

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: QUD591/2015  
File Title: Graeme Clarke and Marion Clarke in their capacity as trustees of the G&M Clarke Superannuation Fund v Sandhurst Trustees Limited ACN 004 030 737  
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 21/09/2017 3:44:05 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.

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## **AMENDED DEFENCE TO FURTHER AMENDED STATEMENT OF CLAIM**

No. QUD 591 of 2015

Federal Court of Australia  
District Registry: Queensland  
Division: General

### **GRAEME CLARKE AND MARION CLARKE**

**In their capacity as Trustees of the G&M CLARKE SUPERANNUATION FUND**

Plaintiffs

### **SANDHURST TRUSTEES LIMITED ACN 004 030 737**

Defendant

This is the Amended Defence to the Further Amended Statement of Claim filed on 2 May 2017.

The Amended Defence to the Further Amended Statement of Claim is dated 21 September 2017, and is filed pursuant to orders made by Lee J on 19 September 2017.

#### **The Plaintiffs**

1. The Defendant admits paragraph 1 of the Further Amended Statement of Claim.
2. The Defendant does not know and therefore cannot admit paragraph 2 of the Further Amended Statement of Claim.
3. With respect to paragraph 3 of the Further Amended Statement of Claim, the Defendant admits that the G & M Clarke Superannuation Fund have since 4 September 2008 been the holders of unsecured deposit notes (**Notes**) issued by Wickham Securities Limited (in liquidation) ACN 111 421 811 (**Wickham**) but does not know and cannot admit they were in the amounts and for the terms set out in the particulars.

Filed on behalf of	Sandhurst Trustees Limited, Defendant		
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**Wickham**

4. In respect of paragraph 4 of the Further Amended Statement of Claim the Defendant:
  - 4.1. admits paragraph 4(a);
  - 4.2. admits paragraph 4(b);
  - 4.3. in relation to paragraph 4(c):
    - 4.3.1. says that at all material times Wickham carried on business as a financier providing funds to borrowers to assist in the financing of property investments and related property transactions;
    - 4.3.2. from time to time Wickham borrowed money from the public by issuing notes under Chapter 2L of the *Corporations Act*, 2001 (Cth) (***Corporations Act***);
    - 4.3.3. the Defendant otherwise denies paragraph 4(c).
  - 4.4. in relation to paragraph 4(d):
    - 4.4.1. says at all material times Wickham used the moneys borrowed from the public by way of the issue of notes to advance funds by way of loans secured by, among other things, first and second ranking mortgages;
    - 4.4.2. otherwise denies paragraph 4(d).
  - 4.5. admits the matters alleged in paragraph 4(e) of the Further Amended Statement of Claim;
  - 4.6. admits the matters alleged in paragraph 4(f) of the Further Amended Statement of Claim.

**The Group Members**

5. In respect of paragraph 5 of the Further Amended Statement of Claim the Defendant:
  - 5.1. does not know and therefore cannot admit the matters alleged in paragraph 5(a) of the Further Amended Statement of Claim;
  - 5.2. as to paragraph 5(b), denies that any Group Members have suffered loss and damage by reason of any conduct of the Defendant;
  - 5.3. does not know and therefore cannot admit the matters alleged in paragraph 5(c).

**The Defendant**

6. In respect of paragraph 6 of the Further Amended Statement of Claim the Defendant:
  - 6.1. admits paragraph 6(a);
  - 6.2. admits paragraph 6(b);
  - 6.3. admits that it had skill and experience in the provision of trustee services but otherwise denies the matters alleged in paragraph 6(c).

**Trust Deed for Notes**

7. In respect of paragraph 7 of the Further Amended Statement of Claim the Defendant:
  - 7.1. says that it acted as the trustee of a Trust Deed for notes issued by Wickham under Chapter 2L of the *Corporations Act* from 7 June 2005;
  - 7.2. otherwise denies paragraph 7.
8. In respect of paragraph 8 of the Further Amended Statement of Claim the Defendant:
  - 8.1. admits paragraph 8(a);
  - 8.2. admits paragraph 8(b);
  - 8.3. admits paragraph 8(c);
  - 8.4. admits paragraph 8(d);
  - 8.5. admits paragraph 8(e);
  - 8.6. denies paragraph 8(f) and says that the lending and security criteria were and are defined to mean the matters set out in Schedule 4 to the Deed;
  - 8.7. admits paragraph 8(g);
  - 8.8. admits paragraph 8(h);
  - 8.9. admits paragraph 8(i);
  - 8.10. admits paragraph 8(j);
  - 8.11. admits paragraph 8(k) and says further that this included the provision to the Defendant by Wickham of its audited annual financial statements and half year financial statements and auditor's review report;
  - 8.12. admits paragraph 8(l);
  - 8.13. admits paragraph 8(m);

- 8.14. admits paragraph 8(n);
- 8.15. admits paragraph 8(o);
- 8.16. denies paragraph 8(p) and says that “*notes outstanding*” is defined in Schedule 1 to the Trust Deed;
- 8.17. admits paragraph 8(q);
- 8.18. admits paragraph 8(r);
- 8.19. admits paragraph 8(s);
- 8.20. admits paragraph 8(t);
- 8.21. admits paragraph 8(u);
- 8.22. admits paragraph 8(v);
- 8.23. admits paragraph 8(w);
- 8.24. admits paragraph 8(x);
- 8.25. admits paragraph 8(y);
- 8.26. admits paragraph 8(z);
- 8.27. says further that the Trust Deed also provided:
  - 8.27.1. that within 75 days after the end of the first six months of each financial year and within 90 days after the close of each financial year, Wickham must provide to the Trustee a copy of a certificate from the auditor which provides details of Wickham’s Net Tangible Assets (as defined) as at the date specified in the certificate being a date not more than three months or such longer period as the Defendant may allow before the date of that certificate;

#### **Particulars**

- (a) Clause 6.4(d) of the Trust Deed.
  - 8.27.2. that in respect of the issue of notes by Wickham, a report from the auditor was to be provided in accordance with Clause 11.1(c) of the Trust Deed;
  - 8.27.3. placed limits on the liability of the Defendant as set out in Clause 13;

8.27.4. the Defendant was at liberty to accept a certificate given or statement made by any auditor or officer of Wickham and was not bound to call for further evidence or be responsible for any loss occasioned by failure to do so;

**Particulars**

(a) Clause 18(b) of the Trust Deed.

8.27.5. provided that the Defendant was at liberty to accept a certificate signed on behalf of all the directors by any two directors to the effect that any particular dealing or thing was in the opinion of the certifying directors in conformity with the provisions of the Trust Deed as sufficient evidence of conformance with the terms of the Trust Deed and that the Defendant was in no way bound to call for further evidence or be responsible for any loss that may be occasioned as a result.

**Particulars**

(a) Clause 24 of the Trust Deed.

9. The Defendant denies paragraph 9 of the Further Amended Statement of Claim.

**Prospectus**

10. In respect of paragraph 10 of the Further Amended Statement of Claim the Defendant says:

- 10.1. that prospectuses for the offer of notes by Wickham were lodged with ASIC on or about the dates stated in the particulars to paragraph 10;
- 10.2. the prospectuses (as supplemented by supplementary prospectuses) stated that applications for notes issued by Wickham may only be accepted by way of an application form attached to the respective prospectuses;
- 10.3. otherwise denies the matters alleged.

11. In respect of paragraph 11 of the Further Amended Statement of Claim:
- 11.1. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(a) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;
  - 11.2. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(b) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;
  - 11.3. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(c) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;
  - 11.4. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(d) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;
  - 11.5. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(e) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;
  - 11.6. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(f) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;
  - 11.7. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(g) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;
  - 11.8. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(h) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;
  - 11.9. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(i) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;

- 11.10. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(j) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;
  - 11.11. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(k) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;
  - 11.12. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(l) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein;
  - 11.13. admits that the prospectuses particularised contains statements to the effect pleaded in paragraph 11(m) of the Further Amended Statement of Claim but otherwise denies the matters alleged therein.
12. In relation to paragraph 12 the Defendant:
- 12.1. admits that Wickham owed a statutory duty to carry on and conduct its business in a proper and efficient manner pursuant to Section 283BB(a) of the *Corporations Act*;
  - 12.2. otherwise does not know and cannot admit the matters alleged.

**Duties of Wickham under the *Corporations Act***

13. In respect of paragraph 13 of the Further Amended Statement of Claim the Defendant:
- 13.1. admits paragraph 13(a);
  - 13.1A. admits paragraph 13(ai);
  - 13.1B. admits paragraph 13(aii);
  - 13.2. admits paragraph 13(b);
  - 13.3. admits paragraph 13(c).
- 13A. admits paragraph 13A;
- 13B. admits paragraph 13B;

**Duties of Sandhurst under the *Corporations Act***

14. In respect of paragraph 14 of the Further Amended Statement of Claim the Defendant:



- 14.1. admits paragraph 14(a);
- 14.2. admits paragraph 14(b);
- 14.3. admits paragraph 14(c);
- 14.4. in response to paragraph 14(d), admits that among other things pursuant to Section 283DA(e) it had an obligation to notify ASIC as soon as practicable if Wickham had not complied with Section 283BF of the *Corporations Act*.

14A. In respect of paragraph 14A of the Further Amended Statement of Claim, the Defendant admits only that Sandhurst had standing pursuant to s 283HB of the *Corporations Act* to seek one or other of the orders the Court may make pursuant to that section subject, inter alia, to the matters set out in s 283HB(2) of the *Corporations Act* and otherwise does not admit the paragraph;

#### **Loan Transactions**

- 15. In respect of paragraph 15 of the Further Amended Statement of Claim the Defendant:
  - 15.1. says that subsequent to 8 June 2005 Wickham used moneys raised by way of the issue of notes to fund loans to borrowers;
  - 15.2. otherwise does not know and cannot admit the particularised loans.

#### **Breaches of Lending and Security Criteria**

- 16. In respect of paragraph 16 of the Further Amended Statement of Claim the Defendant:
  - 16.1. does not know and cannot admit the matters alleged in paragraph 16(a);
  - 16.2. does not plead to paragraph 16(b) as that paragraph contains no allegations;
  - 16.3. does not know and cannot admit the matters alleged in paragraph 16(c);
  - 16.4. does not know and cannot admit the matters alleged in paragraph 16(d);
  - 16.5. does not know and cannot admit the matters alleged in paragraph 16(e);
  - 16.6. does not know and cannot admit the matters alleged in paragraph 16(f);
  - 16.7. does not know and cannot admit the matters alleged in paragraph 16(g);
  - 16.7A. does not know and cannot admit the matters alleged in paragraph 16(gi);
  - 16.8. does not know and cannot admit the matters alleged in paragraph 16(h);
  - 16.9. does not know and cannot admit the matters alleged in paragraph 16(i);

- 16.10. does not know and cannot admit the matters alleged in paragraph 16(j);
- 16.11. does not know and cannot admit the matters alleged in paragraph 16(k);
- 16.12. does not know and cannot admit the matters alleged in paragraph 16(l);
- 16.13. does not know and cannot admit the matters alleged in paragraph 16(m);
- 16.14. does not know and cannot admit the matters alleged in paragraph 16(n);
- 16.15. does not know and cannot admit the matters alleged in paragraph 16(o);
- 16.16. says further that none of the alleged breaches of lending and security criteria were disclosed to it by way of the director's quarterly certificates pursuant to Section 283BF of the *Corporations Act* provided in the period 8 June 2005 to 21 December 2012;
- 16.17. says it was not informed of any of the alleged breaches by the auditor in any reports provided by the auditor to the Defendant in the period 8 June 2005 to 21 December 2012.

### **Breaches of the Business Conduct Obligation**

- 17. In respect of paragraph 17 of the Further Amended Statement of Claim the Defendant:
  - 17.1. does not know and cannot admit the matters alleged in paragraph 17(a);
  - 17.2. denies the matters alleged in paragraph 17(b)(i), and says:
    - 17.2.1. that Wickham maintained or kept records that recorded and explained its loan transactions and financial position and performance including:
      - 17.2.1.1. physical loan files for each borrower which contained:
        - a. security and legal documents;
        - b. loan approvals;
        - c. credit submissions;
        - d. valuations;
        - e. correspondence between the various parties to the loan;
        - f. searches concerning the property of the borrower, the borrowers themselves and any guarantors;

- 17.2.1.2. Loan registers;
- 17.2.1.3. Cash flow reports;
- 17.2.1.4. Maturing loan reports;
- 17.2.1.5. Portfolio reviews;
- 17.2.1.6. Trustee reports;
- 17.2.1.7. Unearned interest calculation spreadsheets;

**Particulars**

- (i) Wickham Loan register September 2005 to June 2006;
- (ii) Wickham Loan register December 2006 to June 2010 (WSL.0089.0001.2307);
- (iii) Cash Flow report for the period 1 July 2007 to 30 June 2008 (WSL.0089.0001.2307);
- (iv) Loan register print outs at 6 monthly intervals for the period September 2005 to June 2012 within the four lever arch folders of documents produced to the Court by AM Giles & Co on 8 April 2016 in answer to the subpoena dated 17 March 2016;
- (v) Cash Flow report for the period 2009 to 2010 (WSL.0089.0001.2307);
- (vi) Wickham cash flow December 2009 (WSL.0460.0001.1764);
- (vii) Wickham cash flow March 2010 (WSL.0460.0001.1906);
- (viii) Wickham cash flow to June 2010 (WSL.0460.0001.1953);
- (ix) Maturing loan report:
  - 1. November 2007 (WSL.0460.0001.0381);
  - 2. December 2007 (WSL.0460.0001.0447);
  - 3. February 2008 (WSL.0460.0001.0451);
  - 4. March 2008 (WSL.0460.0001.0575);
  - 5. April 2008 (WSL.0460.0001.0803);
  - 6. May 2008 (WSL.0460.0001.0880);
  - 7. July 2008 (WSL.0460.0001.0943);
  - 8. October 2008 (WSL.0460.0001.1164);
- (x) Portfolio Review:
  - 1. April 2008 (WSL.0460.001.0805);
  - 2. 31 July 2008 (WSL.0460.0001.08000944);
  - 3. 4 September 2008 (WSL.0460.0001.0988);

4. 19 November 2008 (WSL.0460.0001.1228);
  5. January 2009 (WSL.0460.0001.1293);
  6. 26 February 2009 (WSL.0460.0001.1578);
  7. 6 July 2009 (WSL.0460.0001.1578);
  8. October 2009 (WSL.0460.0001.1627);
  9. November 2009 (WSL.0460.0001.1902);
  10. September 2010 (WSL.0460.0001.2048);
- (xi) Unearned interest calculation spreadsheets for the periods:
1. 1 July 2007 to 31 October 2007 (WSL.0460.0001.0413);
  2. 1 November 2007 to 31 October 2007 (WSL.0460.0001.0505);
  3. 1 January 2008 to 30 June 2008 (WSL.0460.0001.1220);
  4. 1 July 2008 to 30 September 2008 (WSL.0460.0001.1366);
  5. 30 September 2008 to 31 December 2008 (WSL.0460.0001.1367);
  6. 1 January 2009 to 30 June 2009 (WSL.0460.0001.2029);
  7. 1 July 2009 to 31 December 2009 (WSL.0460.0001.2032);
  8. 1 July 2010 to 30 September 2010 (WSL.0460.0001.2055);
- (xii) Annual General Ledger 1 July 2005 to 30 June 2006;
- (xiii) Annual General Ledger 1 July 2006 to 30 June 2007  
(AMG.001.001.0039);
- (xiv) Annual General Ledger 1 July 2007 to 30 June 2008  
(AMG.001.001.0079);
- (xv) Annual General Ledger 1 July 2008 to 30 June 2009  
(WSL.0500.0003.0262);
- (xvi) Annual General Ledger 1 July 2009 to 30 June 2010  
(WSL.0500.0002.0378);
- (xvii) Annual General Ledger 1 July 2010 to 31 March 2011  
(WSL.0500.0002.0129);
- (xviii) Annual General Ledger 1 July 2011 to 30 June 2012  
(WSL.0019.0001.002);
- (xix) Annual Trial Balance 1 July 2005 to 30 June 2006  
(AMG.001.001.0037);
- (xx) Annual Trial Balance 1 July 2006 to 30 June 2007  
(AMG.001.001.0057);
- (xxi) Annual Trial Balance 1 July 2007 to 30 June 2008  
(AMG.001.001.0077);

- (xxii) Annual Trial Balance 1 July 2008 to 30 June 2009 (WSL.0019.0001.0520);
- (xxiii) Annual Trial Balance 1 July 2009 to 30 June 2010 (WSL.0019.0001.0337);
- (xxiv) Annual Trial Balance 1 July 2010 to 30 June 2011 (WSL.0019.0001.0210);
- (xxv) Financial statements as reviewed by Wickham's auditor for the half year ended 31 December 2005 (ABA.004.003.0452);
- (xxvi) Financial statements as reviewed by Wickham's auditor for the half year ended 31 December 2006 (ABA.004.003.0436);
- (xxvii) Financial statements as reviewed by Wickham's auditor for the half year ended 31 December 2007 (ABA.004.003.0400);
- (xxviii) Financial statements as reviewed by Wickham's auditor for the half year ended 31 December 2008 (ABA.004.003.0364);
- (xxix) Financial statements as reviewed by Wickham's auditor for the half year ended 31 December 2009 (ABA.004.003.0342);
- (xxx) Financial statements as reviewed by Wickham's auditor for the half year ended 31 December 2010 (ABA.004.003.0320);
- (xxxi) Financial statements as reviewed by Wickham's auditor for the half year ended 31 December 2011 (ABA.004.003.0081);
- (xxxii) Audited financial statements for the financial year ended 30 June 2006 (ABA.004.003.0272);
- (xxxiii) Audited financial statements for the financial year ended 30 June 2007 (ABA.004.003.0216);
- (xxxiv) Audited financial statements for the financial year ended 30 June 2008 (ABA.004.003.0181);
- (xxxv) Audited financial statements for the financial year ended 30 June 2009 (ABA.004.003.0174);
- (xxxvi) Audited financial statements for the financial year ended 30 June 2010 (ABA.004.003.0113);
- (xxxvii) Audited financial statements for the financial year ended 30 June 2011 (ABA.004.003.0081);
- (xxxviii) Audited financial statements for the financial year ended 30 June 2012 (ABA.004.003.0019);
- (xxxix) Further particulars will be provided following the production and inspection of subpoenaed documents;

17.2.2. As to particular D to subparagraph 17.2(b) Sandhurst says that:

- 17.2.2.1. the books and records of Wickham are not and were not limited to those defined in paragraph 17(b)(i)(D);

17.2.2.2. Wickham had no employees of its own and outsourced many of its activities including:

- a. the management of its loan book and the preparation and maintenance of business records and loan files relevant to the operation of its loan book to Maxwell Financial Services Pty Ltd in the period early 2006 to September 2010;
- b. the preparation and maintenance of its general ledger, journals, half yearly and annual financial statements to AM Giles & Co, Chartered Accountants in the period 30 June 2005 to 21 December 2012;
- c. administrative support services, IT services and premises to Sherwin Financial Planners Pty Ltd (SFP) in the period 30 June 2005 to 21 December 2012;

**Particulars**

- (i) Ernst & Young report dated 9 May 2007 (ABA.004.005.0247);

17.2.2.3. there is evidence that documents and records alleged by the plaintiffs never to have been prepared or kept by or on behalf of Wickham were in fact prepared and kept;

**Particulars**

- (i) Four lever arch folders of documents produced to the Court on 8 April 2016 by AM Giles & Co in answer to a subpoena dated 17 March 2016;
- (ii) Pitcher Partners 2006 Audit Work Papers produced to the Court on 2 December 2016 in answer to a subpoena for Pannell Kerr Forster dated 15 November 2016;
- (iii) approximately 7,800 documents produced to the Court by ASIC on 19 May 2017 in answer to a subpoena dated 14 February 2017;

- (iv) a further 88 documents produced to the Court on 5 June 2017 by ASIC in further answer to the subpoena dated 14 February 2017;
- (v) hard copy and electronic documents in the possession, custody or power of Stefan Dopking of FTI Consulting the liquidator of SFP, DIY Superannuation Services Pty Ltd, Reacroft Pty Ltd, Blue Diamond Investments Pty Ltd, SP Property Pty Ltd, Astor Funds Pty Ltd, Wickham Capital Pty Ltd production of which will be sought by a subpoena for which leave to issue was requested from the Court on 7 June 2017;

17.2.2.4. loan files were created and kept in the period from at least early 2006 until September 2010 in respect of each of the loans recorded on the Wickham Loan Register as current or finalised as at 30 June 2010. In or about September 2010 those files were taken from the offices of Maxwell Financial Services in Brisbane by Garth Robertson and two associates

17.2.2.5. save for files in respect of:

- a. Living on Lee
- b. SEZ Developments
- c. Cardex Varsity
- d. Cleary, Clements Redofrd
- e. Ball
- f. Hardel
- g. Lifestyle Resports
- h. Read
- i. Plantation Rise
- j. SEQ Developments
- k. TBB Holdings
- l. Universal Self Storage
- m. Vela

the loan files that were created and kept in the period from at least early 2006 until September 2010 have not been

produced to the Court by the liquidators or ASIC or discovered by the plaintiffs;

17.2.2.6. further particulars will be provided following further production to the Court in answer to subpoenas.

17.3. denies the matters alleged in paragraph 17(b)(ii), and says that Wickham maintained unearned interest calculation spreadsheets and a loan register detailing how interest had been calculated at least in the period 30 June 2005 to 30 June 2010:

**Particulars**

- (i) Wickham Loan register December 2006 to June 2010 (WSL.0089.0001.2307);
- (ii) Wickham Loan register (GMC.002.003.7845\_0004);
- (iii) Unearned interest calculation spreadsheets for the periods:
  1. 1 July 2007 to 31 October 2007 (WSL.0460.0001.0413);
  2. 1 November 2007 to 31 October 2007 (WSL.0460.0001.0505);
  3. 1 January 2008 to 30 June 2008 (WSL.0460.0001.1220);
  4. 1 July 2008 to 30 September 2008 (WSL.0460.0001.1366);
  5. 30 September 2008 to 31 December 2008 (WSL.0460.0001.1367);
  6. 1 January 2009 to 30 June 2009 (WSL.0460.0001.2029);
  7. 1 July 2009 to 31 December 2009 (WSL.0460.0001.2032);
  8. 1 July 2010 to 30 September 2010 (WSL.0460.0001.2055);
- (iv) Further particulars will be provided following the production and inspection of subpoenaed documents;

17.4. denies the matters alleged in paragraph 17(b)(iii) and repeats paragraph 17.2.1 above;

17.5. denies the matters alleged in paragraph 17(b)(iv), and:

17.5.1. repeats paragraph 17.2.1 above;

17.5.2. says Wickham's auditors formed an opinion in respect of its annual and half yearly accounts between 30 June 2005 and 30 June 2012, as required by s 307 of the *Corporations Act*, that Wickham had kept



financial records sufficient to enable its financial reports to be prepared and audited;

- 17.6. denies the matters alleged in paragraph 17(b)(v) and says that Wickham did maintain cash flow reports;

**Particulars**

- (i) Cash Flow report for the period 1 July 2007 to 30 June 2008 (WSL.0089.0001.2307);
- (ii) Cash Flow report for the period 2009 to 2010 (WSL.0089.0001.2307);
- (iii) Wickham cash flow December 2009 (WSL.0460.0001.1764);
- (iv) Wickham cash flow March 2010 (WSL.0460.001.1906);
- (v) Wickham cash flow to June 2010 (WSL.0460.0001.1953);
- (vi) Further particulars will be provided following the production and inspection of subpoenaed documents;

- 17.7. denies the matters alleged in paragraph 17(b)(vi), and says that Wickham maintained a loan register which was regularly updated by Maxwell Financial Services from June 2005 to August 2010 and was purportedly maintained and updated by Garth Robertson from in or about September 2010. The loan register was provided to AM Giles & Co for the purpose of maintaining the Wickham general ledger and for the preparation of half year and end of financial year reports in statutory reporting format;

**Particulars**

- (i) Four lever arch folders of documents produced to the Court by AM Giles & Co on 8 April 2016 in answer to the subpoena dated 17 March 2016;

- 17.8. denies the matters alleged in paragraph 17(b)(vii), and says that Wickham issued loan statements to borrowers:

**Particulars**

- (i) Loan statements in respect of the Cleary, Clements and Radford loan (WSL.0460.0001.1763) (GMC.002.003.7843\_0057)

- (ii) Loan statements in respect of the Hardel loan (WSL.0460.0001.0968) (GMC.002.003.7844\_0007)
- (iii) Loan statements for the Universal loan (GMC.002.003.7858\_0275), (GMC.002.003.7858\_0281), (GMC.002.003.7858\_0297)
- (iv) Loan statements for the TBB Holdings loan (GMC.002.003.7856\_0122), (GMC.002.003.7856\_0123), (WSL.0241.0005.0193), (WSL.0460.0001.1919), (WSL.0547.0003.0488)
- (v) Loan statements for the WLP loan (WSL.0011.0006.0461), (WSL.0241.0008.0006), (WSL.0460.0001.1594), (WSL.0546.0001.0118)
- (vi) Loan statements for the Bucasia loan (WSL.0089.0001.4901), (WSL.0435.0001.2051)
- (vii) Loan statements for the Glenview loan (WSL.0089.0001.5815) (WSL.0241.0009.0012), (WSL.0460.0001.1445), (WSL.0460.0001.1799), (WSL.0544.0001.0220), (WSL.0544.0001.0240), (WSL.0544.0001.0254)
- (viii) Loan statements for the Kirby BTN6 loan (WSL.0089.0001.6277) (WSL.0089.0001.8884)
- (ix) Loan statements for the Reichstein loan (WSL.0089.0001.8298), (WSL.0089.0004.1258), (WSL.0089.0005.2943)
- (x) Loan statements for the Kent loan (WSL.0089.0003.0415)
- (xi) Loan statements for the Living on Lee loan (WSL.0089.0004.7447)
- (xii) Loan statements for the Giant Developments loan (WSL.0241.0007.0180), (WSL.0460.0001.1261), (WSL.0460.0001.1576), (WSL.0461.0001.0423), (WSL.0461.0001.0424), (WSL.0461.0001.0433), (WSL.0461.0001.0434), (WSL.0461.0001.0435) (WSL.0460.0001.1116)
- (xiii) Loan statements for the Tiggi loan (WSL.0460.0001.0153)
- (xiv) Loan statements for the Central Avenue loan (WSL.0460.0001.0503)
- (xv) Loan statement for the Dean loan (WSL.0460.0001.0877), (WSL.0460.0001.1118)
- (xvi) Loan statements for the Tomkat loan (WSL.0460.0001.0966), (WSL.0460.0001.1165), (WSL.0460.0001.1264), (WSL.0460.0001.1444), (WSL.0460.0001.1480)
- (xvii) Loan statements for the Rebellious loan (WSL.0460.0001.1115)
- (xviii) Loan statements for the Ivory Properties loan (WSL.0460.0001.1235)
- (xix) Loan statements for the Mackay loan (WSL.0460.0001.1475)
- (xx) Further particulars will be provided following the production and inspection of subpoenaed documents;

- 17.9. As to the matters alleged in paragraph 17(b)(viii) says that there was no requirement under the Lending and Security Criteria or otherwise for Wickham to have valuation reports addressed or assigned to it;
- 17.10. denies the matters alleged in paragraph 17(b)(ix), and says that Wickham held loan approvals by its Board or Investment Committee;

**Particulars**

- (i) Sandhurst repeats paragraph 17.2.2 above
- (ii) Finance approval for the Avipri loan (WSL.0486.0001.0018)
- (iii) Extension approvals for the Avipri loan (WSL.0241.0007.0132), (WSL.0241.0007.0131), (WSL.0002.0001.0035), (WSL.0486.0001.0003) (WSL.0241.0007.0129), (WSL.0486.0001.0002)
- (iv) Finance approval for the Dooney loan:
  1. Wickham finance approval signed minutes dated 20 October 2006 (WSL.0461.0003.0213);
  2. Wickham finance approval signed minutes dated 21 December 2007 (WSL.0461.0003.0209);
  3. Wickham finance approval signed minutes dated 24 June 2008 (WSL.0461.0003.0208);
- (v) Extension approvals for the Dooney loan:
  1. Wickham extension approval signed minutes dated 15 September 2008 (WSL.0461.0003.0207);
  2. Wickham extension approval signed minutes dated 20 January 2009 (WSL.0461.0003.0205);
  3. Wickham extension approval signed minutes dated 23 December 2009 (WSL.0461.0003.0204);
- (vi) Minutes of Directors' meeting for Wickham dated 16 September 2008 recording that the Directors of Wickham had approved a loan extension with respect to the Dooney loan (WSL.0002.0001.0048)
- (vii) Finance approval for the Pressmint loan:
  1. Wickham finance approval signed minutes dated 20 October 2006 (WSL.0462.0001.0034);
  2. Wickham finance approval signed minutes dated 9 November 2007 (WSL.0462.0001.0027);
  3. Wickham finance approval signed minutes dated 15 November 2008 (WSL.0462.0001.0026);

4. Wickham finance approval signed minutes dated 9 February 2009 (WSL.0462.0001.0024);
  5. Wickham finance approval signed minutes dated 23 December 2009 (WSL.0462.0001.0023)
- (viii) Minutes of Directors' meeting for Wickham dated 16 September 2008 recording that the Directors of Wickham had approved the Pressmint loan (WSL.0002.0001.0046)
- (ix) Finance and extension approval for the Keytan loan:
1. Wickham finance approval signed minutes dated 18 July 2007 (WSL.0462.0002.0034);
  2. Wickham extension approval signed minutes dated 24 June 2006 (WSL.0462.0002.0033);
  3. Wickham extension approval signed minutes dated 15 September 2007 (WSL.0462.0002.0032);
  4. Wickham extension approval signed minutes dated 20 January 2009 (WSL.0462.0002.0030);
  5. Wickham extension approval signed minutes dated 23 December 2009 (WSL.0462.0002.0029);
- (x) Finance approval for the Mintgrove loan:
1. Wickham finance approval signed minutes dated 27 January 2007 (WSL.~~0462~~0463.0002.0134);
  2. Wickham finance approval signed minutes dated 12 October 2007 (WSL.0462.0002.0005);
  3. Wickham finance approval signed minutes dated 21 December 2007 (WSL.0462.0002.0130);
  4. Wickham finance approval signed minutes dated 27 January 2008 (WSL.~~0462~~0461.0002.0027);
  5. Wickham finance approval signed minutes dated 15 November 2008 (WSL.0462.~~0002~~0003.0004);
  6. Wickham finance approval signed minutes dated 20 January 2009 (WSL.0462.~~0002~~0003.0003)
  7. Wickham finance approval signed minutes dated 23 December 2009 (WSL.0462.0002.0001)
- (xi) Extension approval for the Mintgrove loan:
1. Wickham extension approval signed minutes dated 24 June 2008 (WSL.~~0462~~0463.0002.0129);
  2. Wickham extension approval signed minutes dated 15 September 2008 (WSL.~~0462~~0463.0002.0128);
  3. Wickham extension approval signed minutes dated 20 January 2009 (WSL.~~0462~~0463.0002.0126);

4. Wickham extension approval signed minutes dated 23 December 2009 (WSL.0462.0002.0125);
- (xii) Finance and extension approval for the Sirford loan:
1. Wickham finance approval signed minutes dated 21 December 2007 (WSL.04620464.0002.0284);
  2. Wickham extension approval signed minutes dated 20 January 2009 (WSL.04620464.0002.0283);
  3. Wickham extension approval signed minutes dated 23 December 2009 (WSL.04620464.0002.0282);
- (xiii) Finance approval for the Giant Development loan (WSL.0241.0007.0161), (WSL.0241.0007.0159)
- (xiv) Minutes of Directors' meeting for Wickham dated 9 September 2008 recording that the Directors of Wickham had approved the Giant Development loan (WSL.0002.0001.0056)
- (xv) Extension approval for the Giant Development loan (WSL.0241.0007.0155)
- (xvi) Minutes of Directors' meeting for Wickham dated 27 October 2008 recording that the Directors of Wickham had approved the Ingelton loan (WSL.0002.0001.0037)
- (xvii) Minutes of Directors' meeting for Wickham dated 29 October 2008 recording that the Directors of Wickham had approved a loan extension with respect to the Mackay loan (WSL.0002.0001.0039)
- (xviii) Minutes of Directors' meeting for Wickham dated 15 December 2008 recording that the Directors of Wickham had approved a loan extension with respect to the Tomkat loan
- (xix) Finance approval for the WLP loan (WSL.0241.0008.0025)
- (xx) Further particulars will be provided following the production and inspection of subpoenaed documents
- 17.11. does not plead to paragraph 17(b)(x) as that paragraph contains no allegations;
- 17.12. denies the matters alleged in paragraph 17(b)(xi), and says that Wickham would be provided with valuations produced by the introducer of a loan or the first mortgagee of the security property and also on occasion obtained and considered RP data;
- 17.13. denies the matters pleaded in paragraph 17(b)(xii), and says that loan files held by Wickham included current correspondence between Wickham and the relevant borrower;

17.14. denies the matters alleged in paragraph 17(b)(xiii) and says that Wickham held approvals of loan extensions beyond the initial approved term for loans particularised in that paragraph:

**Particulars**

- (i) Sandhurst repeats paragraph 17.2.2 above;
- (ii) Email from Brad Sherwin to Russell Maxwell dated 7 October 2008 approving the loan extension of the Avpri loan (GMC.002.003.7850\_0018);
- (iii) Extension Approval for the Kirby BTN6 loan executed on behalf of Wickham Investment Committee on 17 July 2009 (GMC.002.003.7890\_0003);
- (iv) Minutes of Directors' meeting for Wickham dated 16 September 2008 recording that the Directors of Wickham had approved a loan extension to Mintgrove Pty Ltd (GMC.002.003.7893\_0002);
- (v) Extension Approval for the Plantation Rise loan executed on behalf of Wickham Investment Committee on 12 June 2007 (GMC.002.003.7861);
- (vi) Extension Approval for the TBB Holding loan executed on behalf of Wickham Investment Committee on 26 February 2009 (GMC.002.003.7898\_0003);
- (vii) Minutes of Directors' meeting for Wickham dated 7 October 2009 recording that the Directors of Wickham had approved a loan extension to TBB Holdings Pty Ltd (GMC.002.003.7857\_0015);
- (viii) Minutes of Directors' meeting for Wickham dated 26 February 2010 recording that the Directors of Wickham had approved a loan extension to TBB Holdings Pty Ltd (GMC.002.003.7857\_0013);
- (ix) Minutes of Directors' meeting for Wickham dated 4 August 2010 recording that the Directors of Wickham had approved a loan extension to TBB Holdings Pty Ltd (GMC.002.003.7857);
- (x) Further particulars will be provided following the production and inspection of subpoenaed documents;

17.15. does not know and cannot admit the matters alleged in paragraph 17(b)(xiv);

17.16. does not know and cannot admit the matters alleged in paragraph 17(b)(xv);

17.17. does not know and cannot admit the matters alleged in paragraph 17(b)(xvi) but says further and in any event, whether a loan was correctly recorded as a current asset depended, in accordance with AASB 101, whether the loan was due and payable within 12 months of the balance date.

17.18. does not know and cannot admit the matters alleged in paragraph 17(b)(xvii);

17.19. does not know and cannot admit the matters alleged in paragraph 17(b)(xviii);

17.20. as to the matters alleged in paragraph 17(b)(xix), Sandhurst says:

17.20.1. in the course of its trust officer's review of the Wickham 31 December 2005 financial statements it identified that Wickham appeared not to have complied with Clause 6.4 of the Trust Deed by reason of a calculation of its net tangible assets covenant compliance undertaken by Sandhurst as part of the documentation of its review;

17.20.2. Sandhurst's Manager of Corporate Trusts met with Wickham's directors Sherwin and Rae at Wickham's offices on 27 April 2006 in the course of which an explanation for how the breach occurred and the steps to be taken to remedy it was sought and obtained;

17.20.3. on or about 30 May 2006 Wickham's auditors Pitcher Partners certified that Wickham had remedied the breach of the NTA Covenant and had contributed equity of \$600,000 as at 31 March 2006;

17.20.4. Pitcher Partners provided to Sandhurst contemporaneous documentary evidence being a bank statement, trial balance, unsigned director's minute and unsigned share certificates confirming the remedy of the NTA breach

17.20.5. on 1 June 2006 Sandhurst sought and on 6 June 2006 was provided with the signed Board Minutes and Share Certificates;

17.20.6. by reason of the matters set out in sub-paragraphs 17.20.1 to 17.20.5 above Sandhurst was satisfied that the breach of Clause 6.4 as at 31 December 2005 had been satisfactorily remedied by Wickham.

17.21. in response to the matters alleged in paragraph 17(b)(xx) says:

17.21.1. it repeats paragraph 17.26 below;

17.21.2. on 29 September 2010 Sandhurst was informed by email from AM Giles that it was necessary for the shareholders of Wickham to contribute an

additional sum of \$44,566 to satisfy the Minimum Capital requirement set out in clause 6.4(a) of the Trust Deed;

17.21.3. on 30 September 2010, Sandhurst received the audited financial statements of Wickham and requested that Wickham provide the Auditor's clause 6.4(a) certificate for the 6 months ended 30 June 2010;

17.21.4. on 26 October 2010, Sandhurst received the Auditor's clause 6.4(a) certificate confirming that Wickham did not at all times maintain net tangible assets equal to the Minimum Capital during the period 1 April 2010 to 30 June 2010 and that on 30 September 2010 an amount of \$44,566 was deposited into Wickham's bank account which rectified the shortfall;

17.21.5. by reasons of the matters set out in sub-paragraphs 17.21.1 to 17.21.4 above, Sandhurst was satisfied that the breach of Clause 6.4 as at 30 June 2010 had been satisfactorily remedied by Wickham;

17.22. does not know and cannot admit the matters alleged in paragraph 17(b)(xxi);

17.23. does not know and cannot admit the matters alleged in paragraph 17(b)(xxii);

17.24. does not know and cannot admit the matters alleged in paragraph 17(b)(xxiii);

17.25. does not know and cannot admit the matters alleged in paragraph 17(b)(xxiv);

17.26. as to paragraphs 17(b)(xxv) and 17(b)(xxvi), Sandhurst says that:

17.26.1. by reason of its review and analysis of the Wickham's 31 December 2009 financial statements it identified that dividends had been paid contrary to undertakings that Wickham's issued capital would be increased and that Wickham had come close to breaching Clause 6.4 NTA Covenant in the Trust Deed;

17.26.2. Sandhurst required the provision by Wickham of an Auditor's Clause 6.4(d) Certificate and a Director's Statement for the purposes of Clause 6.4 confirming that no breach of the NTA Covenant had occurred and



directed that no further notes be issued by Wickham pending confirmation that there had been no breach of the NTA Covenant;

17.26.3. between 31 March and 1 June 2010, Sandhurst ascertained the matters alleged in paragraph 17(b)(xxvi) and thereby an apparent breach of the lending and security criteria had occurred;

17.26.4. between 31 March and 19 July 2010, Sandhurst:

- a) sought and obtained disclosure by Wickham in respect of the breach of the lending and security criteria;
- b) required repayment in full to Wickham of the related party loan by SFP in April and May 2010;
- c) required that Wickham, by its external accountant AM Giles & Co, provide documentary evidence confirming rectification of the breach of the lending and security criteria;
- d) required Wickham to prepare and publish a supplementary prospectus to provide disclosure of the breach of the Trust Deed and its remedy;
- e) met with Sherwin to discuss the breaches and obtain confirmation that Wickham's contributed equity would be increased;
- f) received a Supplementary ASIC Disclosure Notice dated 15 July 2010 which disclosed inaccuracies in quarterly reports provided to ASIC and Sandhurst;

17.26.5. by reason of the matters set out in paragraphs 17.26.1 to 17.26.4 above Sandhurst was satisfied that the breach of the lending and security criteria of the Trust Deed had been remedied and full disclosure to ASIC and noteholders had been made.

17.27. denies the matters alleged in paragraph 17(b)(xxvii) and says that in the period from at least in or about early 2006 to 30 June 2010, Wickham followed the 9 stage process for lending referred to in the prospectus;

17.28. does not know and cannot admit the matters alleged in paragraph 17(b)(xxviii);

17.29. does not know and cannot admit the matters alleged in paragraph 17(b)(xxix);

17.30. denies the matters alleged in paragraph 17(b)(xxx) and says that Wickham made loans, or extended loans, by the unanimous decision of the Investment Committee:

### Particulars

- (i) Wickham Investment Committee extension approval for the Kirby BTN6 dated 17 July 2009 (GMC.002.003.7890\_003);
- (ii) Extension approvals for the Avipri loan (WSL.0241.0007.0132), (WSL.0241.0007.0131), (WSL.0002.0001.0035), (WSL.0486.0001.0003) (WSL.0241.0007.0129), (WSL.0486.0001.0002)
- (iii) Extension approval for the Keytan loan:
  1. Wickham extension approval signed minutes dated 24 June 2006 (WSL.0462.0002.0033);
  2. Wickham extension approval signed minutes dated 15 September 2007 (WSL.0462.0002.0032);
  3. Wickham extension approval signed minutes dated 20 January 2009 (WSL.0462.0002.0030);
  4. Wickham extension approval signed minutes dated 23 December 2009 (WSL.0462.0002.0029);
- (iv) Extension approval for the Mintgrove loan:
  1. Wickham extension approval signed minutes dated 24 June 2008 (WSL.04620463.0002.0129);
  2. Wickham extension approval signed minutes dated 15 September 2008 (WSL.04620463.0002.0128);
  3. Wickham extension approval signed minutes dated 20 January 2009 (WSL.0462.0002.0126);
  4. Wickham extension approval signed minutes dated 23 December 2009 (WSL.0462.0002.0125);
- (v) Extension approval for the Sirford loan:
  1. Wickham extension approval signed minutes dated 20 January 2009 (WSL.04620464.00020004.0283);
  2. Wickham extension approval signed minutes dated 23 December 2009 (WSL.04620464.00020004.0282);
- (vi) Wickham Investment Committee finance approval for Plantation Rise dated 14 April 2006 (GMC.002.003.7861\_0010), 5 December 2006 (GMC.002.003.7861\_0009);
- (vii) Wickham Investment Committee extension approval for the Plantation Rise loan dated 12 June 2007 (GMC.002.003.7861)
- (viii) Wickham Investment Committee finance approval for the TBB Holdings loan dated 1 September 2008 (GMC.002.003.7898\_0008)
- (ix) Wickham Investment Committee extension approval for the TBB Holdings loan dated 26 February 2009 (GMC.002.003.7898\_0003), 7 October 2009 (GMC.002.003.7857\_0014), 26 February 2010 (GMC.002.003.7857\_0012), 5 May 2010 (GMC.002.003.7857\_0001);

- (x) Further particulars will be provided following the production and inspection of subpoenaed documents;

17.31. denies the matters alleged in paragraph 17(b)(xxxi) and says Wickham conducted an assessment process, involving due diligence, market research and feasibility studies before deciding to make loans:

**Particulars**

- (i) Sandhurst repeats paragraph 12.2.2 above
- (ii) Loan Assessment Worksheets for the following loans:
1. Hardel (GMC.002.003.7845\_0064);
  2. Riverside (GMC.002.003.7845\_0128);
  3. SEQ Developments (GMC.002.003.7851\_0114);
  4. TBB Holdings (GMC.002.003.7854\_0115);
  5. Universal Self Storage (GMC.002.003.7858\_0301);
  6. Plantation Rise (GMC.002.003.7861\_0007);
- (iii) Credit submissions with respect to the following loans:
1. TBB Holdings (GMC.002.003.7853\_0157 to GMC.002.003.7853\_0186);
  2. Hardel (GMC.002.003.7845\_0105 to GMC.002.003.7845\_0119);
  3. Riverside (GMC.002.003.7848\_0017 to GMC.002.003.7848\_0025);
  4. SEQ Developments (MC.002.003.7851\_0007 to GMC.002.003.7851\_0019);
  5. Cleary, Clements, Redford (GMC.002.003.7843\_0108 to GMC.002.003.7843\_0110);
  6. Universal Self Storage (GMC.002.003.7858\_0007 to GMC.002.003.7858\_0036);
  7. WLP (GMC.002.003.7845\_0024 to GMC.002.003.7845\_0044);
  8. Read (GMC.002.003.7850\_0020 to GMC.002.003.7850\_0036);
  9. Ball (GMC.002.003.7842\_0005 to GMC.002.003.7842\_0019);
  10. Cardex Varsity (GMC.002.003.7841\_0012 to GMC.002.003.7841\_0028);
  11. Vela (GMC.002.003.7860\_0010 to GMC.002.003.7860\_0025);
- (iv) Summary - Discussion Points for the Living on Lee Street loan (GMC.002.003.7849\_0070 to GMC.002.003.7849\_0072);

- (v) Finance submissions for the Zinlarge loan (GMC.002.003.7859\_0021 to GMC.002.003.7859\_0070);
- (vi) Email chain between Russel Maxwell Investment Committee dated 13 January 2006 with respect to the TBB loan (GMC.002.003.7853\_0095 and GMC.002.003.7853\_0096);
- (vii) PDM Credit Approval Memorandum with respect to the Plantation Rise loan (GMC.002.003.7861\_0021 to GMC.002.003.7861\_0032);
- (viii) Email Chain dated 7 April 2006, between Russell Maxwell and PDM with respect to the Credit Approval Memorandum for the Plantation Rise loan (GMC.002.003.7861\_0033 and GMC.002.003.7861\_0034);
- (ix) Email chain dated 13 march 2008 between Russel Maxwell and the Wickham Investment Committee with respect to approval of the SEQ Developments loan (GMC.002.003.7851\_0108 and GMC.002.003.7851\_0113);
- (x) Email chain between Russel Maxwell and Balmain Commercial dated 7 October 2008 with respect to the credit submission for Hardel (GMC.002.003.7845\_0011 and GMC.002.003.7845\_0012);
- (xi) Email chain between Russel Maxwell and Balmain Commercial dated 14 October 2008 with respect to the Ball loan (GMC.002.003.7842\_0052);
- (xii) Email chain between the Wickham Investment Committee between 9 October and 15 October 2009 with respect to the approval Ball loan (GMC.002.003.7842\_0053 and GMC.002.003.7842\_0054);
- (xiii) Further particulars will be provided following the production and inspection of subpoenaed documents;

17.32. does not know and cannot admit the matters alleged in paragraph 17(b)(xxxii) but says that the Investment Committee did monitor from time to time Wickham's risk exposure and level of return;

17.33. denies the matters alleged in paragraph 17(b)(xxxiii) and says that the Investment Committee was involved overseeing the loans including periodically monitoring the amount of new loans against the value of real estate taken as security:

#### **Particulars**

- (i) Email from Russell Maxwell to Bradley Sherwin, Nigel Rae and Stephen Turner dated 2 February 2006, (WSL.0507.0001.0004);
- (ii) Email from Russell Maxwell to Bradley Sherwin, Nigel Rae and Stephen Turner dated 1 March 2006 (WSL.0507.0001.0005);

- (iii) Email from Russell Maxwell to Bradley Sherwin, Nigel Rae and Stephen Turner dated 3 April 2006 (WSL.0507.0001.0006);
- (iv) Email from Russell Maxwell to Bradley Sherwin, Nigel Rae and Stephen Turner dated 16 May 2006 (WSL.0507.0001.0007);
- (v) Email from Russell Maxwell to Bradley Sherwin, Nigel Rae and Stephen Turner dated 15 June 2006 (WSL.0507.0001.0008);
- (vi) Email from Russell Maxwell to Bradley Sherwin, Nigel Rae and Stephen Turner dated 18 September 2006 (WSL.0057.0001.0009);
- (vii) Wickham Securities Ltd Minutes of meeting held on Monday 4 September 2006 (WSL.0460.0001.0021);
- (viii) Email chain between Russell Maxwell and Jordan Birchall 22-26 February 2007 with respect to the Hardel loan (GMC.002.003.7844\_0031 to GMC.002.003.7844\_034);
- (ix) Emails between Russell Maxwell and Jordan Birchall and/or Luke McKenzie over the period 25-30 April 2007 (GMC.002.003.7844\_0035 to GMC.002.003.7844\_038);
- (x) Credit submission dated 23 April 2007 for the TBB loan (GMC.002.003.7853\_0113 to GMC.002.003.7853\_0128);
- (xi) Email from Luke McKenzie to Russell Maxwell dated 30 April 2007 with respect to the Hardel and WLP loan (GMC.002.003.7844\_036);
- (xii) Credit Approval Memorandum dated 22 May 2007 with respect to the Plantation Rise loan (GMC.002.003.7861\_0038 to GMC.002.003.7861\_0071);
- (xiii) Email from Russell Maxwell to Luke McKenzie dated 28 September 2007 with respect to the Hardel loan (GMC.002.003.7844\_0029);
- (xiv) Email from Russell Maxwell to Luke McKenzie dated 19 October 2007 with respect to the Hardel loan and the Avpri loan (GMC.002.003.7844\_0021 and GMC.002.003.7844\_0022);
- (xv) Email chain between Russell Maxwell and the members of the Wickham Investment Committee dated 23 January 2008 with respect to the TBB Holdings loan (GMC.002.003.7853\_0248 and GMC.002.003.7853\_0249);
- (xvi) Credit submission dated 19 August 2008 with respect to the TBB Holding loan (GMC.002.003.7854\_0006 to GMC.002.003.7854\_0035);
- (xvii) Email chain between Russell Maxwell and John Petzke between 25 to 28 August 2008 with respect to the TBB Holdings loan (GMC.002.003.7854\_0102 to GMC.002.003.7854\_0104);
- (xviii) Credit submission with respect to the Hardel and Avpri loan (GMC.002.003.7850\_0097 to GMC.002.003.7850\_0111);
- (xix) Email chain between Russell Maxwell and Stephen Budd between 2 to 4 February 2009 with respect to the SEQ Developments loan (GMC.002.003.7851\_0095 to GMC.002.003.7851\_0097);

- (xx) Email chain between Russell Maxwell and John Petzke between 3 March 2009 and 10 March 2009 with respect to the TBB Holdings loan (GMC.002.003.7855\_0140 to GMC.002.003.7855\_0142);
- (xxi) Further particulars will be provided following the production and inspection of subpoenaed documents;

17.34. does not know and cannot admit the matters alleged in paragraph 17(c).

**Trustee's obligations to ensure compliance with Trust Deed and *Corporations Act***

18. In respect of paragraph 18 of the Further Amended Statement of Claim the Defendant:

18.1. admits that it owed a duty of reasonable diligence pursuant to Clause 12.1 and Section 283DA(a) to ascertain whether the property of Wickham (that is, or should be available, whether by way of security or otherwise) will be sufficient to repay the amount deposited or lent when it becomes due;

18.2. admits that it had a duty to exercise reasonable diligence pursuant to Clause 12.1(b) of the Trust Deed and Section 283DA(b) of the *Corporations Act* to ascertain whether Wickham had committed any breach of the terms of the notes, the Deed or Chapter 2L of the *Corporations Act*;

18.3. as to paragraph 18(a) admits the matters alleged in paragraph 18(a)(i), (ii) and (iii) but otherwise denies the matters alleged therein;

18.4. denies the matters alleged in paragraph 18(b) and says further in respect of paragraph 18(b)(ii), (iii), (iv) and (v) that having regard to:

18.4.1. the statutory duties and powers of the auditor of Wickham pursuant to Chapter 2M.3 of the *Corporations Act* and the mandatory requirements of Accounting Standards (**AAS**) in force pursuant to s 344 of the *Corporations Act* and Australian Auditing Standards (**ASA**) in force under s 366 of the *Corporations Act*;

18.4.2. the business of Wickham referred to in paragraphs 4.3 and 4.4 above;

18.4.3. the fact that for the auditor to comply with his duties pursuant to Chapter 2M.3 and in particular Sections 308 and 309 and AASB

139 he was required to review the physical files of Wickham in respect of its loans including as alleged in paragraph 18(b)(ii) of the Further Amended Statement of Claim;

it was reasonable and in accordance with the duties of the Defendant pursuant to s 283DA of the *Corporations Act* and the Trust Deed for it to rely upon the auditor's proper discharge of his duties, the reports of the auditor particularised in paragraphs 31.1, 31.2 and 31.3 below and the absence of any report by the auditor pursuant to s 313 of the *Corporations Act*;

18.5. admits the matters alleged in paragraph 18(d).

18.6. says further that the auditor of Wickham in the discharge of his duties as auditor was required to plan and program audit work so as to obtain sufficient appropriate audit evidence to be satisfied and form an opinion as to Wickham's compliance or otherwise with the terms of issue of the unsecured notes, the Trust Deed and Chapter 2L:

#### **Particulars**

(i) Report of Morris Forensic dated 9 June 2017, Chapter 10.

18.7. says that in the discharge of its duty of reasonable diligence pursuant to Section 283DA and the Trust Deed it reasonably relied on the auditor of Wickham properly discharging his duties as set out in paragraph 18.6 and the absence of any reports from the auditor such as to indicate that there had been any breach of the terms of issue of the unsecured notes, the Trust Deed or Chapter 2L.

#### **Sandhurst's failure to exercise reasonable diligence**

19. In respect of paragraph 19 of the Further Amended Statement of Claim the Defendant:

19.1. says that a trustee exercising reasonable diligence in the position of the Defendant would have ascertained the matters referred to in paragraph 18(a)(i), (ii) and (iii);

19.2. denies that a trustee exercising reasonable diligence in the position of the Defendant in light of the reports it had received concerning Wickham would have

ascertained the matters alleged in paragraph 18(a)(iv), (a)(v) and (b), (c) and (d) as alleged or at all;

- 19.3. does not plead to paragraph 19(c) as that paragraph contains no allegations.
20. In respect of paragraph 20 of the Further Amended Statement of Claim, the Defendant:
  - 20.1. repeats the matters set out in paragraphs 18 and 19 above and 31 to 34 below;
  - 20.2. in or about October 2012, following the collapse of Banksia Securities Limited, so as to ascertain its potential impact on the liquidity of other debenture and note issuers by email dated 31 October 2012 from the Defendant to Wickham the Defendant requested the provision of a report as to the liquidity of the loan portfolio of Wickham Securities by no later than Wednesday 7 November 2012;
  - 20.3. in or about November 2012, the Defendant arranged for an officer of Bendigo and Adelaide Bank Limited to conduct an inspection of loan files at the offices of Wickham;
  - 20.4. on or about 27 November 2012, Mr Mike Griffiths of Bendigo and Adelaide Bank Limited attended at the offices of Wickham and met with the Chief Executive Officer of Wickham Mr Garth Robertson for the purpose of obtaining information as to the financial position and affairs of Wickham and the state of its loan book. Mr Griffiths provided a report to the Defendant by email dated 27 November 2012;
  - 20.5. following receipt of Mr Griffiths' report the Defendant notified Wickham that it had appointed Messrs PPB as investigating accountants which it did on 7 December 2012;
  - 20.6. otherwise denies the matters alleged in paragraph 20.

**Sandhurst's breaches of the Reasonable Diligence Covenant and contraventions of s283DA(b)(ii) of the *Corporations Act***

21. In respect of paragraph 21 of the Further Amended Statement of Claim, the Defendant:
  - 21.1. denies paragraph 21(a);
  - 21.2. denies paragraph 21(b).



**Loss or Damage**

22. The Defendant denies paragraph 22 and says further:

22.1. it repeats paragraph 18 above:

22.2. the Guthrie report and in particular the sub-paragraphs particularised in paragraph 22 are based on, inter alia, an assumption that if documents had not been provided to him in briefs assembled by Shine Lawyers in relation to particular loans and other matters, they were not ever created or kept by Wickham

**Particulars**

(i) Letter from Shine Lawyers to Guthrie dated 8 June 2016

22.3. Guthrie was not briefed completely or accurately as to the books and records of Wickham in the possession of the Plaintiffs or otherwise, and the Defendant repeats paragraph 17.2 above

22A. The Defendant denies paragraph 22A and says further:

22A.1 it repeats paragraph 18 above;

22A.2 the Guthrie report and in particular the sub-paragraphs particularised in paragraph 22A are based on, inter alia, an assumption that if documents had not been provided to him in briefs assembled by Shine Lawyers in relation to particular loans and other matters, they were never created or kept by Wickham.

**Particulars**

(i) Letter from Shine Lawyers to Guthrie dated 8 June 2016.

22A.3 Guthrie was not briefed completely or accurately as to the books and records of Wickham in the possession of the Plaintiffs or otherwise, and the Defendant repeats paragraph 17.2 above.

22B. The Defendant denies paragraph 22B and says further:

22B.1 it repeats paragraph 18 above;

22B.2 the Guthrie report and in particular the sub-paragraphs particularised in paragraph 22B are based on, inter alia, an assumption that if documents had not been provided to him in briefs assembled by Shine Lawyers in relation to particular loans and other matters, they were not ever created or kept by Wickham;

#### **Particulars**

- (i) Letter from Shine Lawyers to Guthrie dated 8 June 2016.

22B.3 Guthrie was not briefed completely or accurately as to the books and records of Wickham in the possession of the Plaintiffs or otherwise, and the Defendant repeats paragraph 17.2 above.

22C. The Defendant denies paragraph 22C and says further:

22C.1 it repeats paragraph 18 above;

22C.2 the Barnett report and in particular the sub-paragraphs particularised in paragraph 22C are based on, inter alia, an assumption that if documents had not been provided to Shine Lawyers in briefs assembled by them in relation to particular loans and other matters, they were never created or kept.

#### **Particulars**

- (i) Barnett's report dated 24 December 2016, paragraph 6.1

22C.3 Barnett was not briefed completely or accurately as to the books and records of Wickham in the possession of the Plaintiffs or otherwise, and the Defendant repeats paragraph 17.2 above.

22D. The Defendant repeats the matters set out in paragraphs 22A to 22C above and otherwise does not know and cannot admit the matters alleged therein.

22E. The Defendant repeats the matters set out in paragraphs 22A to 22D above and otherwise does not know and cannot admit the matters alleged therein.

23. The Defendant does not know and cannot admit the matters alleged in paragraph 23.

24. The Defendant does not know and cannot admit the matters alleged in paragraph 24 but says:

24.1. if the breaches alleged are those referred to in paragraph 17(a) of the FASOC, many were able to be remedied either by the provision of valuations or through the repayment of the loans allegedly made in breach of the lending and security criteria:

**Particulars**

- (i) Georgiadis was repaid in full by 31 December 2006
- (ii) Trihedral Properties was repaid in full by 31 December 2006
- (iii) JAR Developments was repaid in full by 30 June 2006
- (iv) MSM Developments was repaid in full by 30 June 2007
- (v) Kahler was repaid in full by 30 June 2007
- (vi) Everton Park was repaid in full by 30 June 2007
- (vii) Conquest was repaid in full by 30 June 2007
- (viii) Surobesh was repaid in full by 30 June 2007
- (ix) Tibbing was repaid in full by 30 June 2007
- (x) Tiggi was repaid in full by 30 June 2007
- (xi) WLP was repaid in full by 30 June 2007
- (xii) Allville was repaid in full by 31 December 2007
- (xiii) Central Avenue was repaid in full by 30 June 2008
- (xiv) Harbour Arbour was repaid in full by 31 December 2007
- (xv) George was repaid in full by 31 December 2007
- (xvi) Ivory Properties was repaid in full by 31 December 2007
- (xvii) Magnolia Grove was repaid in full by 31 December 2007
- (xviii) PBI Kelvin was repaid in full by 31 December 2007
- (xix) Rangegale was repaid in full by 31 December 2007
- (xx) Ball Constructions was repaid in full by 30 June 2008
- (xxi) Zen Foundation was repaid in full by 30 June 2008

- (xxii) Kirby BTN1 was repaid in full by 31 December 2008
- (xxiii) Kirby BTN6 was repaid in full by 31 December 2008
- (xxiv) Kirby BTN5 was repaid in full by 30 June 2009
- (xxv) Mackay Living was repaid in full by 30 June 2009
- (xxvi) TomKat Projects was repaid in full by 30 June 2009
- (xxvii) Cleary Clements Radford was repaid in full by 31 December 2009
- (xxviii) SEQ Developments was repaid in full by 31 December 2009
- (xxix) Universal was repaid in full by 31 December 2009
- (xxx) Zinlarge was repaid in full by 31 December 2009
- (xxxi) Read was repaid in full by 31 December 2009

24.2. if the breaches alleged are those referred to in paragraph 17(b) of the FASOC, many were able to be remedied by the provision of access to the allegedly missing books and records of Wickham.

#### **Particulars**

- (i) The Defendant repeats the matter set out in paragraph 17 above.
- (ii) The Defendant says that at least the following loan files have been destroyed, hidden or are otherwise not presently available to the parties in this action:
  - a. JAR Developments Pty Ltd
  - b. Back Georgiadis Stoyel P/L
  - c. Trihedral Properties Pty Ltd
  - d. Tibbing Pty Ltd
  - e. CJ & ML Kahler
  - f. MSM Developments P/L
  - g. R&A Conquest
  - h. Everton Park Developments
  - i. Tiqgi K P/L
  - j. Surobesh P/L
  - k. Harbour Arbour



- 25.3. would not make an application for the appointment of receivers in the circumstances where the return to noteholders would be substantially eroded by the costs of receivership as alleged in paragraph 26 of the FASOC and particularised in the report of Tony Samuel.
26. ~~The Defendant does not know and cannot admit the matters alleged in paragraph 26.~~ The Defendant denies paragraph 26 and says further that:
- 26.1. the amounts that the Plaintiff alleges would have been available to be distributed to note holders in particulars 26(ii) are based on the report of Tony Samuel dated 31 October 2016 (**Samuel Report**):
- 26.2. the Samuel Report is based on:
- 26.2.1. Wickham's audited annual and reviewed half-yearly financial statements;
- 26.2.2. Wickham's Loan Register [GMC.002.002.1637]; and
- 26.2.3. an assumption that where loans were repaid in full as recorded in available bank statements and the Loan Register, the loans were recoverable in full at the relevant valuation date;

#### Particulars

- (i) Samuel Report, paragraphs 21, 23, 27, 50

#### Plantation Rise Loan

- 26.3. the Samuel Report refers at Appendix E to the loan to Plantation Rise Pty Ltd (**Plantation Rise**) as having been repaid between 30 June 2010 and 31 December 2010 in the amount of \$1,156,068.
- 26.4. contrary to the assumption in the Samuel Report referred to in paragraph 26.2.3 above:

- 26.4.1. Wickham held a second ranking security in respect of the loan to Plantation Rise;
- 26.4.2. Gregory Maloney and William Colwell of Ferrier Hodgson (Qld) were appointed receivers and managers to Plantation Rise on 17 September 2009 by BankWest, being the first ranking security holder;
- 26.4.3. on 14 September 2009 Plantation Rise went into administration and on 1 April 2010 went into liquidation;
- 26.4.4. following the realisation by the receivers and managers of the Plantation Rise security property, there were no surplus proceeds available to Wickham;
- 26.4.5. the payment amount of \$1,156,068 relied upon in the Samuel Report and in turn in the Plaintiffs' claim for loss and damage;
- 26.4.5.1. was not a payment made by or on behalf of Plantation Rise, in satisfaction of its obligations to Wickham;
- 26.4.5.2. was not a payment made following a realisation of property of Plantation Rise, in satisfaction of its obligations to Wickham;
- 26.4.5.3. was a payment that was made in or about August 2010 and concealed Wickham's true financial position from the Defendant and unsecured note holders;
- 26.4.6. if, as is alleged by the Plaintiffs, receivers were appointed to Wickham on or before 31 December 2008, the payment could not and would not have been made to Wickham such that the loan to Plantation Rise was not recoverable to the extent of \$1,156,068;

### **Particulars**

- (i) Portfolio Review November 2009 [WSL.0460.0001.1902]
- (ii) ASIC Company Search in respect of Plantation Rise dated 10 July 2017

(iii) Email from Jean Westhead to Russell Maxwell dated 20 August 2010  
[WSL.0459.0001.7690]

(iv) Letter from Daryl Clifford to Brian McPherson dated 24 August 2010  
[GMC.003.108.0319]

Giant Developments Loan

26.5. the Samuel Report refers at Appendix E to the loan to Giant Developments Pty Ltd  
(Giant Developments) as having been repaid between 30 June 2010 and 31  
December 2010 in the amount of \$1,583,550;

26.6. contrary to the assumption in the Samuel Report referred to in paragraph 26.2.3  
above:

26.6.1. Wickham held a second ranking security in respect of the loan to Giant  
Developments;

26.6.2. Hellen Vincent and Ann Fordyce of Pilot Partners were appointed  
receivers and managers to Giant Development on 22 July 2009;

26.6.3. following the realisation by the receivers and managers of the Giant  
Developments security property, there were no surplus proceeds  
available to Wickham;

26.6.4. the payment amount of \$1,583,550 relied upon in the Samuel Report  
and in turn in the Plaintiffs' claim for loss and damage:

26.6.4.1. was not a payment made by or on behalf of Giant  
Developments, in satisfaction of its obligations to Wickham;

26.6.4.2. was not a payment made following a realisation of property  
of Giant Developments, in satisfaction of its obligations to  
Wickham;

26.6.4.3. was a payment that was made in or about September 2010  
and concealed Wickham's true financial position from the  
Defendant and Wickham's unsecured note holders;



26.6.5. if as is alleged by the Plaintiffs, receivers were appointed to Wickham on or before 31 December 2008, the payment could not and would not have been made to Wickham such that the loan to Giant Developments was not recoverable;

**Particulars**

- (i) Portfolio Review November 2009 [WSL.0460.0001.1902]
- (ii) ASIC Company Search in respect of Giant Developments dated 10 July 2017
- (iii) Email Russell Maxwell to Brad Sherwin dated 25 May 2010 [WSL.0459.0001.6530]
- (iv) Email from Jean Westhead to Russell Maxwell dated 1 September 2010 [WSL.0459.0001.7731]

**Ingleton Loan**

26.7. the Samuel Report refers at Appendix E to the loan to Ingleton as having been repaid in the amount of \$375,430 by December 2010;

26.8. contrary to the assumption in the Samuel Report referred to in paragraph 26.2.3 above;

26.8.1. Wickham held a second ranking security in respect of the loan to Ingleton;

26.8.2. Grant Thornton were appointed as receivers and managers to Ingleton's security properties on 25 May 2009;

26.8.3. following the realisation by receivers and managers of the Ingleton security properties, there were no surplus proceeds available to Wickham;

26.8.4. the payment amount of \$375,430 relied upon in the Samuel Report and in turn in the Plaintiffs' claim for loss and damage:

26.8.4.1. was not a payment made by or on behalf of Ingleton, in satisfaction of its obligations to Wickham;

- 26.8.4.2. was not a payment made following a realisation of property of Ingleton, in satisfaction of its obligations to Wickham;
- 26.8.4.3. was a payment that was made by Reacroft, being an entity controlled by Bradley Sherwin,
- 26.8.4.4. was a payment made to conceal Wickham's true financial position from the Defendant and Wickham's unsecured note holders;
- 26.8.5. if as is alleged by the Plaintiffs, receivers were appointed to Wickham on or before 31 December 2008, the payment could not and would not have been made to Wickham such that the loan to Ingleton was not recoverable;

#### **Particulars**

- (i) Letter Grant Thornton to Wickham dated 27 May 2009  
[WSL.0012.0003.0237]
- (ii) Email Brad Sherwin to Brian McPherson dated 20 May 2010  
[WSL.0419.0002.0013]

#### *Hardel Loan*

- 26.9. the Samuel Report refers at Appendix E to the loan to Hardel Investments Pty Ltd (**Hardel**) as having been repaid in the amount of \$1,500,000 by between January 2009 and June 2009;
- 26.10. contrary to the assumption in the Samuel Report referred to in paragraph 26.2.3 above:
- 26.10.1. the payment of \$1,500,000 relied upon in the Samuel Report and in turn in the Plaintiffs' claim for loss and damage:
- 26.10.1.1. was not a payment made by or on behalf of Hardel;
- 26.10.1.2. was a payment that was:

- a. made by Blue Diamond Investments Pty Ltd (**Blue Diamond**), being an entity controlled by Bradley Sherwin,
- b. made as consideration for the assignment of the loan from Wickham to Blue Diamond;
- c. a payment that concealed Wickham's true financial position from the Defendant and Wickham's unsecured note holders;

### **Particulars**

- 26.10.2. Letter from Gadens Lawyers to Wickham dated 31 March 2009 [PPB.004.012.0408]
- 26.10.3. Notification of assignment of a charge dated 2 April 2009 [GMC.003.102.0005]
- 26.10.4. Email from chain between Russell Maxwell and Jean Westhead dated 18 March 2010 [WSL.0327.0001.0209]
- 26.10.5. if as is alleged by the Plaintiffs, receivers were appointed to Wickham on or before 31 December 2008, the payment could not and would not have been made to Wickham such that the loan to Hardel was not recoverable to the extent of \$1,500,000;

### **Mintgrove Loan**

- 26.11. the Samuel Report refers at Appendix E to the loan to Mintgrove (**Mintgrove**) as having been repaid between 30 June 2010 and 30 June 2011 in the amount of \$1,340,000;
- 26.12. contrary to the assumption in the Samuel Report referred to in paragraph 26.2.3 above;

- 26.12.1. Wickham held second ranking securities over two properties in respect of the loan to Mintgrove;
- 26.12.2. Richard Buckby and Robert Hutson of KordaMentha were appointed receivers and managers to Mintgrove on 18 September 2009;
- 26.12.3. following the realisation by the receivers and managers of the first Mintgrove security property, there were not surplus proceeds available to Wickham;
- 26.12.4. as at the time of the payments, the second Mintgrove security property had not been realised;
- 26.12.5. the payment amount of \$1,340,000 relied upon in the Samuel Report and in turn in the Plaintiffs' claim for loss and damage:
- 26.12.5.1. were not payments made by or on behalf of Mintgrove, in satisfaction of its obligations to Wickham;
- 26.12.5.2. were not payments made following a realisation of property of Mintgrove, in satisfaction of its obligations to Wickham;
- 26.12.5.3. were multiple payments made between July 2010 and January 2011 and concealed Wickham's true financial position from the Defendant and Wickham's unsecured note holders;
- 26.12.6. if as is alleged by the Plaintiffs, receivers were appointed to Wickham on or before 31 December 2008, the payment could not and would not have been made to Wickham such that the loan to Mintgrove was not recoverable;

### **Particulars**

- (i) ASIC Company Search in respect of Mintgrove dated 18 July 2017
- (ii) Letter from Peter Kennedy to Brian McPherson dated 14 May 2010  
[GMC.003.119.0113]

(iii) Email from Russell Maxwell to Brad Sherwin dated 17 May 2010

[WSL.0459.0001.6434]

(iv) Loan Summary and Account Statement work papers

[GMC.002.003.7278]

Wincorp Loan

26.13. the Samuel Report refers to the loan to Wincorp (Australia) Pty Ltd (**Wincorp**) as having been repaid with reliance upon the Loan Register and bank statements which identify a deposit on 21 May 2012 of \$415,275.82;

**Particulars**

(i) Samuel Report, paragraph 47(a), bank statements Annexure 5

26.14. contrary to the assumption in the Samuel Report referred to in paragraph 26.2.3 above:

26.14.1. the payment of \$415,275.82 relied upon in the Samuel Report and in turn in the Plaintiffs' claim for loss and damage was not in fact paid;

26.14.2. the payment was a fictitious transaction recorded on a forged document which purported to be a Bank of Queensland bank statement provided to Mr Samuel for the purpose of his report which he assumed to be authentic;

**Particulars**

(i) Bank of Queensland bank statement for account no. 998722672 for period 7 December 2011 to 12 July 2012 obtained on subpoena from DDH Graham Limited

26.14.3. if as is alleged by the Plaintiffs, receivers were appointed to Wickham on or before 31 December 2008, the loan to Wincorp could not be regarded as recoverable to the extent of \$415,275.82;

Bucasia Loan

26.15. the Samuel Report refers to the loan to Bucasia Holdings Pty Ltd (Bucasia) as having been repaid with reliance upon the Loan Register and bank statements which identify a deposit on 25 May 2012 of \$395,700;

**Particulars**

(i) Samuel Report, paragraph 47(b), bank statements Annexure 5

26.16. contrary to the assumption in the Samuel Report referred to in paragraph 26.2.3 above:

26.16.1. the payment of \$395,700 relied upon in the Samuel Report and in turn in the Plaintiffs' claim for loss and damage was not in fact paid;

26.16.2. the payment was a fictitious transaction recorded on a forged document which purported to be a Bank of Queensland bank statement provided to Mr Samuel for the purpose of his report which he assumed to be authentic;

**Particulars**

(i) Bank of Queensland bank statement for account no. 998722672 for period 7 December 2011 to 12 July 2012 obtained on subpoena from DDH Graham Limited

26.16.3. if as is alleged by the Plaintiffs, receivers were appointed to Wickham on or before 31 December 2008, the loan to Bucasia could not be regarded as recoverable by reason of the alleged payment of \$395,700;

Kahler Loan

26.17. the Samuel Report refers to the loan to CJ & ML Kahler (**Kahler**) as having been repaid and identifies a deposit of \$2,635,633 in the period six months prior to 31 December 2006;

**Particulars**

(i) Samuel Report, Appendix E1

26.18. no corresponding entry in respect of the payment of \$2,635,633 in any bank statement exists;

26.19. if as is alleged by the Plaintiffs, receivers were appointed to Wickham on or before 31 December 2008, the loan to Kahler could not be regarded as recoverable by reason of the alleged payment of \$2,635,633;

Dooney Loan

26.20. the Samuel Report refers to the loan to John Patrick Dooney (**Dooney**) as having been repaid with reliance upon the Loan Register and bank statements which identify a deposit on 14 July 2010 of \$32,732;

**Particulars**

(i) Samuel Report, Appendix E1

26.21. contrary to the assumption in the Samuel Report referred to in paragraph 26.2.3 above;

26.21.1. the payment of \$32,732 relied upon in the Samuel Report and in turn in the Plaintiffs' claim for loss and damage was not a payment made by or on behalf of Dooney;

26.21.2. the payment was a payment that was:

a. made by Reacroft, being an entity controlled by Bradley Sherwin,

- b. a payment that concealed Wickham's true financial position from the Defendant and Wickham's unsecured note holders;

**Particulars**

- (i) Email from Mr Robertson to Russell Maxwell dated 5 July 2011  
[GMC.002.002.418]

- 26.21.3. if as is alleged by the Plaintiffs, receivers were appointed to Wickham on or before 31 December 2008, the loan to Dooney could not be regarded as recoverable to the extent of \$32,732;

**Pressmint Loan**

- 26.22. the Samuel Report refers to the loan to Pressmint Pty Ltd (**Pressmint**) as having been repaid with reliance upon the Loan Register and bank statements which identify a deposit on 14 July 2010 of \$181,014.67;

**Particulars**

- (i) Samuel Report, Appendix E1

- 26.23. contrary to the assumption in the Samuel Report referred to in paragraph 26.2.3 above;

- 26.23.1. the payment of \$181,014.67 relied upon in the Samuel Report and in turn in the Plaintiffs' claim for loss and damage was not a payment made by or on behalf of Pressmint;

- 26.23.2. the payment was a payment that was:

- a. made by Reacroft, being an entity controlled by Bradley Sherwin,  
 b. a payment that concealed Wickham's true financial position from the Defendant and Wickham's unsecured note holders;



**Particulars**

- (i) Email from Mr Robertson to Russell Maxwell dated 5 July 2011 [GMC.002.002.418]

26.23.3. if as is alleged by the Plaintiffs, receivers were appointed to Wickham on or before 31 December 2008, the loan to Pressmint could not be regarded as recoverable to the extent of \$181,014.67;

**Impact of Economic Circumstances**

26.24. from about September 2008, the fallout from the sub-prime mortgage crisis in the United States negatively impacted upon property markets in Australia to the extent that during the period following September 2008:

26.24.1. property values in Queensland substantially declined;

26.24.2. there was a severe difficulty in obtaining finance for the purchase or development of property in Queensland; and

26.24.3. the property development finance climate was so severe that developers, property owners and non-bank financial investment companies failed,

**(Economic Circumstances);**

26.25. Wickham's loan book was comprised of loans which were, with the exception of the loans to Summit View Meritor Pty Ltd, Stephanie Therese Kent and John Reichstein:

26.25.1. loans which were secured by second ranking real property mortgages;

**Particulars**

- (i) Samuel Report Annexure 7 - Loan File Summaries

26.25.2. the subject of deeds of priority or other priority arrangements between Wickham and first ranking mortgagees;

26.26. any enforcement steps which Wickham (or any receivers appointed to Wickham) sought to undertake in respect of its second ranking securities, were subject to the position of the relevant first ranking mortgagee;

26.27. the Samuel Report is based upon assumptions that:

26.27.1. receivers would have been appointed to Wickham at any time during the period on or after 14 July 2006 and on or before 31 December 2008;

26.27.2. receivers would have commenced the orderly realisation of the assets and liabilities of Wickham upon being appointed;

### **Particulars**

(i) Samuel Report, paragraph 27

26.28. if as is alleged by the Plaintiffs, receivers were appointed to Wickham on or before 31 December 2008, any orderly realisation of the securities, the subject of Wickham's loan book:

26.28.1. would have been subject to the position of first ranking mortgagees;

26.28.2. would have been delayed in the event that the first ranking mortgagee did not consent to any enforcement in respect of the relevant security property;

26.28.3. in the event that the receivers appointed to Wickham were able to enforce and/or realise security properties, such realisations:

(i) would have been delayed by reason of the Economic Circumstances; and

(ii) would have entailed a substantial reduction in realisable values given the Economic Circumstances.

27. The Defendant does not know and cannot admit the matters alleged in paragraph 27.

28. The Defendant denies the matters alleged in paragraph 28.

29. The Defendant denies paragraph 29.

30. The Defendant denies paragraph 30.

### **Further Answers**

31. In further answer to the Plaintiffs' claim the Defendant says that in the discharge of its duties under the *Corporations Act* and the Trust Deed it was entitled to rely upon and did rely upon:

31.1. audited financial statements;

**Particulars**

- (a) Financial Statements for the year ended 30 June 2006 and auditor's report of his statutory audit opinion dated 27 October 2006;
- (b) Financial Statements for the year ended 30 June 2007 and auditor's report of his statutory audit opinion dated 28 September 2007;
- (c) Financial Statements for the year ended 30 June 2008 and auditor's report of his statutory audit opinion dated 19 September 2008;
- (d) Financial Statements for the year ended 30 June 2009 and auditor's report of his statutory audit opinion dated 20 August 2009;
- (e) Financial Statements for the year ended 30 June 2010 and auditor's report of his statutory audit opinion dated 28 September 2010;
- (f) Financial Statements for the year ended 30 June 2011 and auditor's report of his statutory audit opinion dated 30 September 2011;
- (g) Financial Statements for the year ended 30 June 2012 and auditor's report of his statutory audit opinion dated 27 September 2012

31.2. half year financial statements subject of review by the auditor;

31.3. certificates in respect of the net tangible assets of Wickham as certified by the auditor pursuant to Clause 6.4(d) of the Trust Deed;

**Particulars**

- (a) Certificate of auditor dated 26 September 2007;
- (b) Certificate of auditor dated 1 October 2008;
- (c) Certificate of auditor dated 13 March 2009;
- (d) Certificate of auditor dated 29 September 2009;
- (e) Certificate of auditor dated 28 September 2010;
- (f) Certificate of auditor dated 30 September 2011;
- (g) Certificate of auditor dated 26 September 2012.

- 31.4. quarterly reports provided by Wickham pursuant to Section 283BF of the *Corporations Act*;

**Particulars**

- (a) Quarterly Report pursuant to s 283BF to the Defendant dated 31.12.2006
- (b) Quarterly Report pursuant to s 283BF to the Defendant dated 31.03.2007
- (c) Quarterly Report pursuant to s 283BF to the Defendant dated 30.09.2007
- (d) Quarterly Report pursuant to s 283BF to the Defendant dated 31.12.2007
- (e) Quarterly Report pursuant to s 283BF to the Defendant dated 31.03.2008
- (f) Quarterly Report pursuant to s 283BF to the Defendant Lodged 31 July 2008 dated 30.06.2008
- (g) Quarterly Report pursuant to s 283BF to the Defendant Lodged 5 August 2008 dated 30.6.2008
- (h) Quarterly Report pursuant to s 283BF to the Defendant dated 30.09.2008
- (i) Quarterly Report pursuant to s 283BF to the Defendant dated 31.12.2008
- (j) Quarterly Report pursuant to s 283BF to the Defendant dated 31.03.2009
- (k) Quarterly Report pursuant to s 283BF to the Defendant dated 30.06.2009
- (l) Quarterly Report pursuant to s 283BF to the Defendant dated 30.09.2009
- (m) Quarterly Report pursuant to s 283BF to the Defendant dated 31.12.2009
- (n) Quarterly Report pursuant to s 283BF to the Defendant dated 31.03.2010
- (o) Quarterly Report pursuant to s 283BF to the Defendant dated 30.06.2010
- (p) Quarterly Report pursuant to s 283BF to the Defendant dated 30.09.2010
- (q) Quarterly Report pursuant to s 283BF to the Defendant dated 31.12.2010

- (r) Quarterly Report pursuant to s 283BF to the Defendant dated 31.03.2011
- (s) Quarterly Report pursuant to s 283BF to the Defendant dated 30.06.2011
- (t) Quarterly Report pursuant to s 283BF to the Defendant dated 30.09.2011
- (u) Quarterly Report pursuant to s 283BF to the Defendant dated 31.12.2011
- (v) Quarterly Report pursuant to s 283BF to the Defendant dated 31.03.2012
- (x) Quarterly Report pursuant to s 283BF to the Defendant dated 30.06.2012
- (y) Quarterly Report pursuant to s 283BF to the Defendant dated 30.09.2012

31.5. an absence of reports from the auditor pursuant to s 313 of the *Corporations Act*.

32. The Defendant says that:

32.1. the auditor provided unqualified statutory audit opinions in respect of the financial statements of Wickham as particularised in paragraph 31 above;

32.2. the auditor certified Wickham's compliance with Clause 6.4(d) of the Trust Deed namely in that it had satisfied the Minimum Net Tangible asset covenant in the Trust Deed on each occasion subject of the certificates;

32.3. Wickham certified by way of the quarterly reports pursuant to s 283BF, as augmented by the additional reporting required by the Defendant, its compliance with the Trust Deed and the requirements of Chapter 2L of the *Corporations Act* stating also that:

32.3.1. the Borrower confirms that there has been no failure by the Borrower or any guarantor to comply with the terms of the debentures or the provisions of the trust Deed or Chapter 2L of the *Corporations Act* during the quarter;

32.3.2. no circumstances had occurred during the quarter that materially prejudice:

32.3.2.1. Wickham, any of its subsidiaries, or any of the guarantors; or

32.3.2.2. any security or charge included in or created by the debentures or the Trust Deed.

32.3.3. it confirmed that it had complied with the financial covenants of the Trust Deed.

32.3.4. it confirmed that it had not exceeded the LVR of any loan as published in the current prospectus, or the Trust Deed.

32.3.5. confirmed that it had lent all monies within the permitted Lending and Security Criteria.

33. The Defendant says that in the premises it exercised the reasonable diligence that a Trustee in the position of Defendant as trustee of Wickham would have exercised.

33A. The Defendant says further that the auditor of Wickham breached his duties in:

33A.1 failing to report breaches of the Trust Deed and Chapter 2L;

33A.2 publishing unqualified audit opinions as to the truth and fairness of Wickham's Financial Statements in circumstances where they were not truly and fairly stated;

#### **Particulars**

(i) Report prepared by Brian Morris dated 9 June 2017, paragraphs 11.13, 11.15, 11.16-11.18, 11.45, 11.46

34. Further, and in answer to the whole of the Further Amended Statement of Claim, and if (which is denied) the Plaintiffs and Group Members sustained loss or damage because the Defendant contravened a provision of Chapter 2L of the *Corporations Act*, the Defendant says the following:

34.1. the Plaintiffs and each Group Members sustained loss or damage on or before 14 July 2009;

34.2. by reason of the facts and matters pleaded in paragraph 34.1 above, any cause of action under s 283F(1) of the *Corporations Act* of the Plaintiffs and Group Members arose on or before 14 July 2009 in respect of losses allegedly suffered prior to that date;

34.3. by reason of the facts and matters pleaded in paragraphs 34.1 and 34.2 above the action brought by the Plaintiffs and Group Members does not satisfy s 283F(2) of the *Corporations Act*;

34.4. by reason of the facts and matters pleaded in paragraphs 34.1 to 34.3 above, s 283F(2) of the *Corporations Act* operates as a bar to the claim brought by the Plaintiffs and each Group Member in respect of losses allegedly suffered prior to 14 July 2009.

Date: 21 September 2017



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Signed by Gareth Edward Horne  
Lawyer for the Defendant

This pleading was prepared and settled by Mark Hoffmann QC and Jack Hynes, counsel for the Defendant.

**Certificate of lawyer**

I, Gareth Edward Horne, certify to the Court that, in relation to the defence filed on behalf of the Defendant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 21 September 2017



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Signed by Gareth Edward Horne  
Lawyer for the Defendant