHDREW	P-105 P-105 P-114
VINCENZO FRANK TESORIERO, ON FORMER OATH EXAMINATION-IN-CHIEF BY MR HAYES CROSS-EXAMINATION BY MR GILES THE WITNESS WITHDREW	P-118 P-118 P-119 P-122

## **Index of Exhibits and MFIs**

EXHIBIT #D BANK STATEMENT FOR 286 CARLISLE STREET PTY LTD FOR THE PERIOD ENDING 30/06/2022	P-66
EXHIBIT #E BANK STATEMENT FOR TESORIERO INVESTMENT GROUP PROPRIETARY LIMITED FOR THE PERIOD ENDING 30/06/2022	P-67
EXHIBIT #F DOCUMENT COMPRISING THE EMAIL FROM DARREN MITCHELL TO MICHAEL PRATT, MR TESORIERO AND MR JOHNS, WITH THE SUBJECT "RE TESORIERO GROUP", DATED 07/06/2022 AT 12.58 PM	P-84
MFI #4 SUMMARY OF SERVICE STATION VALUATIONS	P-108
EXHIBIT #G SUMMARY OF SERVICE STATION VALUATIONS	P-110
EXHIBIT #J TRUST DEED OF THE TRUST KNOWN AS THE JOHN TESORIERO FAMILY TRUST	P-121

# FEDERAL COURT OF AUSTRALIA

## Westpac Banking Corporation v Forum Finance Pty Limited (Freezing Order Variation) [2022] FCA 910

File number: NSD 616 of 2021

Judgment of: **LEE J**

Date of judgment: 20 July 2022

Date of reasons: 4 August 2022

Catchwords: **PRACTICE AND PROCEDURE** – application for variation of freezing order – whether to allow payment of Mr Vincenzo Tesoriero’s reasonable legal expenses in these proceedings – equality of arms – where variation would erode assets over which proprietary claims have been made – where disclosure of assets manifestly inadequate – whether Mr Tesoriero’s asset and liability position has been revealed – whether to increase exception to freezing orders for living expenses

Cases cited: *Clout (Trustee) v Anscor Pty Ltd* [2001] FCA 174

Division: General Division

Registry: New South Wales

National Practice Area: Commercial and Corporations

Sub-area: Commercial Contracts, Banking, Finance and Insurance

Number of paragraphs: 46

Date of hearing: 1, 19–20 July 2022

Counsel for the Applicants: Mr J Giles SC with Ms C Hamilton-Jewell

Solicitor for the Applicants: MinterEllison

Counsel for the Liquidators: Mr R Jameson

Solicitor for the Liquidators: Allens

Counsel for the Third Respondent: Mr P Hayes QC with Mr P Turner

Solicitor for the Third Respondent: Madgwicks Lawyers

Counsel for SMBC Leasing & Finance Ms E L Beechey

Solicitor for SMBC Leasing & Finance Jones Day

# ORDERS

NSD 616 of 2021

**BETWEEN:**                   **WESTPAC BANKING CORPORATION ABN 33 007 457 141**  
First Applicant

**WESTPAC NEW ZEALAND LIMITED (COMPANY  
REGISTRATION NUMBER COMPANY NUMBER 1763882)**  
Second Applicant

**AND:**                         **FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN  
153 301 172**  
First Respondent

**BASILE PAPADIMITRIOU**  
Second Respondent

**VINCENZO FRANK TESORIERO** (and others named in the  
Schedule)  
Third Respondent

**ORDER MADE BY: LEE J**

**DATE OF ORDER: 20 JULY 2022**

## **THE COURT ORDERS THAT:**

### **In the Westpac Proceeding (NSD616/2021)**

1. The freezing order made against the third respondent, Mr Vincenzo Frank Tesoriero (**Mr Tesoriero**), by Order 4 of the Orders dated 2 July 2021 in relation to the interlocutory application dated 2 July 2021 (as varied on 9 July 2021; 27 August 2021 and 12 November 2021) be varied in the form of **Annexure A** and be extended and apply until further order (**Freezing Order**).
2. The interlocutory application filed on 17 June 2022 by Mr Tesoriero (**Interlocutory Application**) otherwise be dismissed.
3. The costs of the Interlocutory Application be costs in the cause.

### **In the Westpac Proceeding (NSD616/2021), the SMBC Proceeding (NSD681/2021) and the Societe Generale Proceeding (NSD642/2021)**

4. The time for compliance with Order 7 of the Orders dated 10 March 2022 (**March Orders**) be extended so that any affidavit proposed to be relied upon by any Active

Respondents (as defined in Order 6 of the March Orders) (other than Mr Tesoriero), is to be filed and served by 4pm on 10 August 2022.

5. The time for compliance with Order 8 of the March Orders be extended to 4pm on 31 August 2022.

**THE COURT NOTES THAT:**

6. As at 20 July 2022, Mr Tesoriero has paid the amount of \$180,000 to Madgwicks, the firm of solicitors currently acting for him in proceeding NSD616/2021, towards his reasonable legal expenses permitted under Order 10(b) of the Freezing Order up to and including 20 July 2022.
7. The release of funds pursuant to Order 10(b) of the Freezing Order occur as follows:
  - (a) the first funds to be released will be those over which no party makes a proprietary claim; and
  - (b) to the extent that amount is insufficient, the balance of the funds released under Order 10(b) of the Freezing Order will be from those over which there are proprietary claims on the basis the release of those funds is to operate so as to reduce the assets available to satisfy those claims on a pro rata basis against all parties who make proprietary claims.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**ANNEXURE A – FREEZING ORDER**

**PENAL NOTICE – FREEZING ORDER**

**TO: VINCENZO FRANK TESORIERO**

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO VINCENZO FRANK TESORIERO**

This is a *'freezing order'* made against you on 2 July 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order. This freezing orders was varied on 9 July 2021, 27 August 2021; 12 November 2021; and 20 July 2022 by Justice Lee at hearings with notice to you.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) [Deleted]
- (2) Subject to the next paragraph, in accordance with the order 1 of the orders made by Justice Lee on 20 July 2022, this order has effect until further order of the Court.
- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
  - (a) *'applicant'*, if there is more than one applicant, includes all the applicants;
  - (b) *'you'*, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (c) *'third party'* means a person other than you and the applicant;

- (d) *'unencumbered value'* means value free of mortgages, charges, liens or other encumbrances.
  - (e) *'Relevant Amount'* means the amount of AUD\$253,766,555.76 and NZD\$44,097,969.
- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

#### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia (*'Australian assets'*) up to the unencumbered value of AUD\$253,766,555.76 and NZD\$44,097,969 (the *Relevant Amount*).
- (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (c) If the unencumbered value of your Australian assets is less than the Relevant Amount, and you have assets outside Australia (**Worldwide Assets**):
- (i) You must not dispose of, deal with or diminish the value of any of your Australian assets or your Worldwide Assets up to the unencumbered value of the Relevant Amount; and
  - (ii) You may dispose of, deal with or diminish the value of any of your Worldwide Assets, so long as the unencumbered value of all of your Australian assets and Worldwide Assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
    - (iii) the following assets in particular:
      - (A) your shares in each of the following companies:
        - a. 23 Margaret Street Pty Limited ACN 623 715 373;



- b. 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
- c. 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
- d. 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
- e. 14 James Street Pty Limited ACN 638 449 206;
- f. Canner Investments Pty Limited ACN 624 176 049;
- g. Tesoriero Investment Group Pty Limited ACN 161 088 115;
- h. 123 High Street Taradale Pty Limited ACN 639 872 512;
- i. 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
- j. 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
- k. 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;
- l. 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
- m. 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
- n. 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
- o. 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
- p. Forum Group Financial Services Pty Limited ACN 623 033 705;
- q. 26 Edmonstone Road Pty Limited ACN 622 944 129;
- r. 5 Bulkara Street Pty Limited ACN 630 982 160;
- s. 6 Bulkara Street Pty Limited ACN 639 734 473;
- t. Pankarn Pty Ltd ACN 104 616 051;
- u. 275 High Street Golden Square Pty Ltd ACN 639 870 545;
- v. 22 High Street Rushworth Pty Ltd ACN 641 392 903;
- w. 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626;
- x. Vintes Qld Pty. Ltd. ACN 624 585 922;
- y. 65 Nelson Street Enterprises Pty. Ltd. ACN 612 614 632;
- z. 193 Carlisle Street Enterprises Pty. Ltd. ACN 612 615 237;
- aa. Vintes No 4 Pty Ltd ACN 639 726 524;
- bb. BV Holdings VT Pty Ltd ACN 639 891 624;
- cc. BV Holdings TD Pty Ltd ACN 639 895 257;
- dd. BV Holdings GS Pty Ltd ACN 640 218 864;
- ee. Vintes Qld No 3 Pty Ltd ACN 640 879 152;
- ff. BV Holdings DB Pty Ltd ACN 641 393 151;
- gg. BV Holdings RW Pty Ltd ACN 641 393 197;

- hh. BV Holdings MB Pty Ltd ACN 641 393 240;
- ii. BV Holdings LB Pty Ltd ACN 641 393 268;
- jj. BV Holdings MC Pty Ltd ACN 641 393 277;
- kk. BV Holdings MW Pty Ltd ACN 641 393 286;
- ll. BV Holdings DN Pty Ltd ACN 639 895 239;
- mm. 308 Carlisle Street Holdings Pty. Ltd. ACN 613 047 439;
- nn. 286 Carlisle Street Pty Ltd ACN 610 042 343;
- oo. Thrivi Group Pty Ltd ACN 625 491 858;
- pp. Mangusta (Vic) Pty. Ltd. ACN 631 520 682;
- qq. San Pel One Pty LTD ACN 651 919 265; and
- rr. San Pel Two Pty Ltd ACN 651 927 356;

(B) the following vehicles and vessels:

- a. Vessel "XOXO" Cayman Islands Official Number 734587;
- b. 2018 Porsche Cayenne with VIN WPiZZZ9YZKDA90623
- c. 2014 Alfa Romeo;
- d. 2020 Mini Cooper S with VIN WMWXX920802M95982;
- e. 2008 Ducati 1098R with registration DUCR;
- f. 2020 BMW S1000 with registration EOZ12;
- g. 1957 Chevrolet Bel Air;
- h. 2019 BRP Can-Am Ryker 600 registration RYKER;

- (b) the value of your assets is the value of the interest you have individually in your assets.

**PROVISION OF INFORMATION**

(8) Subject to paragraph 9, you must:

- (a) at or before **5pm on 14 July 2021** (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
- (b) by **5pm on 14 July 2021**, swear and serve on the applicant an affidavit setting out the above information
- (c) by **5pm on 3 September 2021** (or within such further time as the Court may allow) to the best of your ability, swear and serve on the applicants an affidavit setting out all your assets outside of Australia (**Worldwide Assets**), giving their value, location and

details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the Worldwide Assets.

- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
  - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
  - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

#### **EXCEPTIONS TO THIS ORDER**

- (10) This order does not prohibit:
- (a) you paying up to \$5,000 a week on your ordinary living expenses;
  - (b) paying up to the sum of \$1,250,000.00 on your reasonable legal expenses including:
    - (b)(A) the payment of \$270,000 currently held in the Madgwicks trust account (being the amount released from the controlled monies account with account number 033 003 667 565 (CMA) on 28 June 2022) towards your reasonable legal expenses;
    - (b)(B) the release of the further amount of \$800,000 from the CMA for the sole use in respect of your reasonable legal expenses;
  - (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and

- (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.
- (10A) This order does not prohibit:
- (a) you from directing Australia and New Zealand Banking Group Limited in respect of the bank account in the name of 65 Nelson St Enterprises Pty Ltd (ACN 612 614 632) as trustee of the 65 Nelson Street Enterprises Trust (ABN 74 545 512 288) (**65 Nelson St Co**) to make payments in respect of bona fide expenses:
- (i) for weekly wage payments for employees employed by and working in the business operated by 65 Nelson St Co;
  - (ii) lease payments for premises occupied by the business operated by 65 Nelson St Co;
  - (iii) operating expenses incurred by the business operated by 65 Nelson St Co;
- (b) you from directing any financial institution that holds bank accounts for any of the following entities:
- (i) 23 Margaret Street Pty Limited ACN 623 715 373;
  - (ii) 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
  - (iii) 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
  - (iv) 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
  - (v) 14 James Street Pty Limited ACN 638 449 206;
  - (vi) Forum Group Financial Services Pty Ltd ACN 623 033 705;
  - (vii) Canner Investments Pty Limited ACN 624 176 049;
  - (viii) 123 High Street Taradale Pty Limited ACN 639 872 512;
  - (ix) 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
  - (x) 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
  - (xi) 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;
  - (xii) 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
  - (xiii) 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
  - (xiv) 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
  - (xv) 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
  - (xvi) 26 Edmonstone Road Pty Limited ACN 622 944 129;
  - (xvii) 5 Bulkara Street Pty Limited ACN 630 982 160; and
  - (xviii) 6 Bulkara Street Pty Limited ACN 639 734 473,

to make payments in respect of bona fide expenses of the following types in relation to properties owned by the entity:

- (xix) repayments of registered mortgages that were in existence before 2 July 2021;
- (xx) land tax;
- (xxi) insurance premiums;
- (xxii) council rates;
- (xxiii) water.

- (11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.
- (12) (a) This order will cease to have effect if you:
- (i) pay the sum of AUD\$253,766,555.76 and NZD\$44,097,969 into Court; or
  - (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
  - (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.
- (b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.
- (c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

#### **COSTS**

- (13) The costs of this application are reserved to the Court hearing the application on the Return Date.

#### **PERSONS OTHER THAN YOU AND THE APPLICANT**

(14) **Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

(15) **Bank withdrawals by you**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

(16) **Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.

- (b) The terms of this order will affect the following persons outside Australia:
  - (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

(17) **Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.

## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon you copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than you and the respondents which have been incurred as a result of this order, including the costs of finding out whether that person holds any of your assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding except for the purposes of any police, regulatory authority or prudential disclosure.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against you or your assets.

## SCHEDULE B

### AFFIDAVITS RELIED ON

<b>Name of deponent</b>	<b>Date affidavit made</b>
(1) Geoffrey Keith Anderson	28 June 2021; 8 July 2021
(2) Nicholas Anthony O'Brien	27 June 2021; 1 July 2021
(3) Caitlin Maria Murray	28 June 2021; 2 July 2021; 7 July 2021; 8 July 2021; 12 July 2021; 14 July 2021; 15 July 2021; 25 August 2021; 28 June 2022

### NAME AND ADDRESS OF APPLICANTS' LAWYERS

The Applicants' lawyers are:

MinterEllison  
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ref: CMM:1353397



## REASONS FOR JUDGMENT

(Delivered *ex tempore*, revised from the transcript)

LEE J:

### A INTRODUCTION

1 Heard over three days has been an interlocutory application made by the third respondent, Mr  
Vincenzo Tesoriero, to vary freezing orders made against him on 2 July 2021 (**Freezing  
Orders**). In broad terms, Mr Tesoriero seeks an amount for his reasonable legal expenses of  
up to \$1.866 million to be paid to his solicitor’s trust account, in order to allow him to defend  
the proceeding through to the conclusion of the hearing with, he submits, a proper “equality  
of arms”.

2 The attitude initially taken by the applicants, Westpac Banking Corporation (**WBC**) and  
Westpac New Zealand Limited (**WNZL**) (together, **Westpac**), was to consent to a variation  
of the Freezing Orders to provide for reasonable legal expenses of up to \$642,511.65.

3 After I provided some preliminary indications as to an appropriate amount, Westpac modified  
its position, and now no longer opposes a variation to allow for an amount of \$1.25 million.  
Senior Counsel for Mr Tesoriero conceded that something in “the ball park” of that amount is  
“getting close” to the sum appropriate, but “is not quite there”.

4 For the reasons that follow, I consider that a variation of the Freezing Orders in the amount of  
\$1.25 million for his “reasonable legal expenses” is appropriate.

### B PROCEDURAL BACKGROUND

5 In understanding Mr Tesoriero’s interlocutory application, it is necessary to have regard to  
some of the background.

6 Proceeding NSD 616 of 2021 (**Westpac Proceeding**) is being case managed together with  
proceeding NSD 681 of 2021 commenced by SMBC Leasing and Finance, Inc. Sydney  
Branch (**SMBC**) (**SMBC Proceeding**) and proceeding NSD 642 of 2021 commenced by  
Societe General (**SocGen**) (**SocGen Proceeding**). Although some companies he controlled  
are now respondents to the SMBC Proceeding, Mr Tesoriero is not a respondent in either the  
SMBC or SocGen Proceeding.

- 7 The Westpac Proceeding was commenced on 28 June 2021, with Westpac seeking relief including damages against Forum Finance Pty Limited (**Forum Finance**), and the second respondent, Mr Basile Papadimitriou.
- 8 On 2 July 2021, the matter was brought back before me in my capacity as the Duty Judge to hear, relevantly, Westpac’s *ex parte* interlocutory application seeking freezing orders against Mr Tesoriero. On that occasion, I ordered that Mr Tesoriero be joined as the third respondent in the Westpac Proceeding and made the Freezing Orders that are the subject of the present application.
- 9 The Freezing Orders are not “all assets” freezing orders, although they are of that practical effect, because they are relevant to assets up to the specified unencumbered value of \$254,219,440.23. Consistently with the usual practice, they initially provided for two exceptions relevant to the present application: they did not prohibit Mr Tesoriero from paying up to \$2,500 a week on his ordinary living expenses; or paying \$25,000 on his reasonable legal expenses.
- 10 Since the initial orders of 2 July 2021, the Freezing Orders have been extended and varied by consent, although on a without admissions basis, on 9 July 2021, 27 August 2021, and 12 November 2021. On 9 July 2021, the Freezing Orders were varied to allow an additional amount for legal expenses; namely, \$30,000 per month (up to the sum of \$350,000) and up to \$5,000 a week for ordinary living expenses. On 27 August 2021, the Freezing Orders were further varied and extended. On 12 November 2021, the Freezing Orders were again varied again to provide further for Mr Tesoriero’s reasonable legal expenses in the amount of \$450,000 until 10 March 2022. This is the exception for reasonable legal expenses currently provided for in the Freezing Orders.
- 11 As is customary when orders are made by way of interim preservation, the Freezing Orders included common form ancillary information orders requiring Mr Tesoriero to disclose his assets and liability position by way of a statement of assets and an affidavit verifying that statement (subject to any claim not to produce information by reason of the privilege against self-incrimination). That affidavit was required to be filed and served by 5pm on 8 July 2021.
- 12 Mr Tesoriero did not comply with those orders. Nor did he comply with further orders extending the time within which to disclose his asset and liability position. However, in the face of an interlocutory process brought by Westpac on 20 July 2021 seeking to charge Mr

Tesoriero with contempt, Mr Tesoriero provided an affidavit of 21 July 2021 setting out his Australian assets (**July 2021 Affidavit**) and, subsequently, an affidavit of 3 September 2021 setting out his interest in assets outside of Australia (**September 2021 Affidavit**). As it turns out, an important aspect of the present application is the adequacy or sufficiency of this disclosure.

## **C THE APPLICATION**

13 The present amount (of \$450,000 up until 10 March 2022) was fixed at a time when it was foreshadowed that a strike-out application to be brought by Mr Tesoriero would be heard and determined in early March 2022. However, in the light of the proceedings being fixed for a final hearing commencing on 10 October 2022, on 10 March 2022, I made orders adjourning Mr Tesoriero's summary dismissal application to the trial. The consequence of this is that, as agreed upon by the parties, further funds are now required for Mr Tesoriero to defend the proceeding through to the conclusion of the trial.

14 As noted above, Westpac no longer opposes a variation to the Freezing Orders to increase the exception providing for Mr Tesoriero's reasonable legal expenses to the amount of \$1.25 million. The source of those funds is, however, disputed. Namely, Westpac does not oppose the release of funds held up to the amount of \$462,511.65 from an identified controlled monies account, because the release of those funds would not erode funds in respect of which proprietary claims have been made. This leaves a sum of \$787,488.35 (from the proposed amount of \$1.25 million) which, if allowed, would be paid over from funds in respect of which either Westpac or SMBC allege they have a proprietary claim.

15 Accordingly, the dispute really revolves around two somewhat narrow points: *first*, whether the Freezing Orders should be varied to increase the exception providing for reasonable legal expenses to the amount of \$1.25 million or some greater amount (as contended for by Mr Tesoriero); and *secondly*, whether Mr Tesoriero should have access to funds, over which Westpac or SMBC make proprietary claims, in order to pay his legal expenses.

### **C.1 Adequate Disclosure**

16 Given that the Freezing Orders are relevant only to those assets up to a specified unencumbered value, Mr Tesoriero bears the evidentiary onus of demonstrating that he does not have any other assets above and beyond that unencumbered value out of which the legal

expenses could be paid: see *Clout (Trustee) v Anscor Pty Ltd* [2001] FCA 174 (at [19]–[20] per Drummond J).

17 The kernel of Westpac’s opposition is that the disclosure of Mr Tesoriero has been manifestly inadequate or, at the very least, remains sufficiently opaque such that the Court cannot be satisfied that Mr Tesoriero does not have other assets available out of which reasonable legal expenses could be paid.

18 This opposition is unsurprising given the history of the matter. It is evident from the material that has now emerged that both the July and September Affidavits did not adequately and fully disclose Mr Tesoriero’s assets as required by the Freezing Orders. Without seeking to be exhaustive, on 1 July 2022, Westpac pointed to the following deficiencies in Mr Tesoriero’s disclosure to date.

- (1) The July 2021 Affidavit failed to disclose Mr Tesoriero’s interest in the Mangusta XOXO yacht (which was subsequently disclosed in the September 2021 Affidavit).
- (2) The July 2021 Affidavit did not disclose Mr Tesoriero’s interest in a property with the address 8-12 Natalia Ave Oakleigh South VIC 3167 and no explanation has been provided as to why this was not disclosed.
- (3) The affidavit of Mr Tesoriero sworn 19 October 2021 (**October 2021 Affidavit**) refers to a number of bank accounts that were not disclosed in the July 2021 Affidavit. Furthermore, despite Mr Tesoriero stating in his October Affidavit (at [4]) that he believes he may have “up to 30 accounts with NAB”, only 18 bank accounts are referred to in the October Affidavit.
- (4) Mr Tesoriero did not disclose in his July 2021 Affidavit other vehicles and motorbikes which have subsequently been discovered by Westpac, including, for example, a 2019 BRP Can-Am Ryker 600 registration RYKER referred to in the Freezing Orders.
- (5) The July 2021 Affidavit refers to a property with address “22 Hight [*sic*] St, Rushworth 3612” as being owned by a company associated with Mr Tesoriero namely, 22 High Street Rushworth Pty Ltd: see July 2021 Affidavit, Annexure A, item 24. However, a copy of the historic certificate of title for the property at 22 High Street Rushworth shows that the property is owned by Rushworth Property Holdings Pty Ltd and does not appear to have ever been owned by 22 High Street Rushworth Pty Ltd.

(6) Mr Tesoriero is said to have an interest in a café that is operated by 65 Nelson Street Enterprises Trust, however, no evidence as to the income or assets of this café has been provided.

19 For these reasons, Westpac submitted there is a significant disparity in the rental income and mortgage expenses as initially disclosed in the July 2021 Affidavit and the recent affidavit of Mr Tesoriero sworn 17 June 2022.

20 Mr Tesoriero has also been in default of other orders. When the interlocutory application was before me on 1 July 2022, I indicated that I was not disposed even to consider an application to exercise the discretion in favour of Mr Tesoriero in circumstances where he was in default of orders of the Court relating to discovery. Further, so I could have some assurances that there was transparency as to Mr Tesoriero's financial position, I required Mr Tesoriero to file and serve an affidavit deposing as to his current assets and liabilities position (including his current income and expense position) as at 11 July 2022, and stood the interlocutory application over part-heard to 19 July 2022.

21 Despite this, Mr Tesoriero did not comply with the order that I made on 1 July 2022. Belatedly an affidavit was filed and served on 12 July 2022, and a further affidavit was then filed and served on 18 July 2022 (**July 2022 Affidavits**). I am also now told that the default relating to discovery has been rectified.

22 On the recommencement of the hearing, Mr Tesoriero was cross-examined in relation to his affidavits and disclosure to date. As senior counsel for Mr Tesoriero correctly concedes, the disclosure of Mr Tesoriero in this case has been "less than ideal" and has "ragged edges": T140.27; T165.42. It might be thought that in some respects this is a fairly benign characterisation of the unsatisfactory approach taken by Mr Tesoriero to disclosure.

23 The following aspects of the evidence that he gave before me are of some particular concern.

24 *First*, there are assets that have not been disclosed. For instance, there is no reference in the July 2022 Affidavits to the existence of a Forbearance Deed with Judo Bank Pty Ltd: see Exhibit G (at 81). This is surprising, given the deed was executed on 14 June 2022, with the effect being to reduce the monthly repayments on the Berkely Street property to the amount of \$33,000 per month (subject to interest rate changes). Mr Tesoriero's affidavit sworn on 12 July 2022 sets out that the repayments are \$58,600 per month.

25 Furthermore, Mr Tesoriero has not been forthcoming in relation to his current account balances, the following of which were not disclosed in his July 2022 Affidavits:

- (1) an amount of \$150,841.76 held in an account in the name of 14 Kirwin Road Morwell Pty Ltd as of 12 July 2022;
- (2) an amount of \$11,945.42 in the name of 286 Carlisle Street Pty Ltd as of 30 June 2022 (Exhibit D); and
- (3) an amount of \$40,921.15 in an account in the name of Tesoriero Investment Group Pty Ltd as of 30 June 2022 (see Exhibit E).

26 *Secondly*, there are aspects of Mr Tesoriero’s evidence of his assets and liabilities that remain unclear. An example emerging during the course of cross-examination was a reference to the “John Tesoriero Trust” of which Mr Tesoriero was a beneficiary: see Exhibit J. Details of this trust were omitted from his previous affidavit material, and indeed it appears that the trustee of that trust may be the trustee of two or three other trusts in respect of which the Court knows nothing.

27 *Thirdly*, there is a remarkable disparity between the values ascribed to certain assets, including 10 rural Victorian petrol stations. Mr Tesoriero swore in his July 2021 Affidavit as to the value of those properties, based on formal valuations obtained in early 2020. In his July 2022 Affidavits, Mr Tesoriero deposed that the value of these properties remains substantially unchanged since his July 2021 Affidavit. However, those values are in stark contrast to the indicative valuations of those properties set out in a schedule of properties prepared by a broker engaged by Mr Tesoriero and his father, Mr Giovanni Tesoriero, in April 2022: see Exhibit C. I am satisfied on the evidence that, although Mr Tesoriero was not the source of these indicative valuations, they were provided on his behalf (and with his consent) by his broker to a proposed incoming mortgagee in relation to the service station properties in the event that their application to refinance the properties was successful.

28 The disparity between these valuations can be seen in the following table.

<b>Property</b>	<b>March–April Valuation 2020</b>	<b>Indicative Value to Financier 8 April 2022</b>	<b>Estimate in Evidence July 2022</b>
2-4 Cowslip Street, Violet Town, VIC 3669	\$3,486,000	\$5,177,343	\$3,400,000

160 Murray Valley Highway, Lake Boga, VIC 3584	\$1,800,000	\$2,944,052	\$1,800,000
31 Ellerman Street, Dimboola, VIC 3414	\$1,050,000	\$1,735,440	\$1,050,000
14 Kirwin Road, Morwell, VIC 3840	\$1,140,000	\$2,025,916	\$1,140,000
89 Betka Road, Mallacoota, VIC 3892	\$1,140,000	\$1,738,911	\$1,200,000
55 Nolan Street, Maryborough, VIC 3465	\$1,200,000	\$1,983,360	\$1,200,000
9 Gregory Street, Ouyen, VIC 3490	\$900,000	\$1,440,000	\$900,000
9-15 Main Street, Derrinallum, VIC 3325	\$1,250,000	\$2,185,455	\$1,250,000
124 High Street, Taradale, VIC 3447	\$562,500	\$983,455	\$560,000
9/269-275 High Street, Golden Square, VIC	\$3,580,000	\$5,245,089	\$3,500,000
<b>Total</b>	\$16,108,500.00	\$25,459,021.00	\$16,000,000.00

29 I described these disparities during submissions as “staggering”. Although this description was contested by senior counsel for Mr Tesoriero, I think it is an accurate description as is reflected by the above figures.

## C.2 Reasonable Legal Expenses

30 The simple point made by Westpac is that, in circumstances where I can have no confidence that Mr Tesoriero has been frank and transparent as to his assets, he cannot have discharged his onus to satisfy the Court that there are no assets available to him to source his reasonable legal expenses.

31 There is much force in this submission but, on balance, I do not think I should accede to it. I am far from satisfied that Mr Tesoriero’s explanation on oath as to his assets and liabilities

has revealed a complete picture of his financial interests in all material particulars. Having said that, I am conscious, as his senior counsel points out, that it is open to conclude that those areas where disclosure has been deficient may be more readily explained by a maladroit approach to the preparation of the affidavits than any conscious desire to withhold information from the Court. I do not think it is necessary for me to form a final view in relation to this matter for the purposes of this application, other than to note that I am conscious that Mr Tesoriero's financial affairs could be fairly described as Byzantine.

32 Wading through the complexity of a vast number of entities, discretionary trusts and bank accounts is not a straightforward task. It seems to me to be likely that the substance of Mr Tesoriero's asset and liability position has finally been revealed, despite the deficiencies to which Westpac rightly points. More relevantly for present purposes, I think, on balance, that there is unlikely to be a significant pool of sums upon which Mr Tesoriero can draw in order to access the funds necessary to conduct these legal proceedings fairly, without there being some variation of the Freezing Orders. I say this with a degree of hesitation, because I remain unconvinced that the true position concerning Mr Tesoriero's financial affairs has been completely disclosed with any precision.

33 Returning to the indicative valuations of the various properties set out in Exhibit C, Mr Tesoriero's father, or at least his father and other relatives, were said to have unencumbered real estate assets of approximately \$50 million in April 2020. Although I consider I should specifically reject Mr Tesoriero's affidavit evidence that Mr Tesoriero is unable to continue to fund his son's lifestyle or his expenses, I do not think that this is determinative of the application. Notwithstanding my misgivings as to this aspect of the evidence, Mr Tesoriero's father has no legal obligation to continue to fund his son's legal expenses.

34 At the end of the day, I have to satisfy myself that there will be a fair trial according to law. The resources available to the applicants in these proceedings are very considerable. The amount of legal costs that have already been expended in relation to both this matter and to the administration of the Forum Group companies generally has no doubt been extremely large. This case is one of considerable factual complexity (at least superficially). It is unnecessary for me, for present purposes, to form a final view as to its strength, other than being satisfied that there is a serious question to be tried. I had no doubt that a *prima facie* case had been established sufficient to have persuaded me to grant interlocutory relief which



is the subject of this application for variation. Given I may be the trial judge, and have not had access to all the material, I do not think it is appropriate for present purposes for me to go further in this regard.

35 Applications of this type do involve to some extent an evaluative process of trying to do the best one can to facilitate the overall justice of the case. I think there is a need to ensure that Mr Tesoriero is properly represented. Mr Tesoriero has already paid an amount of \$180,000 to his current solicitors and is said to owe his previous solicitors the amount of \$200,000 in legal costs, which is currently the subject of an ongoing dispute.

36 In fixing upon the figure of \$1.25 million, I am conscious that there will be a need for Mr Tesoriero to pay a properly assessed or taxed amount payable to his previous solicitors, pay his solicitors and counsel who have undertaken work since November last year without payment, and also fund the work necessary to prepare the trial and appear at the hearing.

37 Evidence was given by Mr Tesoriero's solicitor of further amounts that will be necessary for Mr Tesoriero to defend the proceeding through to the conclusion of the trial. However, I consider this amount can be reduced through effective case management, for example, in relation to an amount of \$370,000 proposed to be set aside for the payment of experts (which I consider to be unnecessary given the nature of the defence proposed).

38 I am satisfied that Mr Tesoriero can have a fair trial if the Freezing Orders are varied to allow him to have access to a figure of \$1.25 million. If the case were to develop in some extraordinary way such that this assessment is wrong, then there obviously would be an ability for Mr Tesoriero to apply for a further variation. However, unless there was a very cogent reason for such an application, I doubt that it would be easy to persuade me to allow further funds to be disbursed.

39 I accept that this will mean that in addition to the \$462,511.65 that can be paid from the identified controlled monies account, the amount of \$787,488.35 will have to be paid from companies not presently in external administration, being funds in respect of which there is an extant proprietary claim. It appears to me that such a release of funds should operate fairly and equitably across those who currently assert that they have a proprietary claim, and I have been told by counsel for Westpac and SMBC that the relative proportions of the proprietary claims in respect of the available assets have been identified and no doubt that area of detail can be worked out between the parties.

### **C.3 Ordinary Living Expenses**

40 Although not stated in the interlocutory application filed by Mr Tesoriero, an additional variation was sought in his written submissions in respect of the amount for living expenses provided for by the Freezing Order.

41 Despite an entitlement under the Freezing Order to ordinary living expenses of up to \$5,000 per week, it is said that Mr Tesoriero has been unable to access those funds since September 2021. For this reason, Mr Tesoriero seeks a lump sum payment of \$200,000 (being an amount calculated from September 2021 to the date of judgment). I do not propose to make that order.

42 Currently, the Freezing Orders provide for the not ungenerous amount of up to \$5000 per week to be payable in relation to ordinary living expenses. This has been the case since 9 July 2021. While it is said that Mr Tesoriero has been unable to access those funds since September 2021, I do not consider that the fact that it is only being raised now entitles Mr Tesoriero to be “back-paid” the total amount up to which he was not prohibited from accessing under the Freezing Orders. Mr Tesoriero is not on his uppers. He has been able to fund adequately his personal expenses to date.

43 Further, I do not propose to vary the Freezing Orders so as to provide Mr Tesoriero with a lump sum for his ordinary living expense up to the date of judgment. If there needs to be some communication making it clear the nature of the exceptions that are in the current Freezing Orders, then I would expect both solicitors for the parties to send a joint communication to the relevant financial institution making it clear that he has an entitlement to have access periodically to those limited funds.

### **D CONCLUSION**

44 Despite the fact that I have granted the variation of the Freezing Orders, I do not consider that the position taken by Westpac to this application has been anything other than reasonable in the light of what has emerged concerning Mr Tesoriero’s compliance with his disclosure obligations to date. In those circumstances, my preliminary view was that there be no order as to costs. However, upon delivering the above reasons, senior counsel for Mr Tesoriero sought that the relevant costs be costs in the cause – a position readily adopted by senior counsel for Westpac. Accordingly, the costs of the interlocutory application will be costs in the cause.

45 Upon reflection, I think I should add a further comment to my above reasons revised following their delivery *ex tempore*. This comment relates to a matter I referred to briefly at the end of the hearing: T139.32–141.39. Evidence from Mr Tesoriero was adduced on his behalf, and Westpac (for entirely understandable reasons) cross-examined Mr Tesoriero at some length during this interlocutory hearing. Accordingly, it became necessary for me to assess Mr Tesoriero’s evidence closely and observe him in the witness box. Although it was unnecessary for me to make general credit findings to dispose of this application, it would leave the parties in a state of incomplete information to fail to record that I necessarily formed opinions as to the reliability of Mr Tesoriero as a witness. Despite this, when I raised this issue, senior counsel for each of the parties did not suggest that my hearing the cross examination caused any ongoing difficulty with me continuing as the docket judge and conducting the final substantive hearing.

46 It is presently unclear as to whether Mr Tesoriero will be called and whether it will be necessary to hear him give evidence again. In fairness, however, I think I should record my view that the general impressions I formed of the evidence of Mr Tesoriero were unfavourable as to his reliability as a witness. Although I believe that I can fairly proceed to hear and determine the issues at the final hearing, I am well aware that this is not the test. I record these remarks to provide full transparency to the parties. The parties have been apprised of all relevant facts. I note that I will continue to proceed on the basis that I will hear the case, unless an application is made that I disqualify myself from doing so.

I certify that the preceding forty-six (46) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Lee.

Associate:

Dated: 4 August 2022

## SCHEDULE OF PARTIES

No. NSD 616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### Respondents

- Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705
- Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997
- Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840
- Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364
- Eighth Respondent: 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662
- Ninth Respondent: 14 James Street Pty Ltd (in liquidation) ACN 638 449 206
- Tenth Respondent: 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129
- Eleventh Respondent: 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160
- Twelfth Respondent: 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473
- Thirteenth Respondent: 23 Margaret Street Pty Ltd ACN 623 715 373
- Fourteenth Respondent: 1160 Glen Huntly Road Pty Ltd ACN 639 447 984
- Fifteenth Respondent: 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093
- Sixteenth Respondent: Canner Investments Pty Ltd ACN 624 176 049
- Seventeenth Respondent: 123 High Street Taradale Pty Ltd ACN 639 872 512
- Eighteenth Respondent: 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921
- Nineteenth Respondent: 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887
- Twentieth Respondent: 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352
- Twenty-First Respondent: 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912
- Twenty-Second Respondent: 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179

Twenty-Third Respondent:	9 Gregory Street Ouyen Pty Ltd ACN 641 392 707
Twenty-Fourth Respondent:	9 Main Street Derrinallum Pty Ltd ACN 639 872 736
Twenty-Fifth Respondent:	286 Carlisle Street Pty Limited ACN 610 042 343
Twenty-Sixth Respondent:	275 High Street Golden Square Pty Ltd ACN 639 870 545
Twenty-Seventh Respondent:	Mazcon Investments Hellas IKE
Twenty-Eighth Respondent:	Palante Pty Ltd ACN 135 344 151
Twenty-Ninth Respondent:	Anastasios Giamouridis
Thirtieth Respondent	The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626
Thirty-First Respondent	Iugis Pty Ltd (in liquidation) ACN 632 882 243
Thirty-Second Respondent	Iugis (UK) Limited
Thirty-Third Respondent	Iugis Holdings Limited
Thirty-Fourth Respondent	Iugis Global Financial Services Limited
Thirty-Fifth Respondent	Iugis Finance Limited
Thirty-Sixth Respondent	Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544
Thirty-Seventh Respondent	Intrashield Pty Ltd (in liquidation) ACN 133 426 534
Thirty-Eighth Respondent	Tesoriero Investment Group Pty Ltd ACN 161 088 115
Thirty-Ninth Respondent	Mangusta (Vic) Pty Ltd ACN 631 520 682
Fortieth Respondent	193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237
Forty-First Respondent	8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626
Forty-Second Respondent	Iugis Hellas IKE
Forty-Third Respondent	Iugis Energy SA

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 23/09/2022 11:32:00 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172  
& ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 23/09/2022 11:39:01 AM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.