

To the Interested Persons as addressed

27 February 2023

Dear Sir/Madam

**KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799 as trustee for  
APM Security Plan Sickness & Accident Fund (In Liquidation) ('the Fund') trust ('Trust')  
ABN 57 413 197 086**

## **New Trustee remuneration and disbursement application**

KordaMentha Shelf Co (APMSPSAF) Pty Ltd ('New Trustee') was appointed replacement trustee of the Fund Trust on 22 June 2021 pursuant to an Order of the Supreme Court of New South Wales ('the First Order'). On 2 November 2021, by further Order of the Supreme Court of New South Wales ('the Second Order'), the New Trustee was authorised to undertake a second course of action in respect of the Trust ('Second Course of Action'). Subsequently, on 6 May 2022, by Order of the Supreme Court of New South Wales ('the Third Order'), the New Trustee was authorised to undertake a third course of action ('Third Course of Action').

Pursuant to the First Order, the Second Order and the Third Order, the New Trustee's remuneration and disbursements are to be paid from the assets of the Trust on an indemnity basis, subject to the Court's review and approval.

On 29 June 2022, the New Trustee provided notice of its first application seeking approval of New Trustee's remuneration and disbursements. This was subsequently approved by the Supreme Court of New South Wales by Order dated 8 July 2022.

As detailed in the letter to Interested Persons dated 11 November 2022, the New Trustee filed its second application ('the Application') seeking the Court's review and approval of the New Trustee's remuneration and disbursements on 3 November 2022. The Application was in respect of the New Trustee's remuneration and disbursements for the Second Course of Action, being from 3 May 2022 to 29 July 2022, and the Third Course of Action, from 6 May 2022 to 17 October 2022.

Enclosed again, for your reference, in respect of the Application, is the:

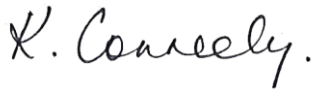
- Background to the New Trustee's appointment and notice of the Application at Annexure A
- Notice of motion dated 3 November 2022, which has been filed with the Supreme Court of NSW at Annexure B
- New Trustee's affidavit in support of the notice of motion at Annexure C.

The correspondence dated 11 November 2022 advised the Application was listed for 9:30am on 5 December 2022. The Application was **not** heard on this date.

I advise the Application is now presently listed for **9:00am on 10 March 2023**. Any changes to this time will be made known on the KordaMentha website at <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>.

Should you have any queries in relation to this matter, please contact Elyse Diamond of my office on (02) 8257 3014 or by email at [ediamond@kordamentha.com](mailto:ediamond@kordamentha.com).

Yours faithfully

A handwritten signature in black ink, reading "K. Conneely." with a stylized flourish at the end.

Kate Conneely  
Liquidator and Director of New Trustee

*Enc.*

**Annexure A – Background and Notice of Application**

KordaMentha Shelf Co (APMSPSAF) Pty Ltd ('New Trustee') was appointed replacement trustee of the Fund Trust on 22 June 2021 pursuant to an Order of the Supreme Court of New South Wales ('the First Order'). The First Order authorised New Trustee to undertake a course of action in respect of the Trust ('First Course of Action'). The First Order further provided that New Trustee's remuneration and disbursements in respect of the First Course of Action be paid from the assets of the Trust on an indemnity basis, subject to New Trustee making an application to the Court for review of its remuneration and disbursements within 6 months of the date of the First Order.

Subsequently, on 2 November 2021, by further Order of the Supreme Court of New South Wales ('the Second Order'), New Trustee was authorised to undertake a second course of action in respect of the Trust ('Second Course of Action'). As a part of the Second Course of Action, New Trustee was authorised to make an application to the Court to, among other things, seek the Court's direction in relation to the future of the Fund ('Judicial Advice Application'), the Second Order varied the First Order to allow New Trustee to bring its application for review of its remuneration and disbursements in respect of the First Course of Action and the Second Course of Action within four weeks after the Court determines the Judicial Advice Application.

On 6 May 2022, the Court determined the Judicial Advice Application and gave its opinion, advice and direction to the New Trustee that it would be justified in, among other things, bringing proceedings to wind up the Fund ('the Third Order'). The Third Order authorised New Trustee to undertake a further course of action in respect of the Trust ('Third Course of Action'). The Third Order further provided that New Trustee's remuneration and disbursements in respect of the Third Course of Action be paid from the assets of the Trust on an indemnity basis, subject to New Trustee making an application to the Court for review of its remuneration and disbursements within 6 months of the date of the Third Order. On the same day, by Order of the Supreme Court of New South Wales, Scott Langdon and Kate Conneely were appointed as joint and several liquidators of the Fund.

Pursuant to the Second Order and the Third Order, New Trustee's remuneration and disbursements are to be paid from the assets of the Trust on an indemnity basis for the Second Course of Action for the period 3 May 2022 to 29 July 2022, and the Third Course of Action for the period 6 May 2022 to 17 October 2022, subject to the Court's review and approval.

In this correspondence, formal notice is provided to all Interested Persons that New Trustee has filed its Application seeking the Court's review and approval of New Trustee's remuneration and disbursements for the Second Course of Action and the Third Course of Action, for the periods 3 May 2022 to 29 July 2022, and 6 May 2022 to 17 October 2022.

Further to this background, enclosed, for your perusal, in respect of the remuneration and disbursement Application, is the:

- Notice of motion dated 3 November 2022, which has been filed with the Supreme Court of New South Wales (Annexure B)
- New Trustee's affidavit in support of the notice of motion (Annexure C).

A partially redacted copy of Exhibit CMC-9 to New Trustee's affidavit in support of the notice of motion is available on the KordaMentha website at <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>. However, as Confidential Exhibit CMC-10 to the affidavit contains confidential information, it has not been provided to Interested Persons and the New Trustee will be seeking confidentiality orders over the exhibit at the hearing of the remuneration and disbursement Application.

**Annexure B – Notice of motion dated 3 November 2022**

Form 20 (version 3)  
UCPR 18.1 and 18.3

## NOTICE OF MOTION

### COURT DETAILS

|             |                                  |
|-------------|----------------------------------|
| Court       | Supreme Court of New South Wales |
| Division    | Equity                           |
| List        | General                          |
| Registry    | Sydney                           |
| Case number | 2021/00179305                    |

### TITLE OF PROCEEDINGS

|                  |                                                                |
|------------------|----------------------------------------------------------------|
| First Plaintiff  | <b>PP New Pty Ltd ACN 088 406 437</b>                          |
| Second Plaintiff | <b>KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799</b> |

### FILING DETAILS

|                                |                                                     |
|--------------------------------|-----------------------------------------------------|
| Person seeking orders          | <b>Second Plaintiff</b>                             |
| Filed in relation to           | Second Plaintiff's notice of motion 3 November 2022 |
| Legal representative           | Bernard Colin Walrut, Ashurst Australia             |
| Legal representative reference | 1000-122-769                                        |
| Legal representative PCN       | 51098                                               |
| Contact name and telephone     | Aaron Kam (02) 9528 6014                            |
| Contact email                  | Aaron.Kam@ashurst.com                               |

### PERSON AFFECTED BY ORDERS SOUGHT

Second Plaintiff

### HEARING DETAILS

This motion is listed at

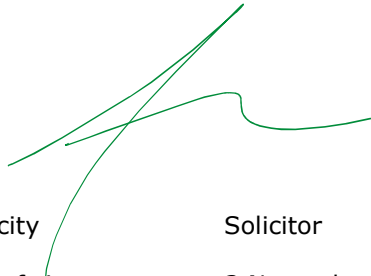
## ORDERS SOUGHT

The second plaintiff (**New Custodian Trustee**) seeks the following relief:

1. An order pursuant to section 90 of the *Civil Procedure Act 2005* (NSW) (**Civil Procedure Act**), sections 59(4) and/or 93 of the *Trustee Act 1925* (NSW) (**Trustee Act**) and/or the Court's inherent jurisdiction that New Custodian Trustee's remuneration incurred in connection with undertaking the course of action authorised by order 2 of the orders made on 2 November 2021 (**Second Course of Action**) for the period 23 May 2022 to 29 July 2022 inclusive, be approved in the amount of \$10,978.50 (excluding GST).
2. An order pursuant to section 90 of the *Civil Procedure Act*, sections 59(4) and/or 93 of the *Trustee Act* and/or the Court's inherent jurisdiction that New Custodian Trustee's disbursements incurred in connection with undertaking the Second Course of Action for the period 1 June 2022 to 29 July 2022 be approved in the amount of \$180,065.73 (excluding GST).
3. An order pursuant to section 90 of the *Civil Procedure Act*, sections 59(4) and/or 93 of the *Trustee Act* and/or the Court's inherent jurisdiction that New Custodian Trustee's remuneration incurred in connection with undertaking the course of action authorised by order 2 of the orders made on 6 May 2022 (**Third Course of Action**) for the period 6 May 2022 to 17 October 2022 inclusive be approved in the amount of \$140,117.50 (excluding GST).
4. An order pursuant to section 90 of the *Civil Procedure Act*, sections 59(4) and/or 93 of the *Trustee Act* and/or the Court's inherent jurisdiction that New Custodian Trustee's disbursements incurred in connection with undertaking the Third Course of Action for the period 1 June 2022 to 17 October 2022 be approved in the amount of \$58,088.16 (excluding GST).
5. An order pursuant to section 93 of the *Trustee Act* that New Custodian Trustee's costs and expenses of and incidental to this application are paid on an indemnity basis out of the assets of the APM Security Plan Sickness & Accident Fund ABN 57 413 197 086.
6. Such further or other orders as the Court considers necessary and/or appropriate.

**SIGNATURE**

Signature of legal representative



Capacity

Solicitor

Date of signature

3 November 2022

**NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT**

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

**REGISTRY ADDRESS**

Street address                      Law Courts Building, 184 Phillip Street, Sydney NSW 2000

Postal address                      Supreme Court of NSW, GPO Box 3, Sydney NSW 2001

Telephone                              1300 679 272

Annexure C – New Trustee’s affidavit

Form 40 (version 6)

UCPR 35.1

**AFFIDAVIT OF CATHERINE MARGARET CONNEELY  
SWORN 3 NOVEMBER 2022**

**COURT DETAILS**

|             |                                  |
|-------------|----------------------------------|
| Court       | Supreme Court of New South Wales |
| Division    | Equity                           |
| List        | General                          |
| Registry    | Sydney                           |
| Case number | 2021/00179305                    |

**TITLE OF PROCEEDINGS**

|                  |                                                                |
|------------------|----------------------------------------------------------------|
| First plaintiff  | <b>PP New Pty Ltd ACN 088 406 437</b>                          |
| Second plaintiff | <b>KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799</b> |

**FILING DETAILS**

|                                |                                                                                                                                                               |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Filed for                      | <b>Second plaintiff</b>                                                                                                                                       |
| Filed in relation to           | Second plaintiff's notice of motion dated 3 November 2022                                                                                                     |
| Legal representative           | Ashurst Australia<br>Lawyers<br>ABN 75304286095<br>Level 11 5 Martin Place<br>SYDNEY NSW 2000<br>DX: 388 SYDNEY<br>Tel: (02) 9258 6000<br>Fax: (02) 9258 6999 |
| Legal representative reference | 1000 122 769                                                                                                                                                  |
| Legal representative PCN       | 51098                                                                                                                                                         |
| Contact name and telephone     | Aaron Kam (02) 9528 6014                                                                                                                                      |
| Contact email                  | Aaron.Kam@ashurst.com                                                                                                                                         |

**AFFIDAVIT**

Name Catherine Margaret Conneely  
 Address Level 5, Chifley Tower, 2 Chifley Place, Sydney NSW 2000  
 Occupation Registered liquidator and chartered accountant  
 Date 3 November 2022

I say on oath:

**A Introduction**

1. I am a registered liquidator, chartered accountant and partner of KordaMentha.
2. I am also a director of the second plaintiff, KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799 (**New Custodian Trustee**), along with my partners of KordaMentha, Scott David Harry Langdon, Mark Anthony Korda and Mark Francis Xavier Mentha.
3. New Custodian Trustee was appointed in substitution of the first plaintiff, PP New Pty Ltd (**PP New**), as trustee of the APM Security Plan Sickness & Accident Fund ABN 57 413 197 086 (**Fund**) trust (**Custodian Trust**), pursuant to orders made by Ward CJ in Eq (as her Honour was then) on 22 June 2021 in these proceedings.
4. Subsequently, Mr Langdon and I were appointed as joint and several liquidators of the Fund (**Liquidators**) pursuant to orders made by Hammerschlag CJ in Eq on 6 May 2022 in proceedings no. 2022/00130874 (**6 May 2022 Winding Up Orders**).
5. I make this affidavit from my own knowledge and the books and records of the Fund (**Books and Records**), except where otherwise indicated. Where I make this affidavit from facts outside my personal knowledge, I am informed by the source stated and believe those facts to be true. Where I refer in this affidavit to an opinion being held by me, I do so after having discussed the matter with Mr Langdon and having confirmed that he also holds the opinion to which I depose.
6. The investigations referred to in this affidavit have been carried out by me and by staff at KordaMentha who have acted on my instructions. My references to KordaMentha or New Custodian Trustee in this affidavit also include, where the context so dictates, information which I have obtained from those staff.
7. Exhibited to me at the time of swearing this affidavit are two bundles of documents titled "Exhibit CMC-9" and "Confidential Exhibit CMC-10". Unless otherwise stated, where I refer to documents in this affidavit, I do so by reference to the page number in Exhibit CMC-9 and Confidential Exhibit CMC-10.
8. Confidential Exhibit CMC-10 contains documents which disclose details of Interested Persons (as defined below) and legally privileged information. New Custodian Trustee seeks an order under section 7 of the *Court Suppression and Non-publication Orders Act 2010* (NSW) limiting the disclosure of these documents.

*K. Conneely*  
*Brandon*

**B Purpose of this affidavit**

9. This affidavit is filed in support of the notice of motion dated 3 November 2022, seeking orders for review and approval of New Custodian Trustee's remuneration and disbursements paid from the assets of the Custodian Trust in accordance with order 9 of the orders made by Ward CJ in Eq on 4 November 2021 in these proceedings (**4 November 2021 Orders**) and order 13 of the orders made by Hammerschlag CJ in Eq on 6 May 2022 in these proceedings (**6 May 2022 Judicial Advice Orders**).
10. The total remuneration and disbursements for which review and approval is sought in this application (**Second Remuneration Application**) is \$151,096.00 in fees and \$238,153.89 in disbursements (both excluding GST). This amount comprises:
  - (a) \$10,978.50 (excluding GST), being the professional fees of New Custodian Trustee incurred during the period 3 May 2022 to 29 July 2022 in connection with the Second Course of Action (defined below);
  - (b) \$180,065.73 (excluding GST), being the disbursements incurred by New Custodian Trustee during the period 1 June 2022 to 29 July 2022 in connection with the Second Course of Action;
  - (c) \$140,117.50 (excluding GST), being the professional fees of New Custodian Trustee incurred during the period 6 May 2022 to 17 October 2022 in connection with the Third Course of Action (defined below); and
  - (d) \$58,088.16 (excluding GST), being the disbursements incurred by New Custodian Trustee during the period 1 June 2022 to 17 October 2022 in connection with the Third Course of Action.

**C Background**

11. I seek leave to rely upon the following affidavits filed in these proceedings:
  - (a) my affidavit sworn on 22 June 2021 (**First Conneely Affidavit**);
  - (b) my affidavit sworn 28 October 2021 (**Second Conneely Affidavit**);
  - (c) my affidavit sworn 24 March 2022 (**Fourth Conneely Affidavit**);
  - (d) my affidavit sworn 3 June 2022 (**Fifth Conneely Affidavit**); and
  - (e) the affidavit of Mr Langdon affirmed 7 July 2022 (**Langdon Affidavit**).
12. I refer to paragraph 12 of the Second Conneely Affidavit where I depose to the background of the commencement of these proceedings.

C1. Appointment of New Custodian Trustee

13. As a result of the matters deposed to in paragraph 12 of the Second Conneely Affidavit, on 22 June 2021, the plaintiffs made an application (**First Application**) before Ward CJ in Eq, seeking the appointment of New Custodian Trustee in substitution of PP New as custodian trustee of the Custodian Trust, the vesting of property held on trust for the Fund in New

*Brendan  
Conneely*

Custodian Trustee and consequential relief, including, the authorisation of a prescribed course of action by New Custodian Trustee (**First Course of Action**).

C2. First Course of Action

14. Following the First Application and in accordance with the 22 June 2021 Orders, New Custodian Trustee undertook the First Course of Action. I depose to the steps taken by New Custodian Trustee pursuant to the First Course of Action in paragraphs 17 to 61 of the Second Conneely Affidavit.
15. As part of the First Course of Action, on 2 November 2021, New Custodian Trustee made an application (**Second Application**) before Ward CJ in Eq, seeking authorisation to, among other things, convene and hold a meeting of the current and past members of the Fund, creditors, claimants and contributories or potential creditors, claimants and contributories of the Fund and the persons who have been acting as officeholders on behalf of the Fund (together, **Interested Persons**) to vote on the future of the Fund (**First Meeting**), along with consequential steps to facilitate the holding of the First Meeting (**Second Course of Action**). At pages 1 to 5 of Exhibit CMC-9 is a copy of the 2 November 2022 Orders.

C3. Second Course of Action

16. Following the Second Application and in accordance with the 2 November 2021 Orders, New Custodian Trustee undertook the Second Course of Action. I depose to the steps taken by New Custodian Trustee pursuant to the Second Course of Action in paragraphs 15 to 62 of the Fourth Conneely Affidavit.
17. As part of the Second Course of Action, on 6 May 2022, New Custodian Trustee made an application (**Third Application**) before Hammerschlag CJ in Eq, seeking, among other things, authorisation to (**Third Course of Action**):
  - (a) bring proceedings to wind up the Fund (**Winding Up Proceedings**);
  - (b) provide notice (Third Notice) to the Interested Persons of:
    - (i) the orders made in respect of the Third Application and any reasons for judgment;
    - (ii) the Winding Up Proceedings; and
    - (iii) any orders or directions made by the Court in the Winding Up Proceedings;
  - (c) issue the Third Notice by:
    - (i) sending the Third Notice to the email addresses of Interested Persons known to New Custodian Trustee;
    - (ii) sending the Third Notice to the postal addresses of Interested Persons known to New Custodian Trustee; and/or
    - (iii) publishing the Third Notice and the documents referred to in the Third Notice on the following website: <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund> (**New Custodian Trustee Website**);

*Branan*  
*Klausey.*

- (d) sell the property held under the Custodian Trust (**Property**);
- (e) to the extent necessary, bring proceedings seeking the Court's opinion, advice and direction in relation to the sale of any of the Property (**Approval Application**);
- (f) transfer the net amount of the sale proceeds of the Property and any other funds held by New Custodian Trustee under the Custodian Trust (**Proceeds**) to the Liquidators, after paying all expenses incurred in respect of the Third Course of Action and retaining such other amount as to New Custodian Trustee appears to be reasonably necessary for satisfying any other liability or contingent liability of the Custodian Trust; and
- (g) obtain professional representation and advice for the purposes of sub-paragraphs (a) to (f) above.

At pages 6 to 9 of Exhibit CMC-9 is a copy of the 6 May 2022 Judicial Advice Orders.

#### **D Work undertaken from 6 May 2022**

##### D1. Second Course of Action

###### *First Remuneration Application*

- 18. On 3 June 2022, in accordance with the 4 November 2021 Orders, New Custodian Trustee filed an application in these proceedings seeking review and approval of its remuneration and disbursements for the period 22 June 2021 to 1 November 2021 (in respect of the First Course of Action) and 2 November 2021 to 5 May 2022 (in respect of the Second Course of Action) (**First Remuneration Application**). The relevant background in respect of the First Remuneration Application is set out in the Fifth Conneely Affidavit.
- 19. On 29 June 2022, New Custodian Trustee provided notice of the First Remuneration Application to Interested Persons (**First Remuneration Notice**). The relevant background in respect of the First Remuneration Notice is set out in paragraphs 13 to 20 of the Langdon Affidavit.
- 20. On 8 July 2022, Hammerschlag CJ in Eq heard the First Remuneration Application and approved New Custodian Trustee's remuneration and disbursements. At pages 10 to 11 of Exhibit CMC-9 is a copy of the orders made by Hammerschlag CJ in Eq on 8 July 2022 in these proceedings.

##### D2. Third Course of Action

###### *Winding Up Proceedings*

- 21. Immediately following the Third Application and in accordance with the 6 May 2022 Judicial Advice Orders, on 6 May 2022, New Custodian Trustee made an application before Hammerschlag CJ in Eq proceedings no. 2022/00130874 seeking to wind up the Fund under section 583(c) of the *Corporations Act 2001* (Cth) (**Corporations Act**) (i.e., the Winding up Proceedings). Hammerschlag CJ in Eq made orders winding up the Fund and appointing Mr Langdon and I as the liquidators of the Fund. At pages 12 to 13 of Exhibit CMC-9 is a copy of the 6 May 2022 Winding Up Orders.

*JBramble*  
*KConneely*

*Issuing the Third Notice*

22. On 6 May 2022, my staff uploaded the 6 May 2022 Judicial Advice Orders and 6 May 2022 Winding Up Orders (together, **6 May 2022 Orders**) to the New Custodian Trustee Website. The 6 May 2022 Orders can be downloaded from the New Custodian Trustee Website by clicking on "Orders – Judicial Advice" and "Orders – Winding Up" in the "Download documents" section of the New Custodian Trustee Website. At pages 14 to 16 of Exhibit CMC-9 is a screen print of the New Custodian Trustee Website taken on or around the date of this affidavit.
23. On 17 May 2022, New Custodian Trustee sent a copy of the 6 May 2022 Orders to the known email and/or postal addresses of the Interested Persons identified by New Custodian Trustee at the time. At pages 1 to 5 of Confidential Exhibit CMC-10 is a list of the Interested Persons (and their email and/or postal addresses) to whom the 6 May 2022 Orders was sent .
24. At page 17 of Exhibit CMC-9 is a copy of the covering email sent to the email addresses of Interested Persons referred to in the Updated Interested Persons List on 17 May 2022. I note that the recipient or "to" field in the email is blank because the Interested Persons were all blind copied such that an Interested Person could not identify another Interested Person the email was sent to.
25. At page 18 to 25 of Exhibit CMC-9 is a copy of the covering letter sent with a copy of the 6 May 2022 orders to the postal addresses of Interested Persons referred to in the Updated Interested Persons List on 17 May 2022.

*Selling the Property*

26. The steps taken by New Custodian Trustee in respect of the sale of the Amcor Shares and Orora Shares (defined below) are summarised below:
  - (a) on 1 September 2022, New Custodian Trustee engaged Macquarie Bank (**Macquarie**) to sell:
    - (i) 289,200 fully paid ordinary shares in Amcor plc (**Amcor Shares**); and
    - (ii) 231,360 fully paid ordinary paid shares in Orora Ltd (**Orora Shares**); and
  - (b) on 26 September 2022, Macquarie sold the Amcor Shares and Orora Shares (together, **Shares**) on behalf of New Custodian Trustee; and
  - (c) the Amcor Shares were sold for a total of \$4,864,140.43 (\$16.8193 per share) and the Orora Shares were sold for a total of \$709,372.84 (136,732 at \$3.0700 per share, 2,929 at \$3.0750 per share, and 91,699 at \$3.0600 per share). At pages 26 to 29 of Exhibit CMC-9 are copies of contract notes relating to the sale of the Shares.
27. The steps taken by New Custodian Trustee in respect of the sale of 67 Victory Parade, Tascott NSW 2250 (**67 Victory Parade**) and 69 Victory Parade, Tascott NSW 2250 (**69 Victory Parade**) (together, **Point Clare Properties**) are summarised below:
  - (a) by about June 2022, New Custodian Trustee (in conjunction with KordaMentha's Real Estate team) was considering the options available to the incoming purchaser of 69 Victory Parade (which does not have a jetty) to use the domestic waterfront jetty

*Brendan Klonovsky*

located on 67 Victory Parade. This was based on the recommendation from Preston Rowe Paterson (**PRP**) that jetty licence no LI 560360 issued to PP New (the former registered proprietor of the Point Clare Properties) (**Licence**) should be reconfigured as a shared licence between each of the registered proprietors of the Point Clare Properties to maximise the value of both properties (see section 14 of the valuation of the Point Clare Properties (**PRP Valuation**) at pages 30 to 79 of Exhibit CMC-9). I understand that before any shared licence arrangement could be implemented, New Custodian Trustee would need to apply for a new licence, which, based on information from the Domestic Waterfront Tenures, could take up to 18 months to process. At pages 80 to 104 of Exhibit CMC-9 is a copy of an email between Kate Ferguson of Ashurst and Domestic Waterfront Tenures including its attachment dated 12 July to 30 August 2022. Given the lengthy delay, New Custodian Trustee did not apply for a new licence;

(b) on 24 August 2022, New Custodian Trustee engaged JMB (NSW) Pty Ltd, Alan Bowler and Alan Bowler Pty Ltd (together, **McGrath**) as the agents to market and sell the Point Clare Properties. At pages 105 to 124 of Exhibit CMC-9 are copies of the Exclusive Agency Agreements for the Point Clare Properties dated 24 August 2022 between McGrath and New Custodian Trustee;

(c) on 20 September 2022, I was informed by Mr Bowler that the marketing campaign for the Point Clare Properties had commenced. The marketing campaign included:

(i) advertisements on the following websites:

- (A) <https://www.mcgrath.com.au/67-victory-parade-tascott-nsw-2250-for-sale-554418>;
- (B) <https://www.mcgrath.com.au/69-victory-parade-tascott-nsw-2250-for-sale-554423>;
- (C) <https://www.realestate.com.au/property/67-victory-pde-tascott-nsw-2250>;
- (D) <https://www.realestate.com.au/property/69-victory-pde-tascott-nsw-2250>;
- (E) <https://www.domain.com.au/67-victory-parade-tascott-nsw-2250-2018078555>; and
- (F) <https://www.domain.com.au/property-profile/69-victory-parade-tascott-nsw-2250>;

(ii) signage out the front of each of the Point Claire Properties

at pages 125 to 157 of Exhibit CMC-9 are extracts from the websites referred to in the preceding paragraph; and

(d) on 7 October 2022, New Custodian Trustee obtained updated valuations of the Point Clare Properties from PRP. At pages 158 to 175 of Exhibit CMC-9 are copies of the valuations;

*Braruli*  
*Klanseely*

- (e) on 15 October 2022, 67 Victory Parade sold for \$1,750,000 and 69 Victory Parade sold for \$1,300,000, at auction. New Custodian Trustee subsequently entered into Contracts for Sale of Land in respect of the properties (**67 Victory Parade Contract** and **69 Victory Parade Contract**). At pages 176 to 321 of Exhibit CMC-9 are copies of the 67 Victory Parade Contract and 69 Victory Parade Contract. Completion under these contracts is subject to and conditional upon New Custodian Trustee notifying the purchaser that it has obtained such opinion, advice and/or direction pursuant to the *Trustee Act 1925* (NSW) as it considers appropriate in relation to the sales.

*Approval Application*

28. In accordance with the 6 May 2022 Judicial Advice Orders, New Custodian Trustee intends to shortly file an application in these proceedings seeking the Court's opinion, advice and direction in relation to the sale of the Point Clare Properties (i.e. the Approval Application).

*Balance of the Third Course of Action*

29. There are still a number of tasks to be undertaken in respect of the Third Course of Action, namely, completion of the sale of the Point Clare Properties.
30. Subject to obtaining the necessary approval from the Court, upon completion of the sale of the Point Clare Properties, I expect that New Custodian Trustee will:
- (a) calculate the funds required to be withheld from the Proceeds for satisfying any other liability or contingent liability of the Custodian Trust;
  - (b) make a subsequent application for approval of New Custodian Trustee's remuneration and disbursements in connection with the Third Course of Action; and
  - (c) transfer the Proceeds (less any funds withheld by New Custodian Trustee for satisfying any other liability or contingent liability of the Custodian Trust) to the Liquidators.

**E Categorisation of work undertaken by New Custodian Trustee**

31. The process for categorising and recording fees undertaken by New Custodian Trustee in connection with the administration of the Custodian Trust and the Fund is described below.
32. Each staff member of KordaMentha maintains a computerised time sheet system, capturing time spent on various engagements on a daily basis. The time spent on various engagements is recorded in that time sheet on the basis of six minute units.
33. The system requires the person entering the time in the computerised system first to nominate the category of work performed before entering their time. My staff and I allocated our time to the following categories:
- (a) "Administration and risk mitigation";
  - (b) "Litigation/legal"
  - (c) "Statutory compliance";
  - (d) "Assets";

*Branham*  
*Klonneely*

- (e) "Trading"; and
- (f) "Interested Persons".

34. While my staff and I used the above categories to record time, certain items of work could have fallen within more than one of the categories, so that, for example, communicating with Interested Persons could have been recorded under either the "administration and risk mitigation" category or the "Interested Persons" category. However, each task is only recorded once, and the time for carrying out each task has only been recorded once.
35. These records have been extracted from the computerised system for the purpose of the Second Remuneration Application. The extracts, to the best of my knowledge and belief, only record time spent by each of my staff and I in relation to the administration of the Custodian Trust and the Fund.

**F Time-based method**

36. New Custodian Trustee has calculated its remuneration on the basis of an hourly rate for each staff member who carried out work in respect of the administration of the Custodian Trust and the Fund multiplied by the number of hours spent by each person on the tasks performed (i.e., a time-based method).
37. The rates charged by New Custodian Trustee are the hourly rates for the relevant staff member (at the time that each task was being performed) of KordaMentha. At pages 322 to 327 of Exhibit CMC-9 are copies of KordaMentha's hourly schedules of rates (exclusive of GST) as applicable during the Third Course of Action Period and disbursement policies for the Third Course of Action Period. I note KordaMentha's hourly schedule of rates was updated and effective from 4 July 2022.
38. I believe that the rates are reasonable given:
- (a) the work actually performed;
  - (b) the experience of each staff member;
  - (c) the responsibility of each staff member in relation to the work performed by them;
  - (d) the complexity of the various tasks performed by each staff member;
  - (e) rates charged by comparable firms for such work;
  - (f) the costs incurred by my firm in performing the work in relation to the administration of the Custodian Trust and the Fund; and
  - (g) the risks undertaken by my firm in allowing New Custodian Trustee to accept the appointment as trustee of the Custodian Trust and conducting the work in relation to the appointment.
39. In the First Conneely Affidavit, which was filed in support of a successful application for the appointment of PP New as trustee of the Custodian Trust, I, at paragraphs 59 to 62, indicated to the Court that New Custodian Trustee proposed to calculate its remuneration using a time-based method and expressed the opinion that this approach was appropriate.

*Brank*  
*Conneely*

40. I still consider that the time-based method rather than one of the other methods —for example, fixed fee, percentage (i.e., the fee is based on a percentage rate of a particular variable such as assets recovered) and contingency (i.e., contingent on a particular outcome), is the most appropriate for reasons including:

- (a) the method allows New Custodian Trustee to produce a detailed analysis of time spent on each task by each individual staff member utilised in the administration of the Custodian Trust and Fund;
- (b) the method provides full accountability to Interested Persons in the method of calculation and ensures that Interested Persons are only charged for work that is actually performed; and
- (c) the method fairly reflects the necessary work performed, noting that there are a number of tasks that are required to be performed but do not relate to the realisation of assets, for example, responding to Interested Persons' enquiries, reporting to Interested Persons and general administration and risk mitigation.

#### **G Remuneration and disbursements claimed**

41. At pages 328 to 329 of Exhibit CMC-9 is a summary of the key work performed by New Custodian Trustee during the period 6 May 2022 to 17 October 2022 (**Relevant Period**) in respect of the Second Course of Action and Third Course of Action.

42. At page 330 of Exhibit CMC-9 are schedules which provide an overview of the quantum of the remuneration claimed by New Custodian Trustee during the Relevant Period in respect of the Second Course of Action and Third Course of Action. The schedule identifies the following information:

- (a) each individual who carried out work during the Relevant Period;
- (b) their position within KordaMentha;
- (c) their hourly charge out rate;
- (d) their total hours of work;
- (e) the total remuneration charged in respect of their work; and
- (f) the remuneration charged in respect of each of the categories referred to in paragraph 33.

43. At pages 331 to 354 of Exhibit CMC-9 are schedules which provide a summary of the disbursements that were incurred by New Custodian Trustee in connection with the performance of the role as trustee of the Custodian Trust during the Relevant Period in respect of the Second Course of Action and Third Course of Action.

44. I have also included a detailed schedule setting out each time entry allocated to the categories identified in paragraph 33 above during the Relevant Period in respect of the Second Course of Action and Third Course of Action. I have reviewed the narrations for all the work claimed in the Second Remuneration Application on a line-by-line basis. From my knowledge of the work carried out and my supervision of the tasks undertaken, I am satisfied

*Brandy*  
*Klaneeley*

that the time recorded for each of the tasks is commensurate with what was required to be undertaken and that the records are accurate [.

45. In my view, all of the tasks detailed in this affidavit were necessary for the proper administration of the Custodian Trust and the Fund in accordance with the Second Course of Action and Third Course of Action and in order to maximise realisations for the benefit of Interested Persons.
46. KordaMentha follows the Australian Restructuring Insolvency and Turnaround Association Code of Professional Practice (**ARITA Code**) in relation to the insolvency appointments KordaMentha undertakes. Given the similarities between New Custodian Trustee's role in relation to the administration of the Custodian Trust and the Fund and the role of a voluntary administrator under Part 5.3A of the *Corporations Act*, New Custodian Trustee has adopted the ARITA Code as a guide in carrying out the Second Course of Action and Third Course of Action. At pages 355 to 409 of Exhibit CMC-9 is a copy of "Practice Statement Insolvency 5: Remuneration reporting" which came into effect on 31 March 2021 and is contained in the fourth edition of the ARITA Code.

## **H Second Course of Action**

### H1. Remuneration

47. Immediately below is a summary of the amounts claimed in respect of work undertaken by New Custodian Trustee in the relevant categories identified in paragraph 33 above in connection with the Second Course of Action during the Relevant Period. At paragraphs 48 to 55 below, I provide specific details of the work my staff and I performed during the Relevant Period by reference to those categories.

| <b>Category</b>                                | <b>Remuneration sought to be approved<br/>for the Second Course of Action</b> |
|------------------------------------------------|-------------------------------------------------------------------------------|
| Litigation/legal                               | \$9,546.00                                                                    |
| Interested Persons                             | \$1,432.50                                                                    |
| <b>TOTAL (excluding GST and disbursements)</b> | <b>\$10,978.50</b>                                                            |

#### *Litigation/legal*

48. The total amount of remuneration sought with respect to this category is \$9,546.00 (excluding GST).
49. A schedule setting out each time entry allocated to this category during the Relevant Period in connection with the Second Course of Action is at pages 410 to 411 of Exhibit CMC-9. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
50. In summary, New Custodian Trustee has undertaken the following work in respect of the litigation/legal category:

*Brenn*  
*Klennedy.*

- (a) liaising with and assisting Ashurst, in respect of the preparation of the First Remuneration Application. This included:
  - (i) considering the issues which are likely to arise in respect of the First Remuneration Application;
  - (ii) preparing the Fifth Conneely Affidavit and Langdon Affidavit; and
  - (iii) considering, reviewing and collating relevant information and documentation for the exhibits to the Fifth Conneely Affidavit and Langdon Affidavit, including completing a line-by-line review of narrations for all work claimed in the First Remuneration Application; and
- (b) liaising with and assisting Ashurst in respect of drafting requirements for the First Remuneration Notice.

51. I note that New Custodian Trustee is required to seek approval of remuneration (and disbursements) in connection with the various courses of action. The First Remuneration Application sought approval of remuneration (and disbursements) in connection with both the First Course of Action and Second Course of Action. Accordingly, the remuneration (and disbursements) incurred in respect of the First Remuneration Application should be allocated proportionately between those courses of action.
52. However, it would be extremely time consuming and costly to work this out and would require a review of the relevant time entries and disbursements and a subsequent allocation of these entries and disbursements between the First Course of Action and Second Course of Action. In my opinion, there would be limited (if any) benefit to Interested Persons in doing this. In the circumstances, I propose on allocating all of the remuneration and disbursements incurred respect of the First Remuneration Application to the Second Course of Action. This is also a convenient course to adopt because New Custodian Trustee is required to seek approval of certain disbursements which were strictly incurred in connection with the Second Course of Action.

#### *Interested Persons*

53. The total amount of remuneration sought with respect to this category is \$1,432.50 (excluding GST).
54. A schedule setting out each time entry allocated to this category during the Relevant Period in connection with the Second Course of Action is at page 412 of Exhibit CMC-9. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
55. In summary, New Custodian Trustee has undertaken the following work in respect of the Interested Persons category:
- (a) issuing the First Remuneration Notice by:
    - (i) publishing it on the New Custodian Trustee Website; and
    - (ii) sending a copy to the known addresses and email addresses of the Interested Persons identified at the time; and

*Bramble*  
*K. Conneely*

- (b) responding to queries from Interested Persons in respect of the First Remuneration Notice.

## H2. Disbursements

56. As per the 2 November 2021 Orders, New Custodian Trustee is required to seek a review of disbursements in connection with the Second Course of Action paid out of the assets of the Custodian Trust. Immediately below is a summary of the disbursements paid in connection with the Second Course of Action. At paragraphs 58 to 63 below, I provide more specific details of the disbursements incurred.

| <b>Disbursement</b>                                                        | <b>Amount (excluding GST)</b> | <b>Second Course of Action Amount (excluding GST)</b> |
|----------------------------------------------------------------------------|-------------------------------|-------------------------------------------------------|
| Invoice from Ashurst dated 1 June 2022 ( <b>Ashurst 1 June Invoice</b> )   | \$81,302.69                   | \$78,301.19                                           |
| Invoice from Ashurst dated 30 June 2022 ( <b>Ashurst 30 June Invoice</b> ) | \$58,582.67                   | \$53,122.67                                           |
| Invoice from Ashurst dated 29 July 2022 ( <b>Ashurst 29 July Invoice</b> ) | \$53,422.73                   | \$48,384.23                                           |
| Postage expenses                                                           | \$257.64                      | \$257.64                                              |
| <b>TOTAL (excluding GST)</b>                                               | <b>\$193,565.73</b>           | <b>\$180,065.73</b>                                   |

57. I have reviewed each of the disbursements in connection with the Second Course of Action and am satisfied that they were reasonably incurred and are properly payable by New Custodian Trustee.

### *Ashurst and counsel*

58. In respect of the Ashurst 1 June Invoice, Ashurst 30 June Invoice and Ashurst 29 July Invoice, these relate to work in connection with the Second Course of Action and Third Course of Action. I am informed by Bernie Walrut of Ashurst that Ashurst has highlighted the relevant time entries which relate to the Third Course of Action. Mr Walrut has also informed me that there are a small number of entries which include work done in relation to both the Second Course of Action and Third Course of Action and that Ashurst has allocated these to the Third Course of Action due to the difficulty of accurately separating these time entries.
59. At pages 6 to 12 of Confidential Exhibit CMC-10 is a copy of the Ashurst 1 June Invoice. The total amount of the invoice is \$81,302.69 (excluding GST) (including disbursements). I have reviewed the time entries highlighted in yellow (\$3,001.50 (excluding GST)) and note that they relate to the Third Course of Action, largely, in relation to the sale of the Point Clare Properties by New Custodian Trustee.

*Bernie Walrut*  
*Kennedy*

60. The balance of time entries in the Ashurst 1 June Invoice (\$78,301.19 (excluding GST)) relate to the preparation of and making the Third Application and preparation of the First Remuneration Application. This includes disbursements incurred by Ashurst totalling \$24,086.69 (excluding GST), including, counsel's fees and Court fees. At pages 13 to 18 of Confidential Exhibit CMC-10 are copies of these invoices.
61. At pages 19 to 25 of Confidential Exhibit CMC-10 is a copy of the Ashurst 30 June Invoice. The total amount of the invoice is \$58,582.67 (excluding GST) (including disbursements). I have reviewed the time entries highlighted in yellow (\$5,460.00 (excluding GST)) and note that they relate to the Third Course of Action, largely, in relation to the sale of the Point Clare Properties by New Custodian Trustee and clarification of New Custodian Trustee's role in respect of the Third Course of Action (*vis-à-vis* the Liquidators).
62. The balance of the time entries in the Ashurst 30 June Invoice (\$53,122.67 (excluding GST)) relate to the preparation of the First Remuneration Application. This includes disbursements incurred by Ashurst totalling \$3,912.67 (excluding GST), including, counsel's fees and Court fees. At pages 26 to 29 of Confidential Exhibit CMC-10 are copies of these invoices.
63. At pages 30 to 35 of Confidential Exhibit CMC-10 is a copy of the Ashurst 29 July Invoice. The total amount of the invoice is \$53,422.73 (excluding GST) (including disbursements). I have reviewed the time entries highlighted in yellow (\$5,038.50 (excluding GST)) and note that they relate to the Third Course of Action, largely, in relation to the sale of the Point Clare Properties by New Custodian Trustee and clarification of New Custodian Trustee's role in respect of the Third Course of Action (*vis-à-vis* the Liquidators).
64. The balance of the time entries in the Ashurst 29 July Invoice (\$48,384.23 (excluding GST)) relate to the preparation of the First Remuneration Application. This includes disbursements incurred by Ashurst totalling \$12,250.73 (excluding GST), including, counsel's fees and Court fees. At pages 36 to 45 of Confidential Exhibit CMC-10 are copies of these invoices.

*Other disbursements*

65. At pages 413 to 417 of Exhibit CMC-9 is a copy of the invoice for postage expenses. Postage expenses are paid via KordaMentha's corporate account for various engagements in bulk and then a portion of the cost is applied to the specific engagement. The portion of the invoice incurred in order to distribute the First Remuneration Notice is \$257.64 (excluding GST).

**I Third Course of Action**

I1. Remuneration

66. Immediately below is a summary of the amounts claimed in respect of work undertaken by New Custodian Trustee in the relevant categories identified in paragraph 33 above in connection with the Third Course of Action during the Relevant Period. At paragraphs 67 to 85 below, I provide specific details of the work my staff and I performed during the Relevant Period by reference to those categories.

| Category | Remuneration sought to be approved<br>for the Third Course of Action |
|----------|----------------------------------------------------------------------|
|----------|----------------------------------------------------------------------|

*Brendan Kennedy*

|                                                |                     |
|------------------------------------------------|---------------------|
| Administration and risk mitigation             | \$6,852.00          |
| Litigation/legal                               | \$8,719.00          |
| Assets                                         | \$96,545.50         |
| Interested Persons                             | \$5,385.00          |
| Statutory compliance                           | \$12,344.00         |
| Trading                                        | \$10,272.00         |
| <b>TOTAL (excluding GST and disbursements)</b> | <b>\$140,117.50</b> |

*Administration and risk mitigation*

67. The total amount of remuneration sought with respect to this category is \$6,852.00 (excluding GST).
68. A schedule setting out each time entry allocated to this category during the Relevant Period in connection with the Third Course of Action is at pages 418 to 438 of Exhibit CMC-9. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
69. In summary, New Custodian Trustee has undertaken the following work in respect of the administration and risk mitigation category:
- (a) renewing appropriate insurance policies for the Point Clare Properties and notifying insurers of events as required;
  - (b) maintaining the New Custodian Trustee Website for Interested Persons;
  - (c) attending to ongoing management of RelativityOne, the online document management platform for Books and Records; and
  - (d) general administration including filing of documents and document finalisation.

*Litigation/legal*

70. The total amount of remuneration sought with respect to this category is \$8,719.00 (excluding GST).
71. A schedule setting out each time entry allocated to this category during the Relevant Period in connection with the Third Course of Action is at pages 420 to 421 of Exhibit CMC-9. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
72. This category has been used to record time spent liaising with Ashurst, in particular, in respect of the various applications made by New Custodian Trustee. In summary, New

*Brandon  
Kennedy.*

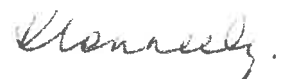
Custodian Trustee has undertaken the following work in respect of the litigation/legal category:

- (a) liaising with Ashurst in respect of the preparation of the 67 Victory Parade Contract and 69 Victory Parade Contract. This included considering various tax issues;
- (b) liaising with Ashurst in respect of transfer of the Licence;
- (c) liaising with and assisting Ashurst in respect of the preparation of the Approval Application seeking, among other things, the Court's opinion, advice and direction to New Custodian Trustee that it would be justified in, among other things, completing the settlement of the sale of the Point Clare Properties as affected by the 67 Victory Parade Contract and 69 Victory Parade Contract. This included:
  - (i) considering the issues which are likely to arise in respect of the sale of the Point Clare Properties;
  - (ii) preparing my affidavit in support of the Approval Application; and
  - (iii) considering, reviewing and collating relevant information and documentation for the exhibits to my affidavit in support of the Approval Application; and
- (d) liaising with and assisting Ashurst in respect of the preparation of the Second Remuneration Application. This included:
  - (i) considering the issues which are likely to arise in respect of the Second Remuneration Application;
  - (ii) preparing this affidavit; and
  - (iii) considering, reviewing and collating relevant information and documentation for the exhibits to this affidavit.

73. In respect of subparagraph 72(d) above, for the reasons deposed to in paragraphs 51 and 52 above, New Custodian Trustee has allocated all of the remuneration (and disbursements) incurred in respect of the Second Remuneration Application to the Third Course of Action.

#### Assets

74. The total amount of remuneration sought with respect to this category is \$96,545.50 (excluding GST).
75. A schedule setting out each time entry allocated to this category during the Relevant Period in connection with the Third Course of Action is at pages 422 to 434 of Exhibit CMC-9. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
76. As per the 6 May 2022 Judicial Advice Orders, New Custodian Trustee was authorised to sell the Property. In summary, New Custodian Trustee has undertaken the following work in respect of the assets category:

- (a) inspecting the Point Clare Properties, identifying inclusions and preparing the Point Clare Properties for sale;
- (b) meeting with potential sales agents for the Point Clare Properties, attending property inspections with prospective agents and reviewing agent submissions;
- (c) engaging McGrath as the agent to market and sell the Point Clare Properties;
- (d) reviewing market analysis and updates, including discussing general economic downturn impacts on pricing of Point Clare Properties with agents, including McGrath;
- (e) obtaining updated valuations for the Point Clare Properties;
- (f) considering the most appropriate method to sell the Point Clare Properties;
- (g) discussing and planning the sales campaign strategy for the Point Clare Properties, including the preparation of marketing collateral;
- (h) liaising with McGrath in respect of documents required for the sale of the Point Clare Properties, including related to reserve prices and vendor bids;
- (i) liaising with McGrath in respect of the sale of the Point Clare Properties, including regular updates and preparing reports on sales campaign progress;
- (j) review of contracts and contract amendments for the sale of the Point Clare Properties;
- (k) attending the auctions of the Point Clare Properties on 15 October 2022;
- (l) finalising the transfer of the Shares from PP New to New Custodian Trustee, and liaising with Computershare and Link Market Services in respect of the same;
- (m) liaising with Computershare and Link Market Services in respect of outstanding dividends in respect of the Shares;
- (n) engaging Macquarie to undertake a sell down of the Shares;
- (o) liaising with Macquarie in respect of onboarding and pre-sale information requirements; and
- (p) liaising with Macquarie in respect of the sale of the Shares and release of net proceeds.

#### *Interested Persons*

- 77. The total amount of remuneration sought with respect to this category is \$5,385.00 (excluding GST).
- 78. A schedule setting out each time entry allocated to this category during the Relevant Period in connection with the Third Course of Action is at page 435 of Exhibit CMC-9. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
- 79. My staff and I have been required to consider and respond to an extensive number of enquiries (approximately 650 emails and phone calls) from Interested Persons as well as

*Brennan*  
*Kloane*

his schedule  
Brenner  
Klanick.

includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.

85. This category has been used to record time spent on general accounting tasks and day- to- day administration connected with the Fund. In summary, New Custodian Trustee has undertaken the following work in respect of the investigations and statutory compliance category:
- (a) general accounting tasks, including, processing receipts, attending to bank account reconciliations and processing receipts and payments onto Insol;
  - (b) preparation and review of various cash flow statements to ensure adequate management of assets; and
  - (c) continued liaising with the ongoing service providers to the Point Clare Properties to ensure maintenance as required.

## 12. Disbursements

86. As per the 6 May 2022 Judicial Advice Orders, New Custodian Trustee is required to seek a review of disbursements in connection with the Third Course of Action paid out of the assets of the Custodian Trust. Immediately below is a summary of the disbursements paid in connection with the Third Course of Action. At paragraphs 88 to 94 below, I provide more specific details of the disbursements incurred.

| <b>Disbursement</b>                                                                  | <b>Amount (excluding GST)</b> | <b>Third Course of Action Amount (excluding GST)</b> |
|--------------------------------------------------------------------------------------|-------------------------------|------------------------------------------------------|
| Ashurst 1 June Invoice                                                               | \$81,302.69                   | \$3,001.50                                           |
| Ashurst 30 June Invoice                                                              | \$58,582.67                   | \$5,460.00                                           |
| Ashurst 29 July Invoice                                                              | \$53,422.73                   | \$5,038.50                                           |
| Invoice from Ashurst dated 31 August 2022 ( <b>Ashurst 31 August Invoice</b> )       | \$10,484.56                   | \$10,484.56                                          |
| Invoice from Ashurst dated 29 September 2022 ( <b>Ashurst 29 September Invoice</b> ) | \$76,413.88                   | \$24,476.50                                          |
| Invoice from Gallaghers dated 15 June 2022                                           | \$2,632.07                    | \$2,632.07                                           |
| Central Coast Emergency Accommodation Services Ltd invoice dated 15 September 2022   | \$81.82                       | \$81.82                                              |

*Brendan  
Klonicki*

|                                                    |                     |                    |
|----------------------------------------------------|---------------------|--------------------|
| Invoice 01094617 from PRP dated 5 October 2022     | \$400.00            | \$400.00           |
| Invoice 01094617 from PRP dated 5 October 2022     | \$500.00            | \$500.00           |
| Company Searches                                   | \$25.20             | \$25.20            |
| RelativityOne hosting fees (internal disbursement) | \$1,606.50          | \$1,606.50         |
| RelativityOne user fees (internal disbursement)    | \$4,350.00          | \$4,350.00         |
| Books and Records storage                          | \$12.60             | \$12.60            |
| Travel expenses                                    | \$18.91             | \$18.91            |
| <b>TOTAL (excluding GST)</b>                       | <b>\$289,833.63</b> | <b>\$58,088.16</b> |

87. I have reviewed each of the disbursements in connection with the Third Course of Action and am satisfied that they were reasonably incurred and properly payable by New Custodian Trustee.

*Ashurst and counsel*

88. As deposed to in paragraph 58 above, the Ashurst 1 June Invoice, Ashurst 30 June Invoice and Ashurst 29 July Invoice relate to work in connection with the Second Course of Action and Third Course of Action. The highlighted time entries in yellow on these invoices relate to the Third Course of Action. I provide further details of these amounts in paragraphs 90 to 94 below.
89. In respect of the 29 September Invoice, the time entries are split between "General" and "Liquidation". The time entries under "General" (\$24,476.50 (excluding GST)) relate to the Third Course of Action, in particular, the sale of the Point Clare Properties and preparation of the Second Remuneration Application. The time entries under "Liquidation" (\$48,774.50 (excluding GST)) relate to the liquidation of the Fund and approval is not sought by New Custodian Trustee in respect of these amounts in this application.
90. At pages 6 to 12 of Confidential Exhibit CMC-10 is a copy of the Ashurst 1 June Invoice. I have reviewed the time entries highlighted in yellow (\$3,001.50 (excluding GST)) and note that they relate to the Third Course of Action, largely, in relation to the sale of the Point Clare Properties by New Custodian Trustee.
91. At pages 19 to 25 of Confidential Exhibit CMC-10 is a copy of the Ashurst 30 June Invoice. I have reviewed the time entries highlighted in yellow (\$5,460.00 (excluding GST)) and note that they relate to the Third Course of Action, largely, in relation to the sale of the Point Clare Properties by New Custodian Trustee and clarification of New Custodian Trustee's role in respect of the Third Course of Action (*vis-à-vis* the Liquidators).

*Brunner*  
*Klanke*

92. At pages 30 to 35 of Confidential Exhibit CMC-10 is a copy of the Ashurst 29 July Invoice. I have reviewed the time entries highlighted in yellow (\$5,038.50 (excluding GST)) and note that they relate to the Third Course of Action, largely, in relation to the sale of the Point Clare Properties by New Custodian Trustee and clarification of New Custodian Trustee's role in respect of the Third Course of Action (*vis-à-vis* the Liquidators).
93. At pages 46 to 49 of Confidential Exhibit CMC-10 is a copy of the Ashurst 31 August Invoice. The total amount of the invoice is \$10,484.56 (excluding GST) (including disbursements). This invoice relates to the Third Course of Action, largely, in relation to the sale of the Point Clare Properties by New Custodian Trustee.
94. At pages 50 to 56 of Confidential Exhibit CMC-10 is a copy of the Ashurst invoice dated 29 September 2022 in the amount of \$76,413.88 (excluding GST). I have reviewed the time entries under the heading "General" (\$24,476.50 (excluding GST)) and note that they relate to the Third Course of Action, largely, in relation to the sale of the Point Clare Properties by New Custodian Trustee and preparation of the Second Remuneration Application.

*Other disbursements*

95. At pages 439 to 448 of Exhibit CMC-9 are copies of the invoices for the other disbursements referred to in the table in paragraph 86. I am unable to provide invoices for certain disbursements, for example, Books and Records storage and company searches, as these costs are paid via KordaMentha's corporate account for various engagements in bulk and then a portion of the cost is applied to the specific engagement. In respect of the RelativityOne disbursements, KordaMentha has an agreement with RelativityOne to pay \$300 in hosting fees and \$150 per person in user fees, each month, which are apportioned to the specific engagement.
96. I note the following in respect of these disbursements:
- (a) Gallaghers – this relates to insurance costs for the Point Clare Properties;
  - (b) Central Coast Emergency Accommodation Services Ltd – this relates to the payment of an invoice for furniture removal from the Point Clare Properties which was paid directly by a member of my staff and subsequently reimbursed;
  - (c) PRP – as deposed to in paragraph 76, New Custodian Trustee re-engaged PRP to provide an updated valuation for each of the Point Clare Properties;
  - (d) searches – this relates to a Personal Property Securities Register search conducted against the Fund's ABN for investigations;
  - (e) travel costs – these relate to the travel costs incurred by staff in travelling to and from the Point Clare Properties; and
  - (f) Books and Records storage, RelativityOne hosting fees and user fees – these relate to the physical storage of the Books and Records and the maintenance of the Books and Records electronically on Relativity.

**J Matters relevant to consideration of remuneration**

*JBrennan*  
*Klonovsky*

97. In the context of an external administration, the Court must have regard to whether the remuneration is reasonable and takes into account any or all of the matters listed in section 60-12 of Schedule 2 to the *Corporations Act 2001* (Cth) (**Schedule 2**) when reviewing a remuneration determination. I consider that the role undertaken by New Custodian Trustee in performing the Second Course of Action and Third Course of Action to be analogous to a voluntary administrator and liquidator. In the circumstances, I consider each of these matters (where relevant) in turn below.

J1. The extent to which the work by New Custodian Trustee was necessary and properly performed (s 60-12(a))

98. I consider that the work performed by New Custodian Trustee as deposed to above was properly incurred by New Custodian Trustee as part of undertaking the Second Course of Action and Third Course of Action. In this regard, I note that the work performed by New Custodian Trustee related, for the most part, to the Assets category, and was necessary in order to realise the Property in accordance with the Third Course of Action.

J2. The period during which the work was performed by New Custodian Trustee (s 60-12(c))

99. The work performed by New Custodian Trustee in respect of the Second Course of Action and Third Course of Action occurred over the period May 2022 to October 2022 (a period of approximately six months). The total professional fees and disbursements over this period was \$389,249.89 (excluding GST), equating to approximately \$64,874.98 per month. The professional fees over this period was \$151,096.00 (excluding GST), equating to approximately \$25,182.67 per month and the disbursements over this period was \$238,153.89 (excluding GST) equating to approximately \$39,692.32 per month.

J3. The quality and complexity of the work performed by New Custodian Trustee (s 60-12(d) and (e))

100. I consider the work performed by New Custodian Trustee, and its legal advisers, has been of a high quality. The majority of the remuneration incurred was in respect of the First Remuneration Application and the sale of the Point Clare Properties. In respect of the former, the Court made orders in respect of this application (albeit uncontested) in substantially the same form as the relief sought by New Custodian Trustee. In respect of the latter, the Point Clare Properties sold for \$3,050,000 and were sold, in my experience, in unfavourable market conditions having regard to factors such as inflation and rising interest rates. This reflects the experience of KordaMentha's Real Estate team and advisors, McGrath, in achieving this sale. I note the sales are subject to the Approval Application.

J4. The level of risk or responsibility accepted by New Custodian Trustee (s 60-12(g))

101. I considered that the level of risk or responsibility was higher than a typical external administration process, in large part due to the rapidly changing economic environment since the Court authorised New Custodian Trustee to undertake the Third Course of Action (and, in particular, sell the Property). As deposed to in the preceding paragraph, the market conditions were generally unfavourable for vendors and therefore, there is greater responsibility on New Custodian Trustee to obtain the maximum price for the Point Clare

*Brennan*  
*Klanke*

Properties. New Custodian Trustee will subsequently bring the Approval Application, seeking justification in completing the settlement of the sale of the Point Clare Properties as affected by the 67 Victory Parade Contract and 69 Victory Parade Contract.

15. The value and nature of any property dealt with, or likely to be dealt with, by New Custodian Trustee (s 60-12(h))

102. As deposed to in the Fourth Conneely Affidavit, the Property consists of the Point Clare Properties, Shares and cash held in various bank accounts maintained with St George Bank and Bank Australia (which have since been transferred to Macquarie). The total value of the Property is approximately \$9.12 million, broken down as follows:

- (a) \$1,750,000 – 67 Victory Parade (being the sale price under the 67 Victory Parade Contract);
- (b) \$1,300,000 – 69 Victory Parade (being the sale price under the 69 Victory Parade Contract);
- (c) \$4,837,388 – Amcor Shares (being the realised value of the shares, net of brokerage costs);
- (d) \$705,471 – Orora Shares (being the realised value of the shares, net of brokerage costs); and
- (e) \$557,925 – cash held in various Macquarie bank accounts.

103. I am not aware of any further property held on the trust for the Fund, however the Liquidators' investigations are continuing in this regard.

16. The number, attributes and conduct, or the likely number, attributes and conduct, of Interested Persons (s 60-12(i))

104. Consistent with the process adopted by New Custodian Trustee for the First Remuneration Application, I intend to provide a copy of the relevant notice of motion and this affidavit (with redactions applied to any paragraphs disclosing the nature of legal advice provided to New Custodian Trustee and excluding Confidential Exhibit CMC-10) to the Interested Persons prior to the determination of the Second Remuneration Application. To the extent that any Interested Person wishes to object to any remuneration and/or disbursements the subject of the Second Remuneration Application, I propose that those Interested Persons should have an opportunity to do so at the hearing of the Second Remuneration Application.

17. The time properly taken by New Custodian Trustee in performing the work (s 60-12(j))

105. In addition to the matters deposed to in paragraphs 36 to 39 above in relation to the rates and the calculation of New Custodian Trustee's remuneration during Relevant Period, I note that:

- (a) the work performed by New Custodian Trustee was delegated to staff members of KordaMentha having regard to their respective rates, their skill and experience and the complexity of the administration of the Custodian Trust and the Fund;

*Branan*

*Klonneely*

- (b) the majority of the work was performed by a Senior Business Analyst/Executive Analyst who had the experience to carry out day-to-day tasks under the supervision of more senior staff. The Senior Business Analyst/Executive Analyst's hourly charge out rate is \$375 for FY22 and \$495 for FY23 and they accounted for 40% of the professional fees sought;
- (c) the Senior Business Analyst/Executive Analyst was primarily supervised by me (hourly charge out rate of \$725 for FY22 and \$795 for FY23) and a Director (hourly charge out rate of \$675 for FY22 and \$745 for FY23). Together this accounted for 20% of the total professional fees sought;
- (d) a substantial portion of the work was performed by a member of KordaMentha's Real Estate team, a Director (hourly charge out rate of \$675 for FY22 and \$745 for FY23), who supervised and managed the sale of the Point Clare Properties. They accounted for 34% of the professional fees sought; and
- (e) general administrative tasks falling into the administration and risk mitigation category were performed by less senior but appropriately qualified staff such as Administration Assistants and Undergraduates.

**K Other matters**

- 106. At page 449 of Exhibit CMC-9 is a summary of receipts and payments in respect of the Relevant Period.
- 107. In respect of the ongoing administration of the Custodian Trust and the Fund, New Custodian Trustee is in the process of realising the Property. The Liquidators have commenced their detailed investigations into the affairs of the Custodian Trust and Fund but do not currently anticipate that there will be further recoveries for Interested Persons apart from the Property. The Liquidators will also continue to undertake the financial review of the Fund with the assistance of Rothsay, including annual bookkeeping and the preparation of financial statements, undertaking audits and completing tax lodgements where required.
- 108. The Liquidators intend to shortly make an application under section 90-15 of Schedule 2 seeking judicial advice in respect of, among other things, the relevant rules which govern the Fund (there are various versions which do not appear to have been properly altered in accordance with the alteration provisions in the rules). The Liquidators consider this to be a necessary first step in a series of applications for judicial advice and/or directions, ultimately, to determine how the proceeds of the Property should be distributed amongst Interested Persons. The initial application is important because the class of members of the Fund is likely to change depending on which set of rules applies to the Fund. Depending on the outcome of the initial application and subsequent judicial advice/directions applications (see paragraph 82 of the Fourth Conneely Affidavit), I anticipate that the winding up of the Fund will take approximately 12 months to complete.
- 109. I anticipate that any further applications for review of New Custodian Trustee's remuneration and disbursements will be made in accordance with the 6 May 2022 Orders and any further orders that may be made in this regard.

*Brandon*  
*Conneely*

110. I note that there is currently no order which relates to the review of the remuneration and disbursements of the Liquidators in respect of the winding up of the Fund. I anticipate that the Liquidators will seek approval of their remuneration in accordance with Division 60 of Schedule 2 and pay disbursements in the ordinary course.

SWORN at Sydney NSW

Signature of deponent

Klaneehy.

Name of witness

Samantha Brandon.

Address of witness

Level 11, 5 Martin Place, Sydney NSW 2000

Capacity of witness

Solicitor

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

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness

SBrandon.

**Endorsement by witness:** I have signed a scanned copy of the signed document sent to me electronically by the deponent, having witnessed the signature of the deponent over audio visual link in accordance with section 14G(2) of the *Electronic Transactions Act 2000* (NSW).