

**AUSTRALIAN PROPERTY CUSTODIAN HOLDINGS LTD. ("THE COMPANY AND / OR APCHL")  
IN ITS CAPACITY AS RESPONSIBLE ENTITY ("RE") FOR  
THE PRIME RETIREMENT & AGED CARE PROPERTY TRUST ("PRIME TRUST")  
(IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)  
(CONTROLLERS APPOINTED) ACN: 095 474 436**

**LIQUIDATORS' REPORT**

I refer to previous correspondence; in particular to my annual report to creditors dated 11th April 2014 ("previous report"). I now provide a further report pursuant to Section 508(1)(b)(ii) of the Corporations Act, 2001 ("the Act").

This report has been prepared for the sole purpose of complying with the provisions of Section 508(1)(b)(ii) of the Act. Consequently, any other party should not rely upon this report for any purpose whatsoever.

**INTRODUCTION**

APCHL is the RE of the Prime Trust and as RE controls the Prime Trust group of 18 companies. APCHL is also a company in its own right and has its own subsidiary APCH Administrators Pty. Ltd. ("APCHA") that assisted with the staffing and maintaining of the Prime Trust office.

At the time of my appointment, there were a total of 12 retirement villages held by the Prime Trust group. Two groups of companies hold or held seven retirement villages on behalf of the Prime Trust. As RE of the Prime Trust, APCHL was the owner of the following five retirement villages:

- Ashton Gardens
- Bellflower
- Brentwood
- Buderim Gardens
- Gardens on Lindfield

All villages, except for Ashton Gardens, were subject to finance and in each case the financier had appointed Receivers and Managers with a view to realising its security.

**ACTS AND DEALINGS**

**1. Receivers and Managers**

Below is a brief update as to the appointments of the Receivers and Managers.

**(a) Ernst & Young ("E&Y")**

E&Y are appointed over the villages subject to finance with Suncorp Metway Ltd. ("Suncorp").

Despite requests to E&Y for a current update on the status of its appointment, no response has been received. E&Y has previously advised that the debt to Suncorp is in excess of \$70m and that it does not expect there to be surplus funds from the sale of the villages available to unsecured creditors. To my knowledge the villages remain unsold.

**(b) Korda Mentha ("KM")**

KM are appointed over the villages that were subject to finance with Capital Finance Australia Ltd. ("CFAL") now AET SPV Management Pty. Ltd. as Trustee for the Lawson Trust ("SPV") together with the National Australia Bank Ltd. ("NAB").

As previously advised, a Deed of Settlement was entered into with KM to come to an agreement as to how all unencumbered assets and choses in action of the Prime Trust were to be dealt with. My previous report outlined the claims in which KM had elected to pursue, specifically, the Listing Fee Claim.

On 25th November 2014 KM advised the following:

***Current status of the Receiverships and Controllerships***

*As you are aware the listing fee proceedings in the Supreme Court are based on several causes of action against the directors of APCH and other associated parties. Amongst other things, the proceedings concern allegations of a breach of directors' duties said to arise out of amendments to the company's constitution which provided for payment of a 'listing fee' to APCH in its own right.*

*In accordance with Orders made by Justice Robson, the parties were required to mediate this matter prior to 29 August 2014. However, we have been unable to agree a date with the defendants.*

*Until this claim is resolved, we are not in a position to finalise and resign from our appointments over the Companies.*

***Current amounts due to Financiers***

*As at 14 October 2014, we advise that the following amounts were outstanding:*

	<b><i>NAB Balance</i></b>	<b><i>AET SPV Balance</i></b>	<b><i>Total Balance</i></b>
<i>Sunshine Coast facilities</i>	<i>89,101,781.82</i>	<i>89,101,781.82</i>	<i>178,203,563.64</i>
<i>Gardens on Lindfield facilities</i>	<i>-</i>	<i>15,256,212.93</i>	<i>15,256,212.93</i>
<b><i>Total exposure</i></b>	<b><i>\$89,101,781.82</i></b>	<b><i>\$104,357,994.75</i></b>	<b><i>\$193,459,776.57</i></b>

As previously advised any orders for compensation and subsequent recovery from the defendants in the KM proceedings would be caught by the Deed of Settlement and subject to other realisations, the Liquidators would receive 50% of the net proceeds up to \$12 million. Further information in relation to the Listing Fee Claim is set out below in the section "Listing Fee Claim".

As advised in my previous report, my investigations identified a number of other assets that were subject to recovery action by KM; namely Summerwood (Torquay), Plant and Equipment, and Tenambit. I have written to KM in relation to these claims, no response has been received and therefore KM's first right of refusal appears to have expired. No further action has been taken with respect to these claims.

**2. APCHL (as RE of the Prime Trust)**

**(a) Property Investment Loan Agreements ("PILAS")**

In my previous report, I advised three PILAS; namely the Belmont, Wyee, and Lilydale villages were novated from APCHL to APCH Investments Pty. Ltd. (In Liquidation) ("APCHI") (a subsidiary of Prime Trust).

In early July 2014 a share sale and purchase deed was entered into and in consideration for the 19% ownership in the Lilydale village a sum of \$325,000 was received by APCHI.

External Administrators have been appointed to the Belmont and Wye PILAS and I am presently considering my options in respect to these matters. As previously advised, any benefit arising in APCHI will flow to Prime Trust after payment of the costs of the administration.

(b) Listing Fee Claim

This claim seeks a declaration as to various breaches of the Act and Prime Trust's constitution, and the recovery of compensation, damages, and payment of \$33m plus interest from 15 defendants. As referred to above, in accordance with the Deed of Settlement, KM has the carriage of this claim.

ASIC also commenced proceedings against a number of the APCHL directors for a breach of director's duties in relation to the Listing Fee Claim and in December 2013, the Court found that APCHL and each of the directors had breached their duties in amending the constitution and paying the listing fee.

Pursuant to section 1317J (1) of the Act, ASIC then sought compensation from the directors as a result of their breach of duties. A hearing on Relief from Liability and Penalty was held on 28th July 2014 where ASIC argued that disqualification orders and financial penalties should be imposed against the directors. On 2nd December 2014 the Federal Court handed down the following penalties:

<u>Director</u>	<u>Disqualification Order (years)</u>	<u>Penalty</u>
William Lewski	15	\$230,000
Kim Jaques	4	\$ 20,000
Mark Butler	4	\$ 20,000
Michael Wooldridge	2.25	\$ 20,000
Peter Clarke	Nil	\$ 20,000

All of the directors of APCHL have subsequently appealed the judgment and a hearing for the appeal is expected to be heard in May 2015.

(c) Management Rights Claims

The Management Rights Claims relate to a transfer of the rights to manage various villages to private entities owned by Mr. William Lewski ("Lewski") (who was also the managing director of APCHL) for no consideration. The group of Lewski entities then sold the management rights to a subsidiary of Babcock & Brown Ltd. for what is understood to have been \$60 million. The Babcock & Brown entity was later acquired by entities associated with Lend Lease Primelife "LLP entities".

There are two management rights claims and these are as set out below.

i. Alienation of Management Rights Claim

Pursuant to the Deed of Settlement, KM previously had the right to proceed with of the Alienation of Management Rights claim. KM then elected not to proceed with the claim and a variation deed was subsequently entered into with KM to transfer the sole carriage and control of any litigation in respect of the management rights claim to the Liquidators.

In order to preserve this claim from becoming statute barred, an application for an extension of time was sought predominately to allow further time for the Liquidators to review the claim and obtain funding to pursue the claim. The matter was heard in April 2014 and the Honourable Justice Robson granted an extension to 30th June 2014. A further extension to 21st July 2014 was granted for service of some of the defendants that were difficult to locate.

In June 2014 a funding agreement was entered into to pursue this claim, and also the Voidable Transactions Claim and the Auditors claim (which are both detailed below). Further information in relation to the funding obtained is also set out below in the "Funding" section of this report.

Subsequent to the defendants being served an application was made by the defendants to set aside the extension of time granted. The application was heard on 17th September 2014 and the Honourable Justice Robson ordered that the extensions of time previously granted be set aside. This resulted in the claim becoming statute barred.

Following that decision, I obtained advice based on the same facts as to whether the claim could be pursued as a claim "in Equity" rather than a breach of statutory duties/contract, thereby not being subject to any statute of limitations. With funding in place, I have commenced pursuit of this matter as a claim "in Equity".

A writ was filed on 17th December 2014 and all defendants have since been served. I anticipate filing a summons in or around March 2015 to bring the matter to Court for further directions. There are a total of 18 defendants to this claim comprised of:

- Lewski, his related entities and his family members
- LLP entities
- Madgwicks Lawyers and;
- Kidder Williams and its directors

ii. The Liquidators' voidable transaction claim pursuant to section 588 of the Act ("Voidable Transaction Claim").

As advised in my previous report, in October 2013 an originating process was filed in relation to the Voidable Transaction Claim to preserve the claim from becoming statute barred and an extension of time in which to serve the defendants was granted until December 2014.

Subsequent to serving the defendants in November 2014 and like the Alienation of Management Rights Claim, the defendants have made an application to set aside the extension of time granted. The application is due to be heard on 18th March 2015.

The extension of time for the Voidable Transaction Claim was granted under different circumstances to that of the Alienation of Management Rights Claim. I am hopeful for a positive outcome and for the claim to remain on foot.

There are a total of nine defendants to this claim comprised of Lewski related entities and LLP entities.

(d) Auditors Claim

As previously advised I identified a claim against the auditors of APCHL "Pitcher Partners" in relation to alleged breaches in the 2007 audited financial accounts. In September 2013 a Writ and Endorsement was filed to preserve the claim from becoming statute barred.

In September 2014 I served the Writ and Endorsement on Pitcher Partners. A statement of claim has subsequently been filed.

Pitcher Partners was due to file its defense by 6th February 2015 however, has been granted an extension to the 27th February 2015. I continue to liaise with my solicitors, counsel, experts and witnesses on a frequent basis to build the case in preparation for trial. A further directions hearing has now been set for 13th March 2015.

(e) Funding

As set out above, I have made attempts were made to preserve the various claims available. However, due to the liquidation having limited funds, I was not in a position to proceed with any of the claims and serve the appropriate defendants without funding. There are quite a number of defendants, and a significant amount of security for costs could be required and there could be an exposure to substantial adverse costs (if unsuccessful). The liquidation was not in a position to meet such costs.

Throughout the liquidation, my lawyers and I have made various approaches to litigation funders, which were all unsuccessful in securing funding. In early 2014 I was approached by a litigation funder "LCM Litigation Fund Pty. Ltd." ("LCM") who was interested in funding the Liquidators' claims.

In June 2014 I entered into a funding agreement with LCM to pursue the three claims mentioned above; Alienation of Management Rights Claim, Voidable Transaction Claim and Auditors Claim.

A Liquidator is not permitted to enter into an agreement which compromises a debt or will have a term of more than three months without approval. That being the case, on 14th April 2014 I convened a meeting of Committee of Inspection ("COI") for 16th April 2014 for approval to enter into such funding agreement with LCM. At this meeting, approval was granted by the COI.

The key terms of the funding agreement are summarised as follows:

- Legal costs and Liquidators' costs directly attributed to the three claims are to be funded
- In the event of a successful recovery, LCM is repaid all costs expended as a first priority, and if there is a successful recovery in any one claim, funds recovered can be used to repay LCM's costs in all three claims
- If the recovery is sufficient, LCM will then be due for payment of a success fee in addition to the repayment of its costs
- The balance of the net proceeds are to be paid into the liquidation, subject to the agreement with KM in respect to the Alienation of Management Rights Claim
- LCM has the right to terminate the funding agreement at any time without cause, but will remain liable for costs (and adverse costs) incurred up to that point

(f) PI Insurance

As previously advised, a claim was made against APCHL's PI insurance policy in relation to the claims of all unitholders on the basis that the majority of unitholders had suffered the same or similar loss of those complaints determined by the Financial Ombudsman Service ("FOS"). This claim was denied and the PI insurer advised that only the two FOS determinations were covered by the policy.

Payment for the two FOS determinations was not received, and I was informed that the entirety of the policy had been exhausted by the acceptance of the directors' defence costs claims in relation to various proceedings.

As a result of the decision handed down in the ASIC proceeding that each of the directors had breached their duties, it is was my view the directors defence costs should not have been covered by the policy and absent any other claims having been made against the policy, it cannot have been eroded. The parties being the insurer, the directors and the company agreed to have the dispute determined by an independent senior counsel.

The binding determination found that the claims made by the directors were valid and had exhausted the policy prior to the receipt of the FOS claims.

(g) Prime Trust Action Group ("PTAG") & Unitholders

I have been holding regular teleconferences with members of PTAG to keep them updated on matters concerning the liquidation and to deal with any unit holder issues that arise.

3. APCHL (In Its Own Right)

(a) Daytree / APA Proceedings

As previously advised, this matter has been adjourned to a date to be fixed. This matter has not progressed any further since my previous report, however I am presently considering my options moving forward. The \$5 million still remains on term deposit pending a resolution of this matter.

**SUMMARY OF RECEIPTS AND PAYMENTS**

Below is a summary of receipts and payments from 23rd November 2013 to 22nd November 2014. The balance on hand includes an amount of \$5,683,528 which relates to the \$5 million term deposit plus interest that belongs to the company in its own right. These funds are subject to the Daytree / APA proceedings. Until such time as that matter is resolved by the Court the funds are frozen.

Consequently the balance on hand as related to the Prime Trust totals \$41,570.

<b>Balance as at 22nd November 2013 as reported</b>	5,940,037
<b><u>Receipts</u></b>	
Advance of funds – LCM funding agreement	15,101
Ashton Gardens – Proceeds of Sale	372,387
Interest Earned	247,817
SRO preference recovery	113,660
<b>Total Receipts</b>	748,965
<b><u>Less: Payments</u></b>	
APCHA - Prime Trust office running costs	180,000
Bank Charges	226
Legal Costs	378,698
Legal Costs – LCM Funding Agreement funding	15,101
Liquidators Remuneration	385,000
Liquidators' Out of Pocket Expenses	4,850
<b>Total Payments</b>	963,904
<b>Overall Balance as at 22nd November 2014</b>	5,725,098
Less: Amount relating to APCHL in its own right	5,683,528
<b>Balance on Hand related to Prime Trust as at 22nd November 2013</b>	\$41,570

*(Note: Where applicable amounts are inclusive of GST)*

As a consequence of the limited funds available in the Prime Trust account, there is significant remuneration and disbursements (including legal costs) that are unable to be paid and remain outstanding. These costs include:

Administrators fees and expenses from 1st to 23rd November 2011	175,143
Liquidators fees and expenses from 24th November 2011 to 31st December 2014	1,254,775
Legal and Counsel costs up to 31st December 2014 (Estimate)	1,700,000
	\$3,129,918

I have continued to incur Liquidators' remuneration and disbursements and legal costs in relation to this administration. It is my view that there is a good chance of recovery from the various legal proceedings on foot and my solicitors share a similar view and continue to work on a speculative basis.

#### **ACTS AND DEALINGS THAT REMAIN TO BE CARRIED OUT**

The current issues which will be attended to going forward are:

1. Lodge a Section 533 report with the ASIC
2. Resolve Court proceedings involving Daytree / APA and the \$5 million term deposit
3. Liaise with and provide assistance where necessary to KM regarding the listing fee claim
4. Pursuit of the various claims for which the Liquidators have the carriage
6. Establish a cost efficient manner whereby the claims of the relevant unitholders can be calculated
7. Call meetings of the COI from time to time as required, in order to update the COI on current proceedings and put before it various resolutions, including approval of Liquidators remuneration; and
8. Continue to liaise with PTAG and Unit holders

#### **DIVIDEND PROSPECTS**

Any return to unsecured creditors is subject to the outcome of the aforementioned legal actions.

#### **WINDING UP COMPLETION**

Until such time as E&Y has sold the villages under its control and all Receivers and Managers have completed their administrations, the liquidation of APCHL will continue.

Furthermore, it is likely that the various legal proceedings on foot and any future legal proceedings could take a considerable amount of time (up to 2-3 years) to complete and the winding up cannot be finalised until then.

DATED this 20th day of February 2015



S.L. HORNE  
Liquidator