

IN THE MATTER of an Application by the Australian Securities and Investments Commission to the Companies Auditors and Liquidators Disciplinary Board pursuant to section 1292 of the Corporations Act 2001

MATTER NO: 06/VIC07

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Applicant

ALLAN GREGORY WALKER
Respondent

DECISION of the Board to exercise its powers under section 1292 of the Corporations Act. Notice of this decision will be given to the Respondent under section 1296(1)(a) of the Corporations Act and a copy of that notice will be lodged with ASIC under section 1296(1)(b) of the Corporations Act.

22 December 2008

Panel: Donald Magarey (Chairman)

Geoff Brayshaw

Patrick Burroughs

Patrick Ponting

Simon Stretton

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OUTLINE OF BOARD PROCEDURES

The Companies Auditors and Liquidators Disciplinary Board (**Board**) is constituted under Part 11 of the Australian Securities and Investments Commission Act, 2001 (**ASIC Act**). By s204 of the ASIC Act the Board is given the functions and powers conferred on it by or under that Act or the Corporations Act 2001 (**Corporations Act**). In relation to any particular application, those functions and powers are performed and exercised by a Panel of the Board. In this outline, references to sections are to sections of the Corporations Act unless otherwise stated.

Section 1292(1)(d) of the Corporations Act provides as follows:

- (1) *The Board may, if it is satisfied on an application by ASIC ... for a person who is registered as an auditor to be dealt with under this section that, before, at or after the commencement of this section:*

...

- (d) *the person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:*

- (i) *the duties of an auditor; ...*

by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

In addition, the Board is given power by s1292(9) to admonish or reprimand a person who is registered as an auditor or to require the person to give undertakings in relation to future conduct.

Thus the Board has three principal questions to answer in relation to any application, namely whether it is satisfied that one or other of the grounds specified in s1292 (based on the contentions contained in the application) has been established, and, if so, whether any sanction should be imposed and, if so, what sanction should be imposed.

The Board holds an initial hearing (under s1294(1)) before determining the first of those questions. After that initial hearing the Board issues to the parties a detailed written determination which sets out whether the Board is satisfied in relation to each contention contained in the application (and its reasons) and whether the Board is satisfied that one or other of the grounds specified in s1292 has been established.

On 10 October 2008, in connection with this application, we issued our determination and informed the parties that we were satisfied that the Respondent had failed to carry out or perform adequately and properly the duties of an auditor. That determination was prepared for the benefit of the parties firstly to inform them of our conclusion (with reasons) on each of the contentions raised by ASIC in the application and secondly to enable them to formulate and make their submissions on the questions of sanction, costs and publicity. Our determination has not been and will not be lodged with ASIC.

In all cases, if any one or more of the contentions has been determined by the Board to be established, the Board holds a further hearing before making its decision on the second and third questions namely whether any order should be made and, if so, what order to make. Prior to that further hearing the parties are given an opportunity to make written submissions on sanction, costs and publicity. At that hearing the Board gives the parties the opportunity of presenting evidence and making further oral submissions, (to supplement any written submissions they may have made) on sanction, costs and publicity.

The following statutory provisions govern the Board's procedures in the final stages:

Corporations Act section 1296

- (1) *Where the Board decides to exercise any of its powers under section 1292 in relation to a person,... the Board must, within 14 days after the decision:*
- (a) *give to the person a notice in writing setting out the decision and the reasons for it; and*
 - (b) *lodge a copy of the notice referred to in paragraph (a); and*
 - (c) *cause to be published in the Gazette a notice in writing setting out the decision.*

...

- (1B) *If the Board:*
- (a) *decides to exercise any of its powers under section 1292 in relation to a person ...*
- then, in addition to meeting the requirements of subsection (1), the Board may take such steps as it considers reasonable and appropriate to publicise:*
- (c) *the decision; and*
 - (d) *the reasons for the decision.*

Without limiting this, the Board may make the decision and reasons available on the Internet.

...

- (2) *Where the Board decides to refuse to exercise its powers under section 1292 in relation to a person ... the Board must, within 14 days after the decision:*
- (a) *give to the person a notice in writing setting out the decision and the reasons for it; and*
 - (b) *lodge a copy of the notice referred to in paragraph (a).*

ASIC Act section 223

- (1) *Where:*
- (a) *the Panel holds a hearing in relation to a person in accordance with subsection 1294(1) of the Corporations Act; and*

- (b) *the Panel cancels or suspends the registration of the person as an auditor, ... or deals with the person:*
 - (i) *by admonishing or reprimanding the person; or*
 - (ii) *by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct;*

the Panel may require the person to pay an amount specified by the Panel, being all or part of:

- (c) *the costs of and incidental to the hearing; or*
- (d) *the costs of ASIC ... in relation to the hearing; or*
- (e) *the costs mentioned in paragraph (c) and the costs mentioned in paragraph (d).*

This document sets out the Board's decision (**Decision**) to exercise our powers under s1292 (in respect of the contentions which have been established to our satisfaction) and the reasons for that Decision. This document will accompany the notice which the Board will give to the Respondent under s1296(1)(a) and will accompany the notice which the Board will lodge with ASIC under s1296(1)(b). This document is also the document to which the Board will give any publicity under s1296(1B).

A document setting out the Board's decision to refuse to exercise its powers under s1292 in respect of any other contentions contained in the application and the reasons for that decision will accompany the notice which the Board will give to the Respondent under s1296(2)(a) and will accompany the notice which the Board will lodge with ASIC under s1296(2)(b).

The Board's decision on costs has been made under ASIC Act s 223(1) and the parties will be notified of that decision and the reasons for that decision.

The Board's decision as to what steps it considers to be reasonable and appropriate to publicise our Decision has been made under s1296(1B) and the parties will be notified of that decision and the reasons for that decision.

* * * * *

DECISION AND REASONS

1. Introduction

1.1 This is an application to the Companies Auditors and Liquidators Disciplinary Board (**Board**) by the Australian Securities and Investments Commission (**ASIC**) under s1292(1)(d)(i) of the Corporations Act 2001 (**Corporations Act**) for Allan Gregory Walker (**Mr Walker**), a registered company auditor, to be dealt with under s1292 (**Application**). In its Application, ASIC contends that Mr Walker failed to carry out or perform adequately and properly his duties as an auditor in relation to the audit of the financial reports of RVP Group Limited (**RVP**) for the years ended 30 June 2005 (**RVP 2005 Audit**) and 30 June 2006 (**RVP 2006 Audit**) and in relation to the audit of the financial report of Crane Industry Council of Australia Limited (**Crane**) for the year ended 30 June 2006 (**Crane 2006 Audit**).

1.2 The various contentions which ASIC advanced in support of its Application were set out in the Statement of Facts and Contentions (**SOFAC**) lodged with the Application and an amendment was filed pursuant to a direction of the Chairman of the Board made on 17 March 2008. Further amendments were made at the hearing with leave of the Panel. There were a total of 17 contentions of which one was constituted by six sub-contentions and one by five sub-contentions. Three other contentions raised multiple matters but in each case they were put forward as instances of the overall contention. Of the 17 contentions, 11 were established to our satisfaction (although not all the sub-contentions or individual instances under each of those contentions were established) and they form the basis of our decision to exercise our powers under s1292 (**Decision**). The successful contentions (and sub-contentions and instances) are set out below together with our reasons why they were established to our satisfaction.

1.3 In a separate decision dated today we have set out the contentions and sub-contentions which were not established to our satisfaction and the reasons why we were not satisfied and why we decided to refuse to exercise the Board's powers under s1292 in connection with those contentions and sub-contentions.

1.4 References in this Decision to sections are, unless otherwise indicated, references to sections of the Corporations Act.

2. History and Background

2.1 Mr Walker has been since 11 February 1983 and still is registered as an auditor under the applicable corporations legislation - currently the Corporations Act.

- 2.2 At all times relevant to this Application Mr Walker was a member of CPA Australia and ceased to be a member on 9 October 2006.
- 2.3 In 2005 (and for some years before that) Mr Walker was in practice as a public accountant at Level 1, 67 Atherton Road, Oakleigh, Victoria under the name A G Walker and Associates (**AGWA**) a business name owned by Lagan Pty Ltd, a company associated with Mr Walker and of which he was a director. Mr Walker was the only person in that firm with accounting qualifications and the only person who was a registered company auditor. Mr Walker carried out or supervised all relevant professional work. AGWA employed several members of staff who had some years of experience in book-keeping, keeping of financial records and preparation of financial accounts and taxation returns (**Relevant Staff**).
- 2.4 In addition, AGWA carried on an audit practice which constituted approximately ten per cent of the total business. All the work in the audit practice was done by Mr Walker.
- 2.5 In February 2006, Mr Walker sold the greater part of his accounting and taxation practice (partly because of health problems) to a purchaser who carried on that practice initially under the name Allan Walker & Co and subsequently under a different name (**New Firm**). All the Relevant Staff transferred to the New Firm.
- 2.6 Since February 2006 Mr Walker has been a consultant to the New Firm and has carried on an audit practice (with a small number of tax and accounting clients) on his own and on his own account at the same address. If he needed staff, he hired the services of the Relevant Staff from the New Firm.
- 2.7 For some years before 2005 (probably since 1976 or 1978), Mr Walker had provided accounting and taxation services (not always continuously) to several members of the Duker family and their associated companies and trusts.
- 2.8 On 1 July 2002, Mr Walker was appointed auditor of RVP. The principal activities of RVP, including during the years ended 30 June 2005 and 30 June 2006, were property development related. At all times relevant to this Application, Glenn Duker, and some other members of his family were directors of RVP and Glenn Duker's mother-in-law was an employee of RVP who prepared the accounting records from prime entry through to ledgers, reports and trial balances and provided them to AGWA. AGWA (largely the Relevant Staff) converted those records into an appropriate form using Solution 6 accounts program and reporter program.

- 2.9** On 18 October 2005, Mr Walker signed an unqualified audit report on the financial report of RVP for the year ended 30 June 2005 (**RVP 2005 Report**). On 24 October 2006, Mr Walker signed an unqualified audit report on the financial report of RVP for the year ended 30 June 2006 (**RVP 2006 Report**).
- 2.10** Crane was registered on 20 March 1984. At all relevant times, Crane was a public company limited by guarantee which acted as the industry body responsible for issuing safety certificates for cranes registered in Australia, and this was its principal activity.
- 2.11** Mr Walker was appointed auditor of Crane on 20 October 1999. On 24 July 2006, Mr Walker signed an unqualified audit opinion on the financial report of Crane for the year ended 30 June 2006 (**Crane 2006 Report**).

3. ASIC's Contentions

In its Application to the Board, ASIC has contended that Mr Walker has failed to carry out or perform adequately and properly the duties of an auditor within the meaning of s1292 (1)(d)(i) of the Act in ways which are set out and particularised in the following contentions:

Contention 1

- (a) In conducting his audit function for the RVP 2005 Audit and the RVP 2006 Audit, Mr Walker was auditing his own work, creating a self-review threat and a conflict of interest situation and Mr Walker was aware or ought to have been aware that the conflict of interest situation existed.
- (b) Mr Walker took no step to reduce the obvious self-review threat or conflict of interest situation or to ensure that they ceased to exist.
- (c) Mr Walker did not identify the self-review threat or conflict of interest situation to RVP nor did he propose ways of addressing the issue.

Contention 2

- (a) Mr Walker and/or the related Walker entities purchased a unit "off-the-plan" from RVP so that Mr Walker had a commercial and/or financial interest in the success of RVP's business at the time he conducted both the RVP 2005 Audit and the RVP 2006 Audit and this created a conflict of interest situation and a self-interest threat.
- (b) Mr Walker was aware that the conflict of interest situation and self-interest threat existed and took no step to reduce the conflict of interest situation or self-interest threat or to ensure they ceased to exist.

- (c) Mr Walker did not identify the conflict of interest situation, and/or self-interest threat to RVP nor propose ways of addressing the issue.

Contention 3

- (a) Mr Walker and/or the related Walker entities made loans to RVP during the financial year ended 30 June 2005 thereby giving Mr Walker a direct and/or indirect financial interest in RVP at the time he conducted both the RVP 2005 Audit and the RVP 2006 Audit and this created a conflict of interest situation and a self-interest threat.
- (b) Mr Walker was aware that the conflict of interest situation existed and took no step to reduce the conflict of interest situation and/or self-interest threat or to ensure they ceased to exist.
- (c) Mr Walker did not identify the conflict of interest situation or self-interest threat to RVP, nor did he propose ways of addressing the issue.

Contention 7

- (a) By reason of his conduct mentioned in contentions 1 to 5, Mr Walker was in a conflict of interest situation in relation to RVP while conducting the RVP 2005 Audit and the RVP 2006 Audit.
- (b) In contravention of s324CA(1A), Mr Walker failed to notify ASIC in writing of the various conflict of interest situations within seven days of becoming aware of them existing or at all.
- (c) In respect of contentions 1, 2, 4 and 5, a relevant item of the table in s324CH(1) applied to Mr Walker. Mr Walker did not notify ASIC pursuant to s324CE(1A) in writing of the various circumstances within seven days of becoming aware of the relevant circumstances existing or at all.

Contention 8

In various specific ways (set out in our Decision below) Mr Walker failed in the conduct of the RVP 2005 Audit to comply with the following auditing standards namely AUS 202, AUS 208, AUS 212, AUS 502 and AUS 702.

Contention 9

In various specific ways (set out in our Decision below) Mr Walker failed in the conduct of the RVP 2006 Audit to comply with the following auditing standards namely AUS 202, AUS 208, AUS 212, AUS 502 and AUS 702.

Contention 10

In various specific ways (set out in our Decision below) Mr Walker failed in the conduct of the Crane 2006 Audit to comply with the following auditing standards namely AUS 202, AUS 208, AUS 502 AUS 702, AUS 704 and AUS 710.

Contention 11

In various specific ways (set out in our Decision below) the RVP 2005 Report contained a number of errors and Mr Walker's audit opinion should have been qualified in accordance with AUS 702.45 or generally due to those errors.

Contention 13

Mr Walker failed to qualify his audit opinion in respect of the RVP 2005 Report notwithstanding that the Report failed to comply with accounting standard AASB 1024 by failing to consolidate the accounts of RVP Group P1 Ltd, a wholly owned subsidiary of RVP.

Contention 14

Mr Walker failed to qualify his audit opinion in respect of the RVP 2005 Report notwithstanding that the Report failed to comply with accounting standard AASB 1034 by failing to distinguish the amount paid to Mr Walker representing remuneration for the conduct of the audit and for other non-audit services.

Contention 15

In various specific ways (set out in our Decision below) the RVP 2006 Report contained a number of errors and Mr Walker's audit opinion should have been qualified in accordance with AUS 702.45 or generally due to those errors.

4. Relevant statutory provisions

Important provisions of the Corporations Act which are referred to in our Decision are set out below:

Section 324CA

- (1) An individual auditor ... contravenes this subsection if:
 - (a) the individual auditor ... engages in audit activity in relation to an audited body at a particular time; and
 - (b) a conflict of interest situation exists in relation to the audited body at that time; and
 - (c) at that time:

- (i) in the case of an individual auditor – the individual auditor is aware that the conflict of interest situation exists; ... and
 - (d) the individual auditor ... does not, as soon as possible after the individual auditor ... becomes aware that the conflict of interest situation exists, take all reasonable steps to ensure that the conflict of interest situation ceases to exist.
- (1A) An individual auditor ... contravenes this subsection if:
 - (a) the individual auditor ... is the auditor of an audited body; and
 - (b) a conflict of interest situation exists in relation to the audited body while the individual auditor ... is the auditor of the audited body; and
 - (c) on a particular day (the *start day*):
 - (i) in the case of an individual auditor – the individual auditor becomes aware that the conflict of interest situation exists; ... and
 - (d) at the end of the period of 7 days from the start day:
 - (i) the conflict of interest situation remains in existence; and
 - (ii) the individual auditor ... has not informed ASIC in writing that the conflict of interest situation exists.
- (2) An individual auditor ... contravenes this subsection if:
 - (a) the individual auditor ... engages in audit activity in relation to an audited body at a particular time; and
 - (b) a conflict of interest situation exists in relation to the audited body at that time; and
 - (c) at that time:
 - (i) in the case of an individual auditor – the individual auditor is not aware that the conflict of interest situation exists; ... and
 - (d) the individual auditor ... would have been aware of the existence of the conflict of interest situation at that time if the individual auditor ... had had in place a quality control system reasonably capable of making the individual auditor ... aware of the existence of such a conflict of interest situation.

Section 324CD

- (1) For the purposes of sections 324CA, 324CB and 324CC, a *conflict of interest situation* exists in relation to an audited body at a particular time if, because of circumstances that exist at that time:
 - (a) the auditor ... is not capable of exercising objective and impartial judgment in relation to the conduct of the audit of the audited body; or
 - (b) a reasonable person, with full knowledge of all relevant facts and circumstances, would conclude that the auditor, ... is not capable

of exercising objective and impartial judgment in relation to the conduct of the audit of the audited body.

Section 324CE

- (1) An individual auditor contravenes this subsection if:
- (a) the individual auditor engages in audit activity at a particular time; and
 - (b) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (5) of this section; and
 - (c) the individual auditor is or becomes aware of the circumstances referred to in paragraph (b); and
 - (d) the individual auditor does not, as soon as possible after the individual auditor becomes aware of those circumstances, take all reasonable steps to ensure that the individual auditor does not continue to engage in audit activity in those circumstances.
- (1A) An individual auditor contravenes this subsection if:
- (a) the individual auditor is the auditor of an audited body; and
 - (b) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (5) of this section while the individual auditor is the auditor of the audited body; and
 - (c) on a particular day (the *start day*), the individual auditor becomes aware of the circumstances referred to in paragraph (b); and
 - (d) at the end of the period 7 days from the start day;
 - (i) those circumstances remain in existence; and
 - (ii) the individual auditor has not informed ASIC in writing of those circumstances.

Section 324CH

- (1) the following table lists the relationships between:
- (a) a person or a firm; and
 - (b) the audited body for an audit;
- that are relevant for the purposes of sections 324CE, 324CF and 324CG:

| Relevant relationships | |
|-------------------------------|--|
| Item | This item applies to a person (or, if applicable, to a firm) at a particular time if at that time the person (or firm)... |
| 10 | has an asset that is an investment in the audited body |

| | |
|----|--|
| 15 | owes an amount to: |
| | (a) the audited body; or |
| | (b) a related body corporate; or |
| | (c) an entity that the audited body controls; |
| | unless the debt is disregarded under subsection (5), (5A) or (5B) |

| | |
|----|--|
| 16 | is owed an amount by: |
| | (a) the audited body; or |
| | (b) a related body corporate; or |
| | (c) an entity that the audited body controls; |
| | under a loan that is not disregarded under subsection (6) or (6A) |

Section 1292

- (1) The Board may, if it is satisfied on an application by ASIC ... for a person who is registered as an auditor to be dealt with under this section that, before, at or after the commencement of this section:
- ...
- (d) the person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:
- (i) the duties of an auditor;
- ...
- by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

5. Relevant Accounting Standards

Extracts from significant accounting standards referred to in our Decision are set out below:

AASB1

38 An entity shall explain how the transition from previous GAAP to Australian equivalents to IFRSs affected its reported financial position, financial performance and cash flows.

Reconciliations

39 To comply with paragraph 38, an entity's first Australian-equivalents-to-IFRSs financial report shall include:

(a) reconciliations of its equity reported under previous GAAP to its equity under Australian equivalents to IFRSs for both of the following dates:

- (i) the date of transition to Australian equivalents to IFRSs; and
 - (ii) the end of the latest period presented in the entity's most recent annual financial report under previous GAAP;
- (b) a reconciliation of the profit or loss reported under previous GAAP for the latest period in the entity's most recent annual financial report to its profit or loss under Australian equivalents to IFRSs for the same period; and
- (c) if the entity recognised or reversed any impairment losses for the first time in preparing its opening Australian-equivalents-to-IFRSs balance sheet, the disclosures that AASB 136 *Impairment of Assets* would have required if the entity had recognised those impairment losses or reversals in the period beginning with the date of transition to Australian equivalents to IFRSs.
- 40 The reconciliations required by paragraph 39(a) and (b) shall give sufficient detail to enable users to understand the material adjustments to the balance sheet and income statement. If an entity presented a cash flow statement under its previous GAAP, it shall also explain the material adjustments to the cash flow statement.
- 41 If an entity becomes aware of errors made under previous GAAP, the reconciliations required by paragraph 39(a) and (b) shall distinguish the correction of those errors from changes in accounting policies.
- 42 AASB 108 does not deal with changes in accounting policies that occur when an entity first adopts Australian equivalents to IFRSs. Therefore, AASB 108's requirements for disclosures about changes in accounting policies do not apply in an entity's first Australian-equivalents-to-IFRSs financial report.
- 43 If an entity did not present financial statements for previous periods, its first Australian-equivalents-to-IFRSs financial report shall disclose that fact.

AASB 101

108. An entity shall disclose in the summary of significant accounting policies:
- (a) the measurement basis (or bases) used in preparing the financial report; and
 - (b) the other accounting policies used that are relevant to an understanding of the financial report.

AASB 112

81. The following shall also be disclosed separately:

- (g) in respect of each type of temporary difference, and in respect of each type of unused tax loss and unused tax credit:
 - (i) the amount of the deferred tax assets and liabilities recognised in the balance sheet for each period presented; and
 - (ii) the amount of the deferred tax income or expense recognised in the income statement, if this is not apparent from the changes in the amounts recognised in the balance sheet;

AASB 1024

10 Each company required to apply this Standard shall prepare and present consolidated accounts for the economic entity in which it is the parent entity.

11 Consolidated accounts shall be prepared by combining the accounts of each of the entities comprising the economic entity and this aggregated information shall be presented as one set of accounts. This aggregation shall be subject to such adjustments as may be necessary under this Standard.

AASB 1034

5.3 The following information must be disclosed:

- (a) in the financial report of an entity other than an *economic entity*, the amounts of remuneration of:
 - (i) the auditor of the entity for an audit or a review of the financial reports of the entity
 - (ii) the auditor of the entity for other services in relation to the entity
 - (iii) a *related practice* of the auditor for other services in relation to the entity

6. Relevant Professional Statements and Auditing Standards

Extracts from significant professional statements and auditing standards referred to in our Decision are set out below:

Professional Statement F.1

Appendix 1

1.6 *Independence* requires:

- (a) *Independence* of mind: The state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional scepticism.
- (b) *Independence* in appearance: The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a *firm's*, or a member of the *assurance team's*, integrity, objectivity or professional scepticism had been compromised.

1.22 “Self-Interest Threat” occurs when a firm or a member of the *assurance team* could benefit from a *financial interest* in, or other self-interest conflict with, an *assurance client*.

1.23 “Self-Review Threat” occurs when (1) any product or judgment of a previous *assurance engagement* or non-*assurance engagement* needs to be re-evaluated in reaching conclusions on the *assurance engagement* or (2) when a member of the *assurance team* was previously a *director* or *officer* of the *assurance client* or was an employee in a position to exert direct and significant influence over the subject matter of the *assurance engagement*.

Examples of circumstances that may create this threat include, but are not limited to:

...

- (c) performing services for an assurance client that directly affect the subject matter of the assurance engagement; and
- (d) preparation of original data used to generate a financial report or preparation of other records that are the subject matter of the assurance engagement.

1.24 “Advocacy Threat” occurs when a *firm*, or a member of the *assurance team*, promotes, or may be perceived to promote an *assurance client's* position or opinion to the point that objectivity may, or may be perceived to be, compromised. Such may be the case if a *firm* or a

member of the *assurance team* were to subordinate their judgment to that of the client.

- 1.25 “Familiarity Threat” occurs when, by virtue of a close relationship with an *assurance client*, its *directors*, *officers* or employees, a firm or a member of the *assurance team* becomes too sympathetic to the client's interests.
- 1.28 When threats are identified, other than those that are clearly insignificant, appropriate safeguards should be identified and applied to eliminate the threats or reduce them to an acceptable level.

Appendix 2

- 2.67 *Firms* have traditionally provided to their *assurance clients* a range of non-assurance services that are consistent with their skills and expertise. *Assurance clients* value the benefits that derive from having these *firms*, who have a good understanding of the business, bring their knowledge and skill to bear in other areas. Furthermore, the provision of such non-assurance services will often result in the *assurance team* obtaining information regarding the *assurance client's* business and operations that is helpful in relation to the *assurance engagement*. The greater the knowledge of the *assurance client's* business, the better the *assurance team* will understand the *assurance client's* procedures and controls, and the business and financial risks that it faces.

The provision of assurance and non-assurance services to the same client may, however, create perceived or real threats to the *independence of the firm*, a network firm or the members of the *assurance team*. Therefore, it is necessary to evaluate the significance of any threat created by the provision of such services. In some cases it may be possible to eliminate or reduce the threat created by application of safeguards. In other cases no safeguards are available to reduce the threat to an acceptable level, in such a situation, one service should be refused.

- 2.77 It is the responsibility of client management to ensure that accounting records are kept and a financial report is prepared, although they may request the *firm* to provide assistance. If *firm*, or *network firm*, personnel providing such assistance make management decisions, the self-review threat created could not be reduced to an acceptable level by any safeguards. Consequently, personnel should not make such decisions. Examples of such managerial decisions include the following:
- determining or changing journal entries, or the classifications for accounts or transaction or other accounting records without obtaining the approval of the *audit client*;
 - authorizing or approving transactions; and

- preparing source documents or originating data (including decisions on valuation assumptions), or making changes to such documents or data.

2.80 The *firm*, or a *network firm*, may provide an *audit client* that is not a *listed entity* with accounting and bookkeeping services, including payroll services, of a routine or mechanical nature, provided any self-review threat created is reduced to an acceptable level.

The significance of any threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level.

AUS 202

.04 The auditor should comply with the ethical requirements of CPA Australia and The Institute of Chartered Accountants in Australia. Ethical principles governing the auditor's professional responsibilities include:

- (a) Independence;
- (b) Integrity;
- (c) Objectivity;
- (d) Professional competence and due care;
- (e) Confidentiality;
- (f) Professional behaviour; and
- (g) Technical standards.

.06 The auditor should plan and perform an audit with an attitude of professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

.08 An audit in accordance with AUSs is designed to provide reasonable assurance that the financial report taken as a whole is free from material misstatement. Reasonable assurance is a concept relating to the accumulation of the audit evidence necessary for the auditor to conclude that there are no material misstatements in the financial report taken as a whole. Reasonable assurance relates to the whole audit process.

.15 The auditor should plan and perform the audit to reduce audit risk to an acceptably low level that is consistent with the objective of an audit. The auditor reduces audit risk by designing and performing audit

procedures to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base an audit opinion. Reasonable assurance is obtained when the auditor has reduced audit risk to an acceptably low level.

AUS 208

- .02 The auditor should document matters which are important in providing evidence to support the audit opinion and evidence that the audit was carried out in accordance with Australian Auditing Standards.
- .05 The auditor should prepare working papers that are sufficiently complete and detailed to provide an understanding of the audit.
- .06 The auditor should prepare working papers that record the auditor's planning, the nature, timing and extent of the audit procedure performed, the results thereof and the conclusions drawn from the audit evidence obtained. Working papers would include the auditor's reasoning on all significant matters which require the exercise of judgement, together with the auditor's conclusion thereon. In areas involving difficult questions of principle or judgement, working papers will record the relevant facts that were known by the auditor at the time the conclusions were reached.

AUS 502

- .02 The auditor should obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.

AUS 518

- .02 When planning and performing audit procedures and in evaluating and reporting the results thereof the auditor should consider the risk of material misstatements in the financial report resulting from the existence of related parties and related party transactions.

AUS 702

- .42 The auditor should express a qualified opinion when any of the following circumstances exist and, in the auditor's judgement, the effects of the matter are or are likely to be material:
 - (a) a disagreement with management regarding the financial report;
 - (b) a conflict between applicable financial reporting frameworks; or
 - (c) a limitation on the scope of the audit.

- .45 When there has been a departure from an Accounting Standard and/or UIG Consensus View the auditor should express a qualified opinion.
- .50 When there has been a departure from a relevant statutory or other requirement, the auditor should express a qualified opinion. Depending upon the audit mandate, it will be appropriate for the auditor to report on the financial report's presentation in accordance with relevant statutory and other requirements either explicitly or only on an exception basis, that is, only when a departure has been noted.

7. Preliminary Matters

7.1 Concessions by Mr Walker

- (a) The relevant section (s1292(1)) requires that we be "satisfied" that there has been a failure to carry out or perform adequately and properly the duties of an auditor before we have any power to deal with a person under that section. In the case of Mr Walker, the question for us is whether we are satisfied that he has failed to carry out or perform adequately and properly the duties of an auditor.
- (b) There are a number of matters arising in connection with this application which ASIC submits Mr Walker has "conceded". Some of those matters have been matters of fact and others of them have been matters of conclusion, that is matters on which we ourselves are by the statute required to be satisfied.
- (c) We do not believe there is any reason why we cannot accept as determinative Mr Walker's concessions on matters of fact. This is subject only to our usual reservation in the case of a self-represented respondent namely that we need to be as sure as we can that such a respondent clearly understands the nature and significance of the concessions being made. In the case of Mr Walker we have had no difficulty on this score and we have no reason to doubt his comprehension of the relevant issues. In the case of concessions on matters of conclusion, however, the statute provides that we may deal with Mr Walker under s1292(1) only if we are "satisfied" that Mr Walker has failed to carry out or perform adequately and properly his duties as an auditor. We do not believe that it is possible for us to be satisfied simply because Mr Walker concedes that we should be (*cf ASIC v Starnex Securities Pty Ltd* [2003] FCA 1375 at para 2). Accordingly we need to consider those matters of conclusion and decide for ourselves whether we are satisfied.

7.2 Expert Evidence

- (a) In this case we had the benefit of evidence (both written and oral) from Mr Colin Parker (of GAAP Consulting) who was put forward by ASIC as an expert in Australian auditing standards and accounting standards. Mr Parker is a fellow of the Institute of Chartered Accountants in Australia and a fellow of CPA Australia. He has over 30 years experience in financial reporting and auditing, having been in private practice (in both large and small firms) as an auditor and a technical director and having worked for several bodies within the accounting and auditing profession. In particular, Mr Parker has been Director – Accounting and Audit of CPA Australia and Senior Audit Project Manager with the Auditing Standards and Assurance Board. In addition he has been a member of the Urgent Issues Group, still is a member the Australian Accounting Standards Board and is co-author of nine editions of "Australian GAAP".
- (b) We accept Mr Parker's qualification as an expert and have taken into account the opinions he has expressed both in his written report and in his oral testimony.
- (c) In this case, we believe that we can gain a benefit from having the views of Mr Parker given his experience, expertise and qualifications. However, that is not to say that we would regard Mr Parker's views on any matters as necessarily decisive. We believe that our role is to determine whether Mr Walker has failed to carry out or perform adequately and properly his duties as an auditor. In making that determination, it is proper that we have regard to all duties which auditors have including duties to observe accepted professional standards and proper professional practice. There are a number of matters which indicate proper professional practice and one of those which may assist us is expert evidence.

7.3 Duties of an auditor

- (a) The statutory question which we have to decide is whether we are satisfied that Mr Walker has failed to carry out or perform adequately and properly the duties of an auditor. Thus ASIC must establish firstly that Mr Walker had a particular duty and secondly that he failed to carry out or perform that duty adequately and properly.
- (b) It is beyond doubt that there are various sources from which an auditor's duties may arise and they include statutory provisions, the general law and codes and standards promulgated by

professional bodies. In this case ASIC has framed a number of its contentions as being constituted by a contravention (or a failure to comply with) a specified statutory provision. However, whether there has been a contravention of any particular statutory provision is not a matter relevantly for us to decide. The exercise of our power under s1292 does not turn on our being satisfied as to a legal standard. It may be that the failure to carry out and perform a relevant duty is an offence, however that is not what we are called upon to determine by the terms of s1292. The question for us is the adequacy and propriety of the carrying out or performance of a relevant duty and that is to be judged by the Board by making an evaluative and subjective determination (*Albarran v CALDB* [2006] FCAFC 69 at 45).

- (c) It is accepted in the accounting profession (including in the auditing and insolvency sectors) that registered company auditors and registered liquidators have a duty to observe what Campbell J called "proper professional practice" (*Re Vouris* (2003) 47 ACSR 155 at para [100]) and what Branson J called "accepted professional standards" (*Goodman v ASIC* [2004] FCA 1000). The codes and standards promulgated by professional bodies from time to time are widely regarded as being evidence, even if not technical proof, of what are accepted professional standards. This is not to say that those published codes and standards actually constitute duties of a practising accountant (although an auditor is obliged by law to conduct an audit in accordance with auditing standards - s307A(1)) nor is it to say that accepted professional standards are actually defined or confined by the codes and standards any more than they are by obligations created by statute. However it is relevant for us in reaching a view about what proper professional practice requires should be done or not done, to have regard to the published codes and standards.

8. Contention 1

8.1 The Contention

- (a) **In conducting his audit function for the RVP 2005 Audit and the RVP 2006 Audit, Mr Walker was auditing his own work, creating a self-review threat and a conflict of interest situation and Mr Walker was aware or ought to have been aware that the conflict of interest situation existed.**
- (b) **Mr Walker took no step to reduce the obvious self-review threat or conflict of interest situation or to ensure that they ceased to exist.**

- (c) **Mr Walker did not identify the self-review threat or conflict of interest situation to RVP nor did he propose ways of addressing the issue.**

8.2 RVP 2005 Audit

- (a) We need to deal separately with this contention in relation to each of the RVP 2005 and 2006 Audits because there was evidence that the factual circumstances relating to the provision by Mr Walker of audit and non-audit services to RVP were different in each of these years. It was submitted by Mr Walker that the difference is relevant to our decision particularly in respect of the RVP 2006 Audit.
- (b) In each case, we shall deal first with that part of the contention which relates to Professional Statement F.1 (Professional Independence) (F.1) and then with that part which relates to the statutory provisions, ss324CA(1) and 324CD(1).
- (c) It is not disputed that AGWA provided services to RVP. Further, we have concluded that it is not disputed that AGWA provided both accounting and auditing services to RVP. Similarly it is not disputed that Mr Walker was the only qualified accountant employed by AGWA. As to the question of whether the accounting services which were provided by AGWA constituted a self review threat for the purpose of the conduct of the RVP 2005 Audit by Mr Walker, we have taken into account the following:
 - (i) the evidence of Glenn Duker that Mr Walker was the accountant and the auditor of RVP and that AGWA prepared the RVP 2005 Report.
 - (ii) Mr Walker's written evidence that the draft financial accounts provided to him by the bookkeeper at RVP were "miscoded and unacceptable" and "unreadable", that he prepared the accounts from the trial balance, and that he "prepared the audited accounts". Mr Walker's evidence also stated that "basically an auditor takes a company accounts reports and turns them to comply with the Companies Code requirements".
 - (iii) Mr Walker's oral evidence about his involvement in the preparation of the RVP 2005 Report and about RVP's dependence on Mr Walker's accounting staff to provide meaningful financial information.

- (iv) the evidence that Mr Walker supervised RVP's bookkeeper including directing her to make journal entries.
 - (v) the evidence that "Mr Walker made a decision (on the question of accounting for "joint ventures") on an independent basis and after due consideration and accounted for the supposed joint ventures in what the auditor considered to be the correct fashion". We agree with Mr Parker that this would be a "management decision". (F1 para 2.77).
 - (vi) the evidence that the directors' report was prepared and typed in Mr Walker's office.
 - (vii) the numerous invoices sent by AGWA to RVP for accounting services and for audit services.
- (d) We have also taken into account the following submissions made by Mr Walker on the question of self review threat:
- (i) Mr Walker submitted that there was no self review threat because the RVP bookkeeper ran the Quicken system. We do not place great weight on this in the light of the evidence that there was no qualified accountant within RVP and that Mr Walker prepared the accounts from the trial balance and supervised the bookkeeper in certain activities. He also gave the bookkeeper directions concerning the completion of the company's financial records such as journal entries and did so on matters of principle on which he himself had formed a view. Mr Walker also gave evidence that he formed an opinion on the capitalisation of interest. In short, Mr Walker's involvement appears to be covered by the spirit of examples (c) and (d) under F.1 para 1.23. This also seems to be covered by F.1 para 2.77 within the concept of management decisions.
 - (ii) Mr Walker submitted that the provision of non-audit services to an audit client is expressly permitted by F.1 para 2.67. We do not regard that paragraph as giving unqualified permission, as seems to have been understood by Mr Walker. That paragraph states what benefits may be derived from such an arrangement, but emphasises (particularly in the second paragraph) the necessity in such cases to evaluate the significance of any self review threat and to consider the need for any safeguards. This is similar to the requirements in F.1 para 2.80.

- (iii) Mr Walker submitted that "there was no self review threat to identify". Mr Walker's evidence was that he evaluated the threat and said, "No, there is not a threat" and that "I would believe that I can basically stand there and be independent". This was clearly a wrong approach, as Mr Walker ought to have known at the time. In fact some of his oral evidence was to the effect that he subjectively realised the potential for a self review threat and turned his mind to the issue, before finally deciding that he was independent. We do not believe Mr Walker's decision that he was independent, and therefore that he did not need to take any further action, was reasonably open to him in the circumstances of this case. Mr Walker did not turn his mind to whether he would objectively be regarded as having been independent. In answer to a question from the Panel about whether it was not an important consideration that he should appear to a reasonable outside person to be independent, Mr Walker replied "It is, sir, but I can't make that judgment. I mean I can't stand outside myself and look at myself. It's really up for the likes of yourself to make that judgment". Further, in answer to a question pointing out that F.1 required an auditor to consider their independence and their appearance of independence (ie how it appears to outsiders), Mr Walker replied "But if it is asking you to do both things, I can't see how you can". This sort of evidence would indicate that Mr Walker had little understanding of the perception test.
- (iv) Mr Walker submitted that he had not personally "prepared" the accounts but had had them prepared by his experienced but unqualified staff. Mr Walker's evidence was that he believed that he "maintained (his) independence entirely by having (his) staff do most of (the) work and also discussing the various things which had to be discussed such as journal entries etc with the proper people" and that so far as he was concerned "there is a segregation between my nine staff of (AGWA) and myself as auditor". This submission is hard to accept and in any event would carry little weight in light of the evidence that
- A. Mr Walker was responsible for directing and supervising his staff - Mr Walker reviewed everything before it was sent out by the firm.

- B. Mr Walker was auditing the work of his unqualified staff.
- C. Mr Walker was a sole practitioner and had no other qualified accountant (or registered auditor) in his firm.
- D. Mr Walker himself made any significant decision required to be made in the preparation of the accounts.
- E. Mr Walker discussed the accounts with the client to agree their final form.

In any event, as a matter of principle, we do not accept that it was possible for Mr Walker to establish an effective "Chinese Wall" between himself and his staff where he was the principal of the firm (and the only qualified accountant) and solely responsible for all accounting services and auditing services provided by the firm. For there to be an effective "Chinese Wall" there must be an effective decision making authority on each side of the wall. In this case Mr Walker was the only decision making authority in the firm. There was in reality no separation between him and his staff.

- (e) On the basis of the evidence available to us and having considered Mr Walker's submissions, we have concluded that there was a self review threat which was too significant to be ignored and that Mr Walker ought to have identified this self review threat, it being of a nature which should have been identified as part of a normal audit process. We have also concluded that Mr Walker did nothing to evaluate it or put any safeguards in place to eliminate or reduce the threat to an acceptable level. In our view a reasonably competent auditor observing normal standards of professional conduct would have identified this self review threat and would have attempted to deal with it under F.1 para 2.80.
- (f) ASIC has also relied for this contention on s324CA. We are not entirely sure that we understand what is meant by the word "aware" in s324CA - whether it means, on the one hand, aware of all the relevant facts and circumstances which cause a conflict of interest situation to exist (even though not necessarily aware that those facts and circumstances do cause a conflict of interest situation to exist) or, on the other hand, aware that all the relevant facts and circumstances have caused a conflict of interest situation to exist. We note that there is no reference in

F.1 paras 2.67 and 2.80 to a practitioner being "aware" of a threat to their independence. We take that to signify that 2.67 and 2.80 are only dealing with threats of which a reasonably competent auditor would be aware. In any event, we do not need to resolve that question in relation to s324CA because it is not our task to decide whether there has been a contravention of s324CA. In our view a conclusion that the facts and circumstances which the evidence shows to have existed in this case and to have been known to Mr Walker did not cause a conflict of interest situation to exist was not reasonably open to Mr Walker. In particular, that evidence included an email to Mr Walker from the company secretary dated 19 September 2005 reading as follows:

"Hi Allan. Wonder how you're going with the draft financials at 30/6/05 – do you have first draft ready for review yet (or is someone else doing them because of Auditor independence requirements now)."

This was clearly a reference to the new statutory provisions for auditor independence including s324CA(1). Mr Walker gave evidence that he had an uneasy relationship with the Company Secretary but Mr Walker's reaction to the email question from the Company Secretary (as described in his own evidence) was less than satisfactory. He did nothing in response to the email because he thought the Company Secretary was referring to "Andersens and Enron" and not to recent changes to the Act. We believe that that response indicates a lack of adequate knowledge about what were important and recent statutory provisions. Furthermore, Mr Walker's evidence that he appeared before the Board without feeling the need to review the statutory provisions or review his decision made in relation to them is a concern for us. He stated that "having arrived at the conclusion I arrived at when I arrived at it, I can't see how re-reading the legislation again would suddenly make me change my mind". He simply "didn't consider the fact that I had any problem with independence". Not only that but "I still don't believe I have breached any independence guidelines at all. I still consider myself independent". All of this indicates to us a lack of understanding of professional standards and statutory obligations and a failure to keep abreast of changes in statutory requirements and accepted standards of professional conduct.

- (g) We believe that a reasonably competent auditor would have been aware of the existence, the meaning and the significance of the provisions of ss324CA(1) and 324CD and would have been aware (in the second sense as well as the first) of the existence of a conflict of interest situation in this case (particularly in light of

the company secretary's email) and would have taken the appropriate action under s324CA. Therefore we have concluded that Mr Walker had a duty to take the appropriate action prescribed by s324CA and, in failing to do so, he failed to perform adequately and properly his duties as an auditor.

- (h) Mr Parker in his Report said that Mr Walker should have "considered the requirements of the Corporations Act, 2001, including a conflict of interest situation under section 324CD".
- (i) We have concluded that contention 1 has been established in respect of the RVP 2005 Audit.

8.3 RVP 2006 Audit

- (a) Mr Walker submitted that his position was materially different in relation to the 2006 RVP Audit because in February 2006 he sold what amounted to his accounting and taxation practice to a new owner. Mr Walker's evidence was that all he retained was a small number of clients, for whom he continued to do accounting and tax work, and his audit practice, which he carried on under his own name.
- (b) In considering whether these events lead to a different conclusion on the RVP 2006 Audit in relation to a self review threat, we have taken into account the following evidence
 - (i) RVP had its 2006 year end accounts prepared (from the trial balance prepared by the RVP bookkeeper) by staff employed by the new owner and for fees rendered by the new owner.
 - (ii) After the sale of his business to the new owner
 - A. Mr Walker continued to occupy a room within the office premises which had previously been his office premises, the lease of which was taken over by the new owner.
 - B. Mr Walker became a consultant to the new owner and in that capacity largely performed accounting and taxation services for his former clients, although he performed them on behalf of the new owner by whom he was paid a consultancy fee.
 - C. Mr Walker in fact remained responsible for the work which his former staff did for his former clients and, under his direction they did the same work in that connection as they had previously

done as his employees. RVP hardly dealt at all with the new owner – virtually all communications were with Mr Walker and his former employees as they had been in previous years.

- (c) For the purpose of our decision on the existence of a self-review threat in relation to the conduct of the RVP 2006 Audit there seems to us to be no significant and relevant difference in the factual situation. We have concluded that Mr Walker was still responsible for the staff who prepared the accounts and financial report under his supervision and he remained the person who had virtually all dealings with RVP in that connection. Accordingly we reach the same conclusion as we did for the RVP 2005 Audit, namely that there was a self review threat to the independence of Mr Walker (within F.1), it was not sufficiently insignificant to be ignored and Mr Walker failed to deal with it in accordance with generally accepted standards of professional conduct.
- (d) ASIC has also relied on s324CA. For the same reasons as we expressed above in relation to the RVP 2005 Audit, we have concluded that Mr Walker has failed to perform adequately and properly his duty as an auditor in relation to the RVP 2006 Audit having regard to the provisions of s324CA.
- (e) We have concluded that contention 1 has been established in relation to the RVP 2006 Audit.

8.4 We have concluded that we are satisfied that contention 1 has been established.

9. Contention 2

9.1 The Contention

- (a) **Mr Walker and/or the related Walker entities purchased a unit "off-the-plan" from RVP so that Mr Walker had a commercial and/or financial interest in the success of RVP's business at the time he conducted both the RVP 2005 Audit and the RVP 2006 Audit, and this created a conflict of interest situation and a self-interest threat.**
- (b) **Mr Walker was aware that the conflict of interest situation and self-interest threat existed and took no step to reduce the conflict of interest situation or self-interest threat or to ensure they ceased to exist.**

(c) **Mr Walker did not identify the conflict of interest situation, and/or self-interest threat to RVP nor propose ways of addressing the issue.**

- 9.2 Maverick Marketing Pty Ltd (**Maverick**) was a company in which Mr Walker was one of the shareholders. Mr Walker was the sole director and secretary of Maverick. The Allan Services Discretionary Trust was a trust constituted by a Deed of Settlement made 1 December 1986 the discretionary beneficiaries of which were the clients of AGWA and the trustee of which was Allan Services Pty Ltd (**Allan Services**) a company the shares in which were owned by, amongst others, Mr Walker and Clem Court Pty Ltd (**Clem Court**). Clem Court was a company in which Mr Walker was one of the shareholders. Mr Walker was the sole director and secretary of Allan Services and of Clem Court. It was accepted that Maverick, Allan Services and Clem Court were companies associated with Mr Walker and Mr Walker did not dispute this.
- 9.3 By contract dated 12 May 2005, Maverick agreed to buy Lot 18 in a proposed community title scheme in Queensland known as "Horizon" for the sum of \$622,375. The seller was RVP Group P1 Pty Ltd (**P1**) a wholly owned subsidiary of RVP. The contract stated in the description of the buyer that Maverick was acting as trustee for the Allan Services Discretionary Trust. The contract refers to a deposit of \$7,375. The copy of the contract in evidence is incomplete but, we believe, shows the information we need for the purpose of this contention.
- 9.4 None of the facts or circumstances surrounding this contention is in dispute. What is in dispute is whether these facts and circumstances gave rise to a conflict of interest situation or a self-interest threat and, if so, whether Mr Walker dealt with that properly in accordance with his duties as the auditor of RVP.
- 9.5 The evidence of Mr Walker was that Maverick had entered into the contract on behalf of a client (**Horizon client**) who was interested in purchasing the unit as an investment but did not want the purchase to be in his own name (or that of his wife) for reasons which are not here relevant. Further the evidence was that the Horizon client had provided the deposit which was paid. Ultimately the proposed development did not proceed, the contract was cancelled and the deposit was returned to Mr Walker with interest on 24 January 2007, all of which was paid by Mr Walker back to the Horizon client on 8 February 2007.
- 9.6 There is no doubt that if Mr Walker (or any company associated with him) had entered into the contract in his own right, there would have arisen a conflict of interest situation and a self-interest threat. Mr Walker gave evidence that he would have been aware at the time that a

purchase by himself (or his company) would have given rise to a conflict. However Mr Walker submitted that the circumstances of this case, involving, as they did, Mr Walker's acting on behalf of a client and the contract being executed by his associated entity only in the capacity of trustee for the Horizon client, did not involve a conflict of interest or a self-interest threat because he did not agree to purchase the unit for himself.

9.7 The evidence to which Mr Walker referred to support his submission, in addition to the facts set out above was as follows:

(a) A declaration of trust made on 15 February 2005 between Maverick and the Horizon client. This document is rather confusing because the trustee is Maverick, the trust property is the shares in Maverick and the trustee declares that "he" holds the shares on behalf of the beneficiary (the Horizon client). We do not understand that the trustee actually held the shares described as the trust property. Nevertheless we do not need to pursue this. We are prepared to assume for present purposes that the declaration of trust had some effect to create or evidence the beneficial ownership (direct or indirect) of the Horizon client over Maverick and therefore over the Horizon contract, which appeared to be its intention.

(b) A statutory declaration was made by the Horizon client on 27 September 2007. In that declaration, the Horizon client states that he was the owner of Lot 18 in the Horizon development from 17 February 2005 which was held by Maverick. This is also a little confusing because the Horizon contract is dated 12 May 2005. Nevertheless we do not need to pursue this and we are prepared to assume for present purposes that the Horizon client was directly or indirectly the beneficial owner of all rights under the contract signed by Maverick for the purchase of the Horizon unit. This is consistent with oral evidence given by the Horizon client.

(c) The money for the deposit paid under the contract was provided to Mr Walker for that purpose by the Horizon client.

9.8 Mr Walker accepted that if he had purchased one of the Horizon units on his own account then that would give rise to a conflict and he as auditor would be "participating financially...in a client that (he) was auditing" and that this would not be allowed by law. However, he did not see the arrangement with the Horizon client and RVP's wholly owned subsidiary as "impinging upon independence". When asked whether it might be seen by somebody else as impinging on his independence, Mr Walker regarded that as a "hypothetical" and said

that he did not turn his mind to it because he knew he was independent.

- 9.9** It appears to us that Mr Walker did not turn his mind to the possible ways in which the situation he was in gave rise or may have given rise or may have been seen to give rise to a conflict of interest situation or a self-interest threat. Without being familiar with any legislation, he nevertheless had it clearly in the back of his mind that the law prohibited certain things such as an auditor having a financial interest in an audit client. However, since he regarded this situation of the Horizon client as relevantly different and regarded himself as independent, he went no further. He did not, for example, consider the possibility that P1 may become unwilling or unable to fulfil its obligations under the contract or that the Horizon client may become unwilling or unable to fulfil his obligations to pay the balance due under the contract. He believed his knowledge of RVP and of his Horizon client meant that he did not have to consider these possibilities. In our view, this shows that Mr Walker had an inadequate understanding of the concept of independence and how it is to be judged. His sole test seemed and still seems to be that he must believe himself to be independent. For us, this gives rise to a similar concern we have expressed above (see para 8.2(f)). In our view a reasonably competent auditor would have identified a self interest threat in these circumstances and dealt with it under F.1 or, more probably, not entered into the transaction. We have concluded that Mr Walker failed to perform adequately and properly his duties as an auditor.
- 9.10** ASIC has also relied on s324CA in relation to contention 2. For the same reasons as we explained in relation to contention 1 we have concluded that Mr Walker had a duty as a result of s324CA for the purposes of contention 2 by reason of the conflict of interest situation created by the execution of the Horizon contract. By failing to act in accordance with s324CA, Mr Walker failed to perform adequately and properly his duty as an auditor.
- 9.11** ASIC has also relied on s324CE in relation to contention 2 and in particular on items 10 and 15 in s324CH:
- (a) Item 10 – ASIC submitted that Mr Walker had an asset which was an investment in P1. We do not believe that the Horizon contract which related to the purchase of a unit off the plan comes within the concept of an "investment" in P1.
 - (b) Item 15 – ASIC submitted that Mr Walker owed an amount of more than \$5,000 to RVP. We are not entirely certain whether "owes" in this context is limited to "is presently obliged to pay" or extends to include "has a present legal obligation which on the fulfilment of certain conditions in the future, will become an

obligation to pay". Mr Parker expressed the view that Mr Walker "owed" an amount under the contract but he did not explain the basis for his opinion. In any event the existence of a contractual obligation (albeit a conditional one) to pay an amount in the future seems to us to create or to have the potential to create the same independence or conflict problems as if the amount were presently due and payable. We therefore believe that a reasonably competent auditor would regard the item as applicable and would act in accordance with s324CE(1). Accordingly, Mr Walker's failure to act in accordance with s324CE(1) constitutes in our view a failure to perform adequately and properly his duties as an auditor.

9.12 We have concluded that we are satisfied that Contention 2 has been established.

10. Contention 3

10.1 The Contention

- (a) **Mr Walker and/or the related Walker entities made loans to RVP during the year ended 30 June 2005 thereby giving Mr Walker a direct and/or indirect financial interest in RVP at the time he conducted both the RVP 2005 Audit and the RVP 2006 Audit and this created a conflict of interest situation and a self-interest threat.**
- (b) **Mr Walker was aware that the conflict of interest situation existed and took no step to reduce the conflict of interest situation and/or self-interest threat or to ensure they ceased to exist.**
- (c) **Mr Walker did not identify the conflict of interest situation or self-interest threat to RVP, nor did he propose ways of addressing the issue.**

10.2 It was accepted that Allan Services and Clem Court were companies associated with Mr Walker and Mr Walker did not dispute this.

10.3 By a Loan Agreement, made in or about November 2004, Allan Services agreed to lend to RVP the sum of \$115,000 on the terms contained in the agreement. The agreement stated in the description of the lender that Allan Services was acting as trustee for the LAN Trust. By another Loan Agreement, also made in or about November 2004 and made between the same parties and in the same capacities as the Loan Agreement just referred to, Allan Services agreed to lend to RVP the sum of \$50,000. We refer to these two loans as "**the Loans**". The interest rate was different for each of the Loans but the repayment obligations were the same, namely each loan was repayable 12 months

after the loan funds were received by RVP. The loan funds were received by RVP on 25 November 2004, according to the books of RVP. By deed of trust made 21 January 2005, Allan Services declared that it held the two Loans totalling \$165,000 on trust for a client of Mr Walker's firm (**Loans client**).

- 10.4** Mr Walker's evidence was that the Loans were made on behalf of, as trustee for and with funds provided by the Loans client and that the Loans client had been introduced to him by Glenn Duker. The further evidence was that the Loans client had already decided to make the Loans (and had probably already made the Loans, although the evidence on this was not certain) and simply wanted Mr Walker to provide this trustee service because the Loans client did not want the Loans to be in their own name for reasons which are not relevant here. Glenn Duker's evidence was that it was definitely his understanding that Allan Services was acting purely as a trustee for the Loans client. The funds were paid by the Loans client directly to RVP. ASIC did not dispute any of this evidence. The evidence also includes two draft loan agreements between RVP and the Loans client relating to the sums of \$115,000 and \$50,000 respectively, which had already been prepared by Glenn Duker. The bank records of RVP for the period 4 January 2005 to 28 June 2006 show that interest payments on the Loans were regularly made on a monthly basis partly to the bank account of either Allan Services or (after Allan Services was deregistered on 23 December 2005) the trust account of AGWA and partly to a bank account in the name of the Loans client.
- 10.5** It is not necessary to analyse the documentation in detail because there is no dispute about the facts. We are prepared to assume for present purposes that all documentation gave full legal effect to the evident intention of the parties, namely that even though there was some recognition in the books of RVP that the Loans client had an interest in the Loans and that all the parties knew that to be the case, the Loans were technically loans by Allan Services as trustee of the LAN Trust on behalf of the Loans client. This is consistent with oral evidence given by the Loans client.
- 10.6** The question for us is whether the arrangements (including the Loans) constituted a conflict of interest situation or a self-interest threat and if so, whether, Mr Walker dealt with that properly in accordance with his duties as the auditor of RVP.
- 10.7** Mr Walker accepted that if he personally had made the Loans a conflict would have arisen but he thought it would be in order because of the declaration of trust. Mr Walker did not turn his mind to the possibility of what might happen, in connection with these loan arrangements if RVP became insolvent. He stated that he did not believe there was the

possibility of that happening or of the Loans client seeking to mount a claim against him or his companies for any reason arising out of the arrangement. There was no evidence that Mr Walker did anything to assess whether there was any threat (actual or perceived) to his independence or that he identified any such threat let alone take any of the other consequent steps required by his duties as an auditor under F.1. In our view a reasonably competent auditor would have identified a self interest threat in these circumstances and dealt with it under F.1 or, more probably, not entered into the transaction. We have concluded that Mr Walker failed to perform adequately and properly his duties as an auditor.

10.8 ASIC also relied on s324CA(1) in relation to contention 3. For the same reasons as we explained in relation to contention 1 we have concluded that Mr Walker had a duty as a result of s324CA for the purposes of contention 3 by reason of the conflict of interest situation (as defined in s324CD) created by the existence of the Loans. By failing to act in accordance with s324CA in those circumstances, Mr Walker failed to perform adequately and properly his duty as an auditor.

10.9 ASIC has also relied on s324CE in relation to contention 3 and in particular on items 10 and 16 in s324CH(1):

(a) Item 10 – Mr Walker had an asset which was an investment in P1. We are not sure whether "investment" in this context is limited to a financial scheme or property into which the auditor puts money, with the intention of making a profit, or extends to the making of a loan. Since the funds lent to RVP were at risk depending on the financial survival of RVP it seems to us that the transaction may have created or had the potential to create the same independence or conflict problems as any other form of investment. However because of our conclusion on item 16 below, we do not need to reach a conclusion on item 10. Mr Parker does not deal with item 10 in his Report, only item 16.

(b) Item 16 – Mr Walker was owed an amount by RVP – There seems little doubt that this test is satisfied.

10.10 We believe that in these circumstances a reasonably competent auditor would have acted in accordance with s324CE. Accordingly we believe that Mr Walker had a duty to act in accordance with s324CE(1) and he did not dispute that he did not do so. The failure to do so constituted in our view a failure to perform adequately and properly his duties as an auditor.

10.11 We have concluded that we are satisfied that contention 3 has been established.

11. Contention 7

11.1 The Contention

- (a) By reason of his conduct mentioned in contentions 1 to 5, Mr Walker was in a conflict of interest situation in relation to RVP while conducting the RVP 2005 Audit and the RVP 2006 Audit.
- (b) In contravention of s324CA(1A), Mr Walker failed to notify ASIC in writing of the various conflict of interest situations within seven days of becoming aware of them existing or at all.
- (c) In respect of contentions 1, 2, 4 and 5, a relevant item of the table in s324CH(1) applied to Mr Walker. Mr Walker did not notify ASIC pursuant to s324CE(1A) in writing of the various circumstances within seven days of becoming aware of the relevant circumstances existing or at all.

11.2 This contention alleges a contravention of ss324CA (1A) and 324CE (1A) in respect of the RVP 2005 Audit and the RVP 2006 Audit. Those sections were introduced in the CLERP 9 legislation and took effect on 1 July 2004 and each requires an auditor to give notice to ASIC in certain circumstances.

11.3 Mr Walker has not disputed that he did not give any notice to ASIC under either section in either of the relevant years.

11.4 We note that:

- (a) In relation to s324CA (1A) ASIC contends that Mr Walker contravened the provision by reason of his failure to notify the various conflict of interest situations set out in contentions 1 to 5.
- (b) In relation to s324CE (1A) ASIC contends that Mr Walker contravened the provision by reason of his failure to notify a circumstance (being a relevant item under s324CH) set out in contentions 1, 2, 4 and 5. ASIC stated that the omission of any reference to contention 3 in this context was deliberate. We also note that contention 4 does not raise or refer to s324CE or s324CH and that contentions 1 and 5, although initially referring to s324CE, do not give any particulars of a contended breach of s324CE(1) or refer to s324CH or to any specific item. We have concluded that we are not satisfied that contentions 4 and 5 have been established. Accordingly we shall confine our consideration to contention 2 in connection with s324CE (1A).

11.5 As to s324CA (1A), we have already concluded that Mr Walker had a duty to deal with the conflict of interest situations in accordance with the provisions of s324CA (1) (see above under contentions 1, 2 and 3)

and that he failed to perform that duty adequately and properly. We believe that the same reasoning and conclusion are appropriate here, namely that Mr Walker's view that he had no conflict of interest situation was not reasonably open to him and that a reasonably competent auditor would have been aware of the various conflict of interest situations, and would have complied with s324CA (1) and therefore would have notified ASIC under s324CA (1A) accordingly. Mr Walker's failure to notify ASIC was therefore a failure to perform his duty as an auditor.

- 11.6 As to s324CE(1A), we have already concluded in connection with contention 2 that Mr Walker had a duty to deal with the relevant circumstance (the Horizon contract) under s324CE(1) and that he failed to perform that duty adequately and properly. We believe that the same reasoning and conclusion are appropriate here, namely that a reasonably competent auditor would have been aware that the Horizon contract was within an item in s324CH, would have complied with s324CE(1) and therefore would have notified ASIC under s324CE(1A) accordingly. Mr Walker's failure to notify ASIC was therefore a failure to perform his duty as an auditor.
- 11.7 We have concluded that we are satisfied that contention 7 has been established.

12. Contention 8

12.1 The Contention

In various specific ways (set out below) Mr Walker failed in the conduct of the RVP 2005 Audit to comply with the following auditing standards AUS 202, AUS 208, AUS 212, AUS 502, AUS 702.

- 12.2 (a) In its closing submissions ASIC sets out what auditing standard(s) it relies on for each paragraph in SOFAC 158. We do not propose to consider any standard which has not been specified by ASIC.
- (b) There are several paragraphs which say that ASIC is relying on breaches of specified accounting standards. When this was drawn to ASIC's attention ASIC applied for leave for the SOFAC to be amended and leave was granted by the Panel. Accordingly, these paragraphs now read that Mr Walker should have qualified his report under AUS 702.45 by reason of failure of the accounts to comply with the specified accounting standard(s).
- (c) There are some paragraphs in which the Panel allowed ASIC to replace "evidence" with "audit working papers to show" - see eg

paras (i) and (ii) and, by extension those paragraphs where ASIC has said it is relying only on AUS 208 and has clearly used the word "evidence" to mean "audit working papers". This also applies to contentions 9 and 10.

- (d) The Panel allowed ASIC to amend paras (xxiii) to (xxviii) of the SOFAC to insert at the beginning the words "There are no audit working papers to show that the Respondent reviewed and tested ..." etc., (mutatis mutandis).
- (e) Mr Walker made a number of statements in relation to the general state of his audit working papers relating to the RVP 2005 Audit. We refer in particular to the following:
 - (i) "In my mind, I had inspected everything, I knew that everything was correct, but the fact that I hadn't documented it is probably my fault".
 - (ii) "In 2005 I would have thought that I had gathered enough evidence and seen enough documentation, but whether or not I have actually documented or not could be a problem".
 - (iii) "if you say that I have not properly documented the 30/6/05, you are quite correct in what you are assuming".
 - (iv) "the fact is that I can explain to you mentally what I have done, but the problem is I haven't written it down".
 - (v) "The auditing standards say that (there should be documentary evidence) and by default, by me not doing that, then I have not passed that test".
 - (vi) "As I say, with the '05 situation, the audit papers are not complete. There's not full documentation".
 - (vii) "The audit papers that I provided to 30/6 are not to the standards that is required ... I would agree, other than the fact that the various assets and liabilities were checked by myself and bank accounts and share issuings; all these matters have been checked, but I have failed to document them".
- (f) In answer to a request to "review the material stated by Mr Walker to be his audit working papers" for the RVP 2005 Audit, Mr Parker expressed the opinion that "in respect of the (RVP 2005 Audit) there appears to be no audit working papers" and

"no audit working papers were evident in relation to the 30 June 2005 audit".

- (g) The evidence tendered by Mr Walker in relation to this contention consisted of:
 - (i) a number of tables purporting to show expenses incurred to 30 June 2005 in relation to a number of individual properties from the time they were acquired.
 - (ii) a number of trial balances of RVP at 30 June 2005 (some relating to earlier balance dates).
 - (iii) (draft financial reports (including some reports from early periods) some with hand written figures to update the draft.
 - (iv) sundry other documents including BAS tax returns, faxes, emails, etc.

All of the documents appear to have been generated by or on behalf of the company or in the production of the accounts rather than as part of an audit. None of the documents shows any indication of what, if any, audit work was done in relation to its contents nor is accompanied by or refers to any audit working papers.

- (h) For the purpose of this contention, it is not necessary for us to make any finding as to the general standard of Mr Walker's audit work on the RVP 2005 Audit but it is relevant for us to comment generally on the standard and extent of audit documentation. We have concluded that in reality there were no audit working papers relating to the RVP 2005 Audit. Mr Walker did not draw our attention to any specific audit working papers, other than copies of company generated documents, which he said he read and checked. However, copies of company documents in Mr Walker's file showing no evidence of work done as part of a properly prepared audit plan are no substitute for and are not themselves audit working papers. In addition, a claim by an auditor that they have read and checked company generated documents is no excuse for the general absence of adequate documentation recording the audit procedures followed and the conclusions drawn from the audit evidence obtained.
- (i) In this contention ASIC has particularised a considerable number of instances where it submits Mr Walker has failed to comply with auditing standards and in each case has referred to the specific auditing standard(s) involved. In most cases the

standard is or includes AUS 208 relating to documentation. In light of our conclusion in para 12.2(h) above that there was a general absence of audit working papers, we have concluded that most of ASIC's contentions of a failure to comply with that standard have been established. Since for most of the individual instances involving AUS 208 we have nothing further to add by way of reasons other than an absence of audit working papers, we shall deal with those instances below by use of the expression "Absence of audit working papers".

(j) At the beginning of each paragraph in our discussion below of the individual instances, we have set out, in bold type, the matter raised by ASIC (as amended) followed by, in brackets, a reference to the relevant auditing standard(s) on which ASIC relies for that instance.

(i) **The Directors Report states that 'Since financial year end the Company has made many real estate acquisitions and entered many joint venture arrangements...' It is unclear which financial year end is being referred to, which required clarification in itself. If it was the financial year ended 30 June 2005, it required the Respondent to investigate and consider the transactions in question, but there are no audit working papers to show that he did.**

(208) Absence of audit working papers. We are satisfied that this matter is established.

(ii) **The Directors report states that the Company, as at the date of this report, has an interest in 44 properties, some of which have been or are in the process of being subdivided. There is no evidence that the Respondent checked the figure of 44 properties and the internal documents do not correspond with this figure on even a cursory examination. A document entitled 'RVP group ltd - Property Profile (sic)' lists 35 properties, while a document entitled 'Inventories and Property' that apparently supports the 2005 RVP Financial Report lists 43 Properties. As to 'the interest' of RVP see below. There are no audit working papers to show that the Respondent ever checked that any of the properties had been sub-divided or were in the process of being subdivided.**

(208) Absence of audit working papers. We are satisfied that this matter is established.

- (iii) **There are no audit working papers to show that the Respondent performed procedures determined by him to be necessary to provide sufficient appropriate audit evidence to enable reasonable conclusions to be drawn, or even that he determined what procedures were necessary.**

(208) Absence of audit working papers. We are satisfied that this matter is established.

- (iv) **The failure to take the necessary steps to collect sufficient appropriate audit evidence is a breach of the requirements to exercise professional competence and due care.**

(202) Mr Walker said he relied on Glenn Duker as to the valuations and on the cost reports as to costs. In addition, Mr Walker stated that he sighted loan documents, payments made, BAS statements and joint venture documents to support his conclusions that RVP owned the properties concerned and in the percentages shown. There was no evidence that any checks were made with solicitors, outside parties (such as lenders or joint venture partners) or searches of legal titles. In fact there was evidence that one property (which RVP's records apparently recorded that it owned) had been sold by a third party in whose name the property was registered. In our view a reasonably competent auditor would not have relied only on the internal evidence on which Mr Walker said he relied. We are satisfied that this matter has been established.

- (v) **The Respondent appears to have simply relied upon the assertions of the management of RVP as to the state of affairs of the company and has, accordingly, breached paragraph .06 requiring the auditor to neither assume that management is dishonest nor assume unquestioned honesty and that representations from management are not a substitute for obtaining sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.**

(202) See (iv) above. We are satisfied that this matter is established.

- (vi) **The Respondent has not taken the necessary steps to be in a position to have a reasonable assurance by the accumulation of the audit evidence necessary that there**

are no material misstatements in the financial report taken as a whole.

(202) See (iv) above. We are satisfied that this matter is established.

(502) It follows from what we have said in (iv) above that we do not believe that Mr Walker had sufficient appropriate audit evidence to justify a conclusion that there were no material misstatements in the financial report taken as a whole. We are satisfied that this matter has been established.

(vii) The Respondent has failed to obtain and evaluate audit evidence to obtain reasonable assurance about whether the financial report gives a true and fair view (or is presented fairly in all material respects).

(202) See (iv) above. We are satisfied that this matter is established.

(502) See (vi) above. We are satisfied that this matter is established.

(viii) The Respondent failed to plan and perform the audit to reduce audit risk to an acceptably low level consistent with the objective of an audit.

(202) There was no evidence that Mr Walker undertook any appropriate planning for the audit. There was no audit plan. It also follows from what we have said in (iv) above that we do not believe that the planning or the performance of the audit reduced the audit risk to an acceptably low level. We are satisfied that this matter has been established.

(ix) There is a general absence of sufficient appropriate audit evidence to enable the Respondent to draw reasonable conclusions on which to base the audit opinion.

(502) See (vi) above. We are satisfied that this matter is established.

(xii) If, however, the absence of audit evidence was due to the Respondent seeking such evidence but being unable to obtain it, he did not, in accordance with AUS 702, express a qualified opinion.

(702) There was some evidence that Mr Walker raised with Glenn Duker many times the need to ensure that declarations of trust were properly in place for all properties not registered in the name of RVP but that Mr Walker's requests were all ignored. In those circumstances, we believe that a reasonably competent auditor would have regarded this as a scope limitation and would have qualified his audit opinion, which Mr Walker conceded. We are satisfied that this matter is established.

- (xiii) **The RVP Financial Reports values 'inventories' at \$26,320,000 as at 30 June 2005. There is no RVP document that carries the same valuation. The Inventory sheet lists a directors' valuation of \$28,476,000. 'Inventories' were in fact properties allegedly purchased by RVP and which were being redeveloped. No evidence has been provided by the Respondent to indicate that he evaluated the bases used by management in the valuation of inventory. There are no audit working papers indicating how the dollar values assigned to inventory were arrived at by RVP Management or any audit testing of same.**

(208) Absence of audit working papers. We are satisfied that this matter is established.

- (xiv) **Note 1(b) to the 2005 RVP Financial Reports states that 'inventories' are measured at the lower of cost and net realisable value. This is untrue. Glenn Duker gave evidence that the valuations were applied by RVP Management on an ad-hoc basis. There are no audit working papers to demonstrate that the Respondent checked that this policy was actually used by RVP as stated. In fact, given that this Financial Report was prepared by the Respondent himself the basis for asserting that this was a 'Significant Accounting Policy' of RVP is unknown.**

(208) Absence of audit working papers. We are satisfied that this matter is established.

- (xv) **There are no audit working papers to demonstrate that the Respondent undertook title searches or examined contracts of sale to check that RVP was the registered proprietor of the numerous properties that made up the RVP Inventory List, In fact, upon examination by ASIC, RVP does not appear as registered proprietor of any of the properties listed. The registered proprietor of many**

of the properties are, in fact, the directors of RVP or Mrs Lago, an employee and the mother-in-law of Glenn Duker." This issue also gave rise to 'related party' concerns under AUS 518 'Related Parties' which was not considered or address by the Respondent in breach of numerous provisions of that standard.

(518) There was no evidence that Mr Walker considered the question of related party transactions under AUS 518 in connection with the registered proprietors of several properties being related parties of RVP (such as members of the Duker family). We are satisfied that this matter has been established.

(xvii) **There are no audit working papers to demonstrate that the Respondent visited any of the properties to ensure they existed (i.e. undertook an inventory count) or that they were in the process of development. A reconciliation of the opening and closing balances for Inventory would have been appropriate, but there is no evidence that this was performed by the Respondent. There are no AWP to demonstrate that the Respondent performed any reconciliation of changes in inventory quantities.**

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xviii) **There are no audit working papers to demonstrate that the Respondent obtained any third party valuations of any of the properties as a means of verification, obtained expert opinion (for example from an architect, surveyor or real estate agent/valuer) regarding the status of each real estate project, including the percentage complete, current value, anticipated costs to complete and the expected value when complete or tested the accumulation of costs on the projects by reference to third party invoices and documents.**

(208) ASIC has not established to our satisfaction that Mr Walker had a duty to obtain any third party valuations. Mr Parker was of the opinion that it was not a requirement. However, we are satisfied that Mr Walker should have verified the status and tested the costing of the property development projects (even if by sample) and should have documented that verification and testing. We are satisfied that this matter has been established.

- (xix) **There are no audit working papers to demonstrate that the Respondent performed any testing of the accumulation of costs.**

(208) Absence of audit working papers. We are satisfied that this matter is established.

- (xx) **There are no audit working papers to demonstrate that the Respondent tested the arithmetical accuracy of any calculations.**

(208) We are satisfied that Mr Walker should have tested the arithmetical accuracy of the calculations and should have documented that. It is not enough for Mr Walker to submit that the "trial balance etc" were all generated by the Quicken system. We are satisfied that this matter has been established.

- (xxi) **There are no audit working papers to demonstrate that the Respondent compared the known sales and costs of similar completed projects as indicative of the values ascribed, or to compare such completed projects to values ascribed to them in earlier financial reports when they were work-in-progress, and thereby assess the reliability of previous valuations.**

(208) We are satisfied that Mr Walker should have conducted some comparisons in relation to the values, costs and sales and that he should have documented that. Mr Walker's submission that each development is unique may be literally true but it does not remove the need to assess the reliability of the valuations. We are satisfied that this matter has been established.

- (xxii) **It appears, in short, that no audit procedures were applied in respect of inventory. If there were, there are no audit working papers showing the extent of their application, the results of their application and actions taken on those results. As such, sufficient appropriate audit evidence regarding the valuation of inventory was not obtained by the Respondent.**

(208) Absence of audit working papers. We are satisfied that this matter is established.

(502) See (vi) above. We are satisfied that this matter is established.

(xxiv) There are no audit working papers to show that the Respondent reviewed and tested the process used by management to develop the estimate.

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xxv) There are no audit working papers to show that the Respondent used an independent estimate for comparison with that prepared by management.

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xxvi) There are no audit working papers to show that the Respondent reviewed subsequent events which confirm the estimates made.

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xxvii) There are no audit working papers to show that the Respondent compared accounting estimates made for prior periods with actual results of those periods.

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xxviii) There are no audit working papers to show that the Respondent made or obtained an independent estimate and compared it with the accounting estimate prepared by management.

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xxix) There are no audit working papers to show that the Respondent made a final assessment of the reasonableness of the accounting estimate based on his knowledge of the business or in consideration with other audit evidence obtained during the audit.

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xxx) The Respondent did not document matters which were important in providing evidence to support the audit opinion and evidence that the audit was carried out in accordance with Australian Auditing Standards.

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xxxii) The Respondent did not prepare working papers that are complete and detailed to provide an understanding of the audit, or at all.

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xxxiii) The Respondent did not prepare working papers that recorded his planning, the nature, timing and extent of the audit procedure performed, the results thereof and the conclusions drawn from the audit evidence obtained.

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xxxvi) There are no audit working papers to show that the Respondent developed and documented any audit program setting out the nature, timing and extent of the planned audit procedures required to implement the audit procedures.

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xxxvii) to (xxxix) The Director's Report is signed by Glenn Phillip Duker and dated 20 October 2005. The independent audit report is signed by the Respondent and dated 18 October 2005. The Respondent therefore signed the audit report two days earlier than the date on which the financial report was signed by the Director.

(702) These paragraphs relate to a single contention that Mr Walker failed to fulfil his duty to sign his audit report after the 2005 RVP Report had been signed by the directors. This has been conceded by Mr Walker with no satisfactory explanation or justification. We are satisfied that this matter has been established.

(xl) ASIC also relies on the absence of audit working papers and other evidence to demonstrate that Mr Walker considered auditing standards AUS 210, (The auditor's responsibility to consider fraud in an audit of a financial report), 402 (Understanding the entity and its environment and assessing the risks of material misstatements), 504 (External confirmations), 506 (Existence and valuation of inventory), 508 (Inquiry

regarding litigation and claims), 512 (Analytical procedures), 520 (Management representations), 706 (Subsequent events), 708 (Going concern), 710 (Communicating with management on matters arising from an audit).

(208) Absence of audit working papers. We are satisfied that this matter is established.

(xli) **ASIC also relies on the contravention by Mr Walker of AUS 212 (Other information in documents containing audited financial reports) constituted by his failure to read the directors report to identify any material inconsistencies or material misstatements of facts.**

(212) This matter has been conceded by Mr Walker and we are satisfied that it has been established.

(xlii) **ASIC also relies on the failure by Mr Walker to qualify the audit report pursuant to auditing standard AUS 702.45 in respect of the failure of the 2005 RVP Report to comply with accounting standards AASB 1 paras 38 - 43, AASB 101 para 108 and AASB 112 para 81(g).**

(702) This matter has been conceded by Mr Walker and we are satisfied that it has been established.

12.3 On the basis of the various matters which have been established, we have concluded that we are satisfied that contention 8 has been established.

13. Contention 9

13.1 The Contention

In various specific ways (set out below) Mr Walker failed in the conduct of the RVP 2006 Audit to comply with the following auditing standards AUS 202, AUS 208, AUS 212, AUS 502 and AUS 702.

13.2 ASIC adopted the same matters for contention 9 as it contended in respect of contention 8 (except for the AUS 702 contention in para 12.2(j) (xxxvii) to (xxxix) which is not raised in respect of contention 9 because it was not applicable to the RVP 2006 Audit). In addition, the matter raised in para 13.5 below does not appear in contention 8 and we shall deal with that separately.

13.3 Mr Walker made submissions that he had adequate audit working papers for 2006 and provided a list of what he said were the audit working papers which related to each particular instance referred to

under contention 9. Mr Parker was of the opinion that those documents were not adequate audit working papers. The audit working papers which Mr Walker tendered in evidence in relation to the RVP 2006 Audit consisted (apart from those similar to the papers relating to the RVP 2005 Audit which we have already described at para 12.2.(g) above) largely of pro forma documents from a commercial set of precedent audit working papers which had been photocopied and then filled in, at least partially. Mr Walker described these audit working papers as "a vast improvement" on the 2005 audit working papers. Those pro forma documents largely comprised audit work programs which are filled in (incompletely) by indicating what itemised tasks had been completed by Mr Walker – either by a mark such as a tick or by a word such as "yes" or "done". However, there are no audit working papers recording the result of audit work which the programs say was done or the conclusions drawn from audit evidence. There are no references in the audit programs to any working papers. There are some handwritten notes which could be regarded as audit working papers but were not adequately explained. We do not regard the material which was tendered as a proper or adequate set of audit working papers at all. A tick or "done" or "OK" in an audit program is no substitute for an audit working paper showing what the audit work was and what the audit conclusion was.

- 13.4 Although there are more working papers in 2006 than for the RVP 2005 Audit, the 2006 audit working papers are still inadequate. The additional material tendered by Mr Walker relating to the RVP 2006 Audit was not sufficient to alter our conclusion on any individual matter raised under contention 9. Accordingly all of our conclusions are the same as for the equivalent instances under contention 8.
- 13.5 There was one additional instance raised by ASIC in connection with this contention which related to the RVP 2006 Audit and which had no equivalent in contention 8 relating to the RVP 2005 Audit.

The 2006 RVP Report records the 2005 inventory figure as \$28,476,000 which was not the figure contained in the 2005 RVP Report. The 2005 RVP Report recorded inventories as \$26,320,000. No explanation for this discrepancy is contained in the 2006 RVP Report and Mr Walker failed to address the discrepancy in any way and/or document his consideration of the discrepancy.

(208) Although Mr Walker submitted that these figures could be reconciled and that it was simply an error in his treatment in the 2005 RVP Report (see para 15.5(b)(i) below) we believe that the reconciliation and the reasons for the necessity to alter the 2005 comparative figure should have been documented. We are satisfied that this matter has been established.

13.6 On the basis of the various matters which have been established, we have concluded that we are satisfied that contention 9 has been established.

14. Contention 10

14.1 The Contention

In various specific ways (set out below) Mr Walker failed in the conduct of the 2006 Crane Audit to comply with the following auditing standards AUS 202, AUS 208, AUS 502, AUS 702, AUS 704 and AUS 710.

14.2 Mr Walker did not concede that he made no (or no proper) audit working papers for the 2006 Crane Audit (in his view his audit working papers were adequate), although he did make various specific concessions. Mr Walker provided a list of what he said were the audit working papers which related to each particular matter under contention 10. The audit working papers which Mr Walker tendered in evidence included several pro forma audit programs from a commercial set of precedents which are filled in (incompletely) by a tick or a single word such as "No" to indicate what itemised tasks had been completed by Mr Walker. However, there are no references in the audit programs to audit working papers and there are only one or two audit working papers recording what audit work was done and what conclusions were drawn from the audit evidence. There were also some draft financial accounts, transaction reports and BAS statements all of which appear to have been produced by or on behalf of the company. There are also a small number of invoices and bank statements which are not referenced to any other document. ASIC has submitted that these documents do not constitute adequate audit working papers and relies on the opinion of Mr Parker to that effect. We do not regard the material which was tendered as a proper or adequate set of audit working papers.

14.3 In this contention ASIC has particularised a considerable number of instances where it submits Mr Walker has failed to comply with auditing standards and in each case has referred to the specific auditing standard involved. We shall adopt the same method as we did for contention 8 in setting out (in bold) the instance contended by ASIC (as amended) then setting out (in brackets) the auditing standard/s relied on by ASIC and then our reasons and conclusion.

(i) **There are no audit working papers to show that the Respondent performed procedures determined by him to be necessary to provide sufficient appropriate audit evidence to enable reasonable conclusions to be drawn, or even that he determined what procedures were necessary.**

(208) We regard the determination and implementation of appropriate and necessary procedures as a matter not only required to be carried out but also required to be properly documented. We are satisfied that there was no proper documentation. We regard Mr Walker's submission that there is "a full set of work papers" with considerable concern as that appears to indicate a mistaken view of what is required in an adequate set of audit working papers. We are satisfied that this matter has been established.

- (ii) **The failure to take the necessary steps to collect sufficient appropriate audit evidence is a breach of the requirements to exercise professional competence and due care.**

(202) We are satisfied that Mr Walker failed to perform his duty in connection with the collection of sufficient appropriate audit evidence. We are satisfied that this matter has been established.

- (iii) **The Respondent has not taken the necessary steps to be in a position to have a reasonable assurance by the accumulation of the audit evidence necessary that there are no material misstatements in the financial report taken as a whole.**

(202) We are satisfied that Mr Walker failed to perform his duty in connection with the collection of sufficient appropriate audit evidence relating to the question of material misstatements in the financial report which he was auditing taken as a whole. We are satisfied that this matter has been established.

(502) We do not believe that Mr Walker had sufficient appropriate audit evidence to justify a conclusion that there were no material misstatements in the financial report which he was auditing taken as a whole. We are satisfied that this matter has been established.

- (iv) **The Respondent has failed to obtain and evaluate audit evidence to obtain reasonable assurance about whether the financial report gives a true and fair view (or is presented fairly in all material respects).**

(202) We are satisfied that Mr Walker failed to perform his duty in connection with the collection of sufficient appropriate audit evidence relating to the question of whether the financial report which he was auditing gave a true and fair view. We are satisfied that this matter has been established.

(502) See (iii) above. We are satisfied that this matter is established.

- (v) **The Respondent failed to plan and perform the audit to reduce audit risk to an acceptably low level consistent with the objective of an audit.**

(202) We have reviewed the audit planning program which was included in the papers tendered by Mr Walker and we do not regard it as adequate to reduce audit risk to an acceptably low level. There are no supporting working papers and there is no audit plan. There is nothing in the audit planning program to indicate the successful performance or completion of any of the itemised tasks. We are satisfied that this matter has been established.

- (vii) **In its 2006 financial statements Crane disclosed as its material asset 'cash at bank and on hand' and its material liability 'Tax control'. The Respondent's AWP demonstrate only limited and insufficient audit testing to verify Crane's cash balances. The Respondent did not appear to obtain third party confirmation of account balances in the form of a bank audit certificate or to determine or confirm details, if any, of any security held by Crane's bankers over the material assets of Crane.**

(502) We are satisfied that Mr Walker failed to perform his duty in connection with his testing to verify Crane's cash balances in the financial report he was auditing. We are satisfied that this matter has been established.

- (xii) **The Respondent did not document matters which were important in providing evidence to support the audit opinion and evidence that the audit was carried out in accordance with Australian Auditing Standards.**

(208) Absence of audit working papers. We are satisfied that this matter is established.

- (xiii) **The Respondent did not prepare working papers that are sufficiently complete and detailed to provide an understanding of the audit, or at all.**

(208) Absence of audit working papers. We are satisfied that this matter is established.

- (xiv) **The Respondent did not prepare working papers that recorded his planning, the nature, timing and extent of the audit procedure performed, the results thereof and the conclusions drawn from the audit evidence obtained.**

(208) We are satisfied that Mr Walker had a duty to document audit programs setting out the nature, timing and extent of the

audit procedures and that he failed to do so. We are satisfied that this matter has been established.

- (xvi) **There are no audit working papers to show that the Respondent developed and documented any audit program setting out the nature, timing and extent of the planned audit procedures required to implement the audit plan.**

(208) Mr Walker submitted that adequate documentation relating to planning was in the working papers. There is no audit plan. There are several audit programs included in the papers tendered by Mr Walker but they do not cover some important areas including cash at bank and on hand and gross profit on rental operations. In addition, the Planning Program asks the auditor to "consider audit risk indicator program". This was marked "OK" but there is no evidence as to how this conclusion was arrived at. We are satisfied that this matter has been established.

- (xvii) to (xix) **The Director's Report is signed by Crane and dated 6 September 2006. The Respondent's independent audit report is dated 24 July 2006. The Respondent therefore signed the audit report approximately six weeks earlier than the date on which the financial report was signed by the Directors, contrary to AUS 702.**

(702) These paragraphs relate to a single contention that Mr Walker failed to fulfil his duty to sign his audit report after the 2006 Crane financial report had been signed by the directors. This has been conceded by Mr Walker with no satisfactory explanation or justification. We are satisfied that this matter has been established.

- (xxii) **ASIC also relies upon the absence of audit working papers and other evidence to demonstrate that Mr Walker considered auditing standards AUS 210 (The auditor's responsibility to consider fraud in an audit of a financial report), 218 (Consideration of laws and regulations in an audit of a financial report), 302 (Planning), 402 (Understanding the entity and its environment and assessing the risks of material misstatements), 502 (Audit evidence), 504 (External confirmations), 512 (Analytical procedures), 518 (Related parties), 520 (Management Representations), 702 (The audit report on a general purpose financial report), 704 (Comparatives), 708 (Going concern) and 710 (Communicating with management on matters arising from an audit).**

(208) Absence of audit working papers. This matter is established.

(xxiii) **ASIC also relies upon the failure by Mr Walker to comply with the requirements of auditing standard AUS 520 para 04 by failing to obtain sufficient audit evidence that management had approved the financial report.**

(520) Mr Walker conceded that there was no evidence of his having complied with the standard but maintained that the Chief Executive Officer would have rung him to say that everyone had signed. This is not adequate. We are satisfied that this matter has been established.

14.4 On the basis of the various matters which have been established, we have concluded that we are satisfied that contention 10 has been established.

15. Contention 11

15.1 The Contention

In various specific ways (set out below) the RVP 2005 Report contained a number of errors and Mr Walker's audit opinion should have been qualified in accordance with AUS 702.45 or generally due to those errors.

15.2 This contention, to the extent that it contends a failure to comply with AUS 702.45, depends on whether ASIC can establish that the accounts failed to comply with an accounting standard. We note that none of the contended errors is specifically contended as a breach of an accounting standard. However, sub-contention (c) contends that note 1 to the financial report (which states that the financial report "has been prepared in accordance with Australian Accounting Standards") is incorrect. Although this sub-contention by its terms relates to the incorrectness of note 1, it is tantamount to a contention that the financial report did not comply with accounting standards. We are prepared to consider this in connection with that part of the contention that alleges that Mr Walker should have qualified his opinion under AUS 702.45.

15.3 This contention is also a contention that, because the RVP 2005 Report contained one or more errors contended in the sub-contentions, Mr Walker should have qualified his audit report. This is said to be based on ss307 and 311 of the Act. Section 307 requires an auditor to form an opinion about various matters including (s307(a)(ii)) whether the financial report is in accordance with s297 (true and fair view). Section 311 requires an auditor to report to ASIC if the auditor has reasonable grounds to suspect a significant contravention of the Act (which would

include s307(a)(ii)). We believe that the question for us therefore is whether, in respect of the six matters contended, ASIC has established that the financial report failed to convey a true and fair view for the purposes of s297.

15.4 Sub-contention 11(c)

Note 1 to the 2005 RVP Report refers to "Significant Accounting Policies". The note states that the financial report "has been prepared in accordance with Australian Accounting Standards ...". This is incorrect for the reasons set out herein.

- (a) Note 1 to the 2005 financial report states that the financial report "has been prepared in accordance with Australian Accounting Standards". ASIC contends that this statement is incorrect "for the reasons set out herein". Since no accounting standards are referred to in that paragraph of the SOFAC or at all under contention 11, we take the word "herein" to mean the whole SOFAC. At the very least we agree that the RVP 2005 Report did not comply with AASB 1024 (see contention 13) and AASB 1034 (see contention 14).
- (b) Therefore we are satisfied that this sub-contention has been established.

15.5 Sub-contention 11(d)

Note 1(b) in the 2005 RVP Report states that inventories are measured at the lower of cost and net realisable value. This is untrue. Note 1(c) refers to "Property" (said to be freehold land and buildings) being measured on "fair value basis" by "annual appraisals of the directors". However, the supposed 44 properties were not included within the "Property Plant and Equipment" section of the financial report, but rather under "Inventories".

- (a) Note 1(b) to the financial report states that "inventories are measured at the lower of cost and net realisable value". ASIC contends that this is untrue. Further, note 1(c) to the financial report states that "Each class of property ... is carried at cost or fair value" and "Freehold land and buildings are measured on the fair value basis, It is the policy of (RVP) to have an independent valuation every three years, with annual appraisals being made by the directors". In our view the contents of notes 1(b) and 1(c) in the RVP 2005 Report are difficult to reconcile. Where note 1(b) says inventories (which must mean real estate held for development and resale) are measured "at the lower of cost and net realisable value", note 1(c) says freehold land and buildings (which must be the same as inventory) says "are

measured on the fair value basis". These two statements seem incompatible. We do not believe that a reasonably competent auditor would have signed an unqualified audit opinion on accounts which contained two apparently incompatible notes on such an important matter.

(b) The evidence included the following:

(i) The 2005 RVP Report. The Statement of Financial Position showed (under Current Assets) "Inventories - \$26,320,000 - note 9" and (under Non-current Assets) "Property, plant and equipment - \$2,156,000 - note 10. Note 9 refers to "work in progress - \$26,320,000 and contains a cross-reference to note 15. Note 10 refers to "Freehold Land - at Directors Valuation 30.06.2005 - \$2,156,000" and to "Freehold Land and Buildings - \$2,156,000" and to "Plant and Equipment" as nil. This is all difficult to reconcile, particularly as we were told by Mr Walker that the figure of \$2,156,000 shown in non-current assets represents the plant and equipment located on the freehold properties and should have been included under inventory and that this explains the discrepancy between the inventory figure shown in the RVP 2005 Report and the 2005 inventory figure shown as a comparative figure in the RVP 2006 Report. However that may be, that explanation, together with the treatment of the relevant items, confirm the error in the RVP 2005 Report. We do not believe that a reasonably competent auditor would have signed an unqualified audit opinion on accounts which contained notes so difficult to reconcile and with such an error in relation to assets of such importance.

(ii) A document headed "Inventories and Property (note 9 and 10)" produced to ASIC by RVP in response to a Notice. This document, we were told, lists the company's properties as at 30 June 2005 (43 in number) with a figure against each property and showing a total for those figures of \$28,476,000. At the foot of the document are the following items:

| | |
|-------------------------------|------------|
| "Property Plant and Equipment | 2,156,000 |
| Inventories/Work in Progress | 26,320,000 |
| Total | 28,476,000 |

These are exactly the figures shown in the RVP 2005 Report and the Total is the exact figure for 2005 shown in

the RVP 2006 Report. Mr Walker's evidence was that he had not seen this note before being given a copy by ASIC.

- (iii) A "scrappy" or "scratchy" (Mr Walker's description) note which purports to show most of the properties owned by RVP at 30 June 2005 together with, for each, the name on the title, the name of the lender, the "balance" (we were told this meant the balance owing to the lender) and, in handwriting which Mr Walker said was his, what he told us was the valuation of each property by Glenn Duker (not all properties show a valuation).
 - (iv) The evidence of Glenn Duker that the assets were valued by the directors and carried at those values. This evidence was not contested by Mr Walker.
 - (v) Mr Walker gave evidence that there was another document showing values as at 30 June 2005 which he discussed with Glenn Duker by telephone but that he had not been able to locate the document. Mr Walker stated that the missing document reconciled the values to the balance sheet. We cannot take account of a document we have not seen.
- (c) In our view the "clean" note and the "scrappy" note in (b)(ii) and (iii) above respectively are difficult to reconcile. First, the scrappy note has only 40 properties plus one which is crossed out but which appears in the clean note. Second, most of the properties in the clean note are shown at values significantly higher than the handwritten figures on the scrappy note. Ignoring the properties which are not included in the scrappy note, the total net difference is over \$2.25m which is a significant figure.
- (d) We have reviewed the cost reports at 30 June 2005 included in the papers tendered by Mr Walker. Those cost reports do not cover all the properties but it does appear that in respect of a not insignificant number of properties, the value shown in both the clean and the scrappy notes exceeds the costs shown in the cost reports.
- (e) The evidence establishes that Mr Walker could not reasonably have been satisfied as auditor that the notes to the accounts correctly described how the real estate assets were accounted for.
- (f) In conclusion, we are satisfied that this sub-contention has been established.

15.6 Sub-contention 11(e)

Note 15 to the accounts states that Joint Ventures have been accounted for with only the entity's entitlements being brought to account in the statement of financial position. In each case when the property is sold, the entity's entitlements and the joint venturer's entitlements are brought to account. In the case of unrealised profits, the entitlements of the joint venturers have not been brought to account in the reserves of the entity but have been brought to account as a non-current liability. This is untrue as set out in contention 12 below.

(a) Note 15 in the RVP 2005 Report reads as follows:

"15 Joint Ventures

These have been accounted for with only the entities entitlements being brought to account in the statement of financial position. In each case when the property is sold the entities entitlements and the Joint Venturers entitlements are brought to account. In the case of unrealised profits the entitlements of the Joint Venturers have not been brought to account in the reserves of the entity but have been brought to account as a non-current liability."

The SOFAC quotes note 15 and then states "This is untrue as set out in Contention 12 below". When dealing with contention 12 the SOFAC states that Mr Walker's failure to express a qualified audit opinion "is aggravated by Note 15 of the Financial Report mentioned above". This seems rather circular. We have decided to deal with this question here and not to deal with it again under contention 12 where it is not clear (and we are not satisfied) that it is part of the contention.

(b) The evidence in connection with this sub-contention appears to be:

(i) Note 15 itself.

(ii) The "scrappy" note. There is no indication in this document as to whether it recognises any interest of any third party in any property except that:

A. Against each property is shown the name on the relevant title. This could be seen as some indication that the title holder had some "interest" in the property.

- B. Against one property there is a handwritten note "95% RVP". This suggests someone else has an interest of 5% but the relevant joint venture agreement indicates that is an employee of RVP, not the outside investor.
- (iii) The Property Profile. Glenn Duker could not recall the document or how it came into existence. The document has a summary in the front and then details of several properties. It also shows the "interest" of RVP in each property - only 4 out of 25 show 100%. The property referred to in (ii) B above is shown at a value of \$900,000. In the scrappy note it is shown at \$1,000,000 and in the clean note at \$1,105,000.
- (iv) The "clean" note which Mr Walker said he had never seen before but it does add up to the right numbers for the 2005 financial report.
- (v) A document tendered by Mr Walker which Mr Walker said relates to the 2005 financial report - the date written on it is illegible. That shows percentages and values - (The property referred to in (ii)B above is shown at \$2,100,000) although it shows 17 out of 31 at 100%.
- (vi) A document tendered by Mr Walker which shows Account 934 in the Trial Balance for 2005 at \$837,500 and for 2006 at \$1,360,226. The account is described as "Provision for Earnings to Joint Venture Partners on Agreements". Mr Walker says that this shows that the Joint Venturers' entitlements have been brought to account as a non-current liability as described in note 15.
- (c) It has not been possible for us on the evidence available to us to reach a concluded view as to precisely how the properties and the possible interests of third parties in those properties have been accounted for. ASIC described the lack of material to show how the accounting was done as "a black hole". There was no doubt that there were insufficient documents available to answer the question with any assurance. As far as Mr Walker's oral evidence was concerned, there was also a good deal of uncertainty. The clearest statement appeared to be the following exchange (which follows Mr Walker's statement at that point that the properties were carried at the lower of cost and net realisable value):

"Q. So you are bringing in a liability to the partner and you are actually increasing the value of your

assets by their share of the unrealised profit. But you are not accounting for any of RVP's unrealised profit? ...

A. *That's exactly right."*

This seems consistent with this statement Mr Walker made in his evidence:

"We would sit down and discuss the various percentages of the various supposed joint ventures, partnerships, and then we would try and work out – that's Glenn and myself – a profit and then we would make a provision for it in the accounts."

While there is not enough documentary evidence to establish this, this result is not inconsistent with the trial balance which shows an entry described in para 15.6(b)(vi) above. The net result of that (assuming it to be the case) would be that the properties were accounted for at the lower of cost and net realisable value except for those which (on valuation or directors' appraisal) were showing a book or unrealised profit and in which an outside party had an equity interest. Properties in that category had an amount added to their book value equal to the share of the outside party in that unrealised profit and that amount was also included as a non-current liability. On that basis we have the following comments:

- (i) The first sentence of the note seems incorrect because the full value of the land is brought to account (whether cost or net realisable value). There was no evidence (including from Mr Walker) to suggest that the book values were reduced to reflect the interests of outside parties.
- (ii) The second and third sentences seem wrong because it has not been established that all outside parties had enforceable equity interests in the land. Mr Walker himself was adamant that the relationships between RVP and outside parties were not joint ventures.
- (iii) In any event, in the view which Mr Walker said he held strongly at the time that the relationships were not joint ventures, the note was incorrect in referring to joint ventures and joint venturers at all. We have also concluded (in relation to contention 12 for the reasons – not here relevant – set out in our separate decision referred to in para 1.3 above) that we are not satisfied that the relationships which we have seen any evidence of were joint ventures. At the very least, we believe that a

reasonably competent auditor in these circumstances would not have given an unqualified audit opinion on a financial report with these references to "joint ventures".

- (d) Our conclusion is that the evidence on balance establishes that note 15 was not true. The clean note in particular, which is the only document that contains figures which correspond to the RVP 2005 Report, shows values so far removed from and above purchase prices shown in various other documents as to be quite inconsistent with note 15. Not only that but the clean note does not seem on its figures to take any account of the "interest" of any outside party.
- (e) Therefore we are satisfied that this sub-contention has been established.

15.7 The failure of the financial report to comply with accounting standards (AUS 702.45) (see 11(c)) and the failure of the financial report to give a true and fair view (AUS 702.49) because of the manifest errors (see 11(d) and (e)) mean in our view that Mr Walker should have qualified his audit report. We believe that in failing to do so, he failed to perform his duty as an auditor.

15.8 We have concluded that we are satisfied that contention 11 has been established.

16. Contention 13

16.1 The Contention

Mr Walker failed to qualify his audit opinion in respect of the RVP 2005 Report notwithstanding that the Report failed to comply with accounting standard AASB 1024 by failing to consolidate the accounts of RVP Group P1 Limited, a wholly owned subsidiary of RVP.

16.2 Note 17 to the financial statements in the RVP 2005 Financial Report relevantly states:

"RVP Group P1 Pty Ltd being owned 100% by RVP Group Ltd does trade and is the registered proprietor of the Horizon site at 150 – 152 Mein Street, Scarborough, Qld. RVP Group P1 Pty Ltd does trade and the figures have not been consolidated into these accounts because the financial reports for RVP Group P1 Pty Ltd for 2005 have not as yet been prepared."

16.3 ASIC contends that the financial statements in the RVP 2005 Report did not comply with AASB 1024 by reason of the failure to consolidate the accounts of P1 and therefore that Mr Walker should have qualified his audit report pursuant to AUS 702.45.

- 16.4 In his Response, Mr Walker stated that "the figures in the balance sheet include the cost of 150 - 152 Mein Street, see trial balance and also the liability see trial balance."
- 16.5 Mr Walker in effect repeated this in his oral evidence, however he agreed that in this regard the RVP 2005 Report did not comply with the accounting standard on consolidation. In his oral evidence, Mr Walker also reiterated that the assets and liabilities were "consolidated in the figures" of the RVP 2005 Report. Mr Walker gave further evidence that since the figures were all correct and included in the trial balance, and therefore in the final accounts, note 17 was wrong to say that the figures were not consolidated in fact that was "a typing error". He also agreed that note 17 was "inconsistent with the facts" in saying that the reason why the figures had not been consolidated was that "the financial reports for RPV Group P1 Pty Ltd for 2005 (had) not as yet been prepared".
- 16.6 Mr Walker had no explanation to offer as to why he did not qualify his audit opinion by reason of the failure of the accounts to comply with AASB 1024 and by reason of the incorrectness of the accounts in including the assets and liabilities of RVP P1 in the unconsolidated accounts.
- 16.7 We have concluded that the RVP 2005 Report did not consolidate the accounts of P1 which represented a failure to comply with AASB 1024. We have also concluded that Mr Walker should have qualified his opinion under AUS 702.45 by reason of that failure and by reason of the inclusion of the assets and liabilities of P1 in the unconsolidated accounts of RVP.
- 16.8 We have concluded that we are satisfied that contention 13 has been established.

17. Contention 14

17.1 The Contention

Mr Walker failed to qualify his audit opinion in respect of the RVP 2005 Report notwithstanding that the Report failed to comply with accounting standard AASB 1034 by failing to distinguish the amount paid to Mr Walker representing remuneration for the conduct of the audit and for other non-audit services.

- 17.2 The RVP 2005 Report contained the following item in the Statement of Financial Performance for 2005:

Auditors Remuneration \$6,000

- 17.3 Paragraph 5.3(a) of AASB 1034 requires disclosure in the financial report of a company of the amount of "remuneration of the auditor... for an audit or review of the financial reports" and the amount of "remuneration of the auditor... for other services".
- 17.4 In his Response Mr Walker disputed this contention and stated that the amount which had been termed "accounting and secretarial" should have been termed "audit fees" and that the amount of fees he earned from RVP Group for non-audit services "would have been negligible". However, in his oral evidence, Mr Walker agreed with the contention. He said that the division of the auditor's remuneration was basically arbitrary "... it was basically my best guess of what it had cost to do the audit". Mr Walker's evidence was that his system did not generate information in a form which permitted him to make the necessary distinctions. Finally, his evidence was that he was aware of the relevant provision in the accounting standard and of the consequential requirement for him to qualify his audit opinion. His only explanation offered was "basically it was missed on my part, ... and that's all there is to it".
- 17.5 For an auditor to "miss" a matter which must come up in virtually every audit which he did as a sole practitioner (auditor remuneration), is a serious admission for an auditor. To rely on a system in his office which simply could not generate information to enable the client to comply with the relevant accounting standard does not mitigate the situation but rather exacerbates it.
- 17.6 We have concluded that we are satisfied that contention 14 has been established.

18. Contention 15

18.1 The Contention

In various specific ways (set out below) the RVP 2006 Report contained a number of errors and Mr Walker's audit opinion should have been qualified in accordance with AUS 702.45 or generally due to those errors

- 18.2 This contention relates to the RVP 2006 Report and is almost identical to contention 11 except that it omits sub-contention 11(c) which relates to breaches in accounting standards. The only ones relevantly alleged in the SOFAC are in contentions 13 and 14 both of which relate only to the RVP 2005 Audit.

18.3 Sub-contention 15(c)

Note 1 to the financial statements refers to the "Accounting Policies". The note states that inventories are measured at the lower of cost and

net realisable value. This is untrue. Inventories included the properties allegedly owned by RVP which were based upon updated valuations made by the Directors, including anticipated profit and capital appreciation. This is borne out by the following note "Property" being measured at "fair value". However, the supposed 44 properties were not included with the "Property Plant and Equipment" section of the financial report but rather under "Inventories".

This is not quite the same as sub-contention 11(d). For 2006, note 1 states that "inventories are measured at the lower of cost or (net) realizable value". ASIC contends this is untrue. We observe that the item "Inventories" in the balance sheet refers to note 7 which itself refers to note 15 which is not relevant to inventories. We observe that note 16 indicates a change in accounting policies for inventories but which does not seem to be relevant to real estate holdings. The assets of RVP were really nothing other than real estate. Glenn Duker's evidence seems to support the same result on this aspect as in 2005, that is that values of real estate assets were based on updated appraisals made by the directors with periodic valuations. Mr Walker's evidence was that in addition to the scrappy list there was an additional document on which he had written other properties (with values) following his discussions with Glenn Duker. However, we cannot take into account a document we have not seen. We are satisfied that this sub-contention has been established.

18.4 Sub-contention 15(d)

Note 13 to the accounts [Joint Ventures] have been accounted for with only the entity's entitlements being brought to account in the statement of financial position. In each case when the property is sold, the entity's entitlements and the joint venturer's entitlements are brought to account. In the case of unrealised profits, the entitlements of the Joint Venturers have not been brought to account in the reserves of the entity but have been brought to account as a non-current liability. This is untrue for the same reasons dealt with at length in respect of the 2005 RVP financial Reports.

This is the same as sub-contention 11(e) except that it relates to 2006. We are satisfied for the same reasons that this sub-contention has been established.

18.5 The failure of the RVP 2006 Report to give a true and fair view (AUS 702.49) because of the manifest errors means that Mr Walker should have qualified his audit report and contention 15 is therefore established.

18.6 We have concluded that we are satisfied that contention 15 has been established.

19. Determination

19.1 On 10 October 2008, we issued a determination (**Determination**) informing the parties that, in light of our findings (set out above), we were satisfied that Mr Walker had failed within the meaning of s1292(1)(d)(i) to carry out or perform adequately and properly the duties of an auditor. Our Determination contained our conclusions and our reasons relating to the contentions and sub-contentions which we were satisfied had been established, all of which are set out in this Decision – (see sections 8 – 18 above).

19.2 At that stage we expressly made no order. In view of our Determination, however, it became necessary for us to decide whether we would make an order. At a hearing of the Panel on 17 November 2008, we heard submissions from the parties relating to what decisions we should make in relation to sanction, costs and publicity.

20. Preliminary Remarks on Sanctions

20.1 The principle which should guide us in making any decision is the protection of the public because the principal purpose of these proceedings is protective rather than punitive. The public has an interest in knowing that registered company auditors have a clear understanding that breaches of duty will attract disciplinary action. The consequent encouragement of the relevant practitioner, and of practitioners generally, diligently to observe all relevant professional standards and responsibilities, is a further public protection consideration.

20.2 In *Re Wolstencroft and CALDB* (1998) 54 ALD 773, the Administrative Appeals Tribunal (AAT) said (at para 57) that its decision on penalty should be guided by what is in the public interest in two senses:

"First, there is a public interest in ensuring that the individual follows the appropriate course of action in the future. Second, there is the public interest in ensuring that the public can be secure, or as secure as is reasonably possible, in the knowledge that those who are entrusted with the auditing of accounts can be properly entrusted with that task."

20.3 In *Re Young and CALDB* (2000) 34 ACSR 425 the AAT said (at para 80) that the jurisdiction created by s1292 is of a protective nature and:

"it seems that the protection of the public should be the principal determinant of a proper order but that this may be achieved by an

order affecting the registration of the person in question. In other words, deterrence is an element of public protection."

- 20.4** Thus, although any order we make does not have a punitive purpose, there is nevertheless an underlying motive of personal deterrence. We believe that this element of deterrence is also inherent in what the AAT has called "the second aspect of the public interest" namely "that the community would be aware that action is taken against auditors who err and other auditors would be put on notice that severe consequences follow for those who err". (*Re Wolstencroft* at para 58).
- 20.5** We also need to be guided by the principle that a disciplinary tribunal (such as the Board) should avoid being as concerned with the personal impact upon the practitioner as is, for example, a court when sentencing an offender. Thus, whatever the personal circumstances of the relevant practitioner, our prime concern still has to be the protection of the public. Any personal hardship to the practitioner is a matter to be weighed in the balance against the need to protect the public from further breaches of duty by the practitioner and against the overall public interest considerations.
- 20.6** The characterisation of these proceedings before the Board as predominantly protective might appear to be less clear cut in the light of *Rich v ASIC* (2004) HCA 42 in which the distinction between "punitive" and "protective" is described by the majority of the High Court as, at best, "elusive" (at para 32). However, that description should, we believe, be understood in its context that the distinction finds "no sure footing in the course of decisions concerning the application of the privilege against exposure to penalties" (at para 33). Thus in (*Albarran v CALDB; Gould v Magarey* (2007) 234 ALR 618) the majority of the High Court noted (at para 9) that the citation by the appellants of the *Rich* decision "does not assist them":

"That case concerned a different field of disclosure, namely, the application of the body of law concerning privileges against penalties and forfeitures to court proceedings under ss206C and 206E of the Corporations Act for disqualification of directors, in the course of which the directors were ordered to give discovery of documents."

We therefore do not understand the decision in *Rich* as denying a distinction between "punitive" and "protective" in characterising the function of a disciplinary tribunal such as the Board. On the basis of the authorities we have cited, we see the principal goal of proceedings like these to be public protection rather than punishment.

- 20.7** In summary, we believe that in exercising our powers under s1292:
- (a) Our prime concern has to be the protection of the public;

- (b) The protection of the public includes the maintenance of a system under which the public can be confident that the relevant practitioner and all other practitioners will know that breaches of duty will be appropriately dealt with;
- (c) The personal circumstances of the practitioner concerned are to be given limited consideration.

21. Sanction

21.1 As to the question of whether an order should be made at all, we note that we are not obliged to act even when we have found that any contention has been established. The contentions which have been established relate to failures by Mr Walker which are sufficiently serious that it would not be in the public interest to make no order in this case. We note that Mr Walker has not made a submission that we should make no order. Accordingly we have decided that an order should be made.

21.2 Our role has been explained by the Full Court of the Federal Court in *Albarran v CALDB; Gould v Magarey* (2006) 151 FCR 466 where the Court observed (at para 26):

"Plainly, Part 9.2 of the Corporations Act is a statutory regime designed to limit those who are entitled to be, and hold themselves out as being, auditors and liquidators, to people who have the required professional skill and competence and who are otherwise fit and proper persons to occupy such positions. To call it a licensing regime is not to affix a label to the words of Parliament; rather, it is to describe, with tolerable accuracy, the nature of the provisions in language adequate to describe certain types of governmental power. Parliament has given to (ASIC) the task of attending to registration of auditors and liquidators. It has given to the Board the task of deciding whether a person who has registration as an auditor or liquidator should have his or her registration cancelled or suspended. The circumstances in which this may occur for a liquidator (see 1292(2)) reflect the underlying necessary qualities for registration: skill, competence and being otherwise a fit and proper person to hold the position."

and (at para 42):

"The satisfaction of the Board that the liquidator has failed in his or her duties in the past enlivens the power of the Board to deal with the registration. In the exercise of such power, it will be a matter for the Board to take into account, in accordance with the structure, terms and purpose of the Corporations Act, such considerations as it considers to be relevant to that course of action."

We know of no reason why these remarks would not apply equally to an auditor as to a liquidator.

- 21.3** The question of what order we should decide to make is to be answered by reference to the merits of the individual case, although we accept that in a general sense it is desirable that there be a consistency of approach by the Board in the application of sanctions under the Corporations Act. There are definite limits on the value of reference to other cases since each turns on its own facts. There can be a range of factors which mean that even though the words used to describe other cases may indicate that the nature of the contentions was similar, nevertheless the actual matters established may be rather different. Such factors can include not only the objective circumstances of the particular case but also less tangible matters such as a respondent's recognition of breaches of duty, attitude to compliance with professional standards generally and willingness to improve.
- 21.4** We believe that one of the principal factors relevant to our consideration of a sanction is the seriousness of the matters that have been found to be established. In our Decision, we have found that several contentions were established which related to the rules about independence and conflicts of interest and we have found several contentions and sub-contentions were established which related to basic audit requirements including gathering sufficient appropriate audit evidence and the need for proper documentation. These are all areas of fundamental importance for an auditor properly discharging their duty and observing professional standards of auditing. We regard all of these failures as serious, particularly for a practitioner of the seniority and experience of Mr Walker.
- 21.5** We agree with ASIC's submission that auditors perform a vital role in the administration of corporate affairs and that the financial and wider communities rely on the reports of auditors and are entitled to assume that auditors undertake their statutory functions with adequate skill and care and in accordance with applicable auditing standards. As the Explanatory Memorandum for the CLERP 9 legislation pointed out, auditor independence is fundamental to the credibility and reliability of auditors' reports and the sound operation of Australia's financial markets is dependent upon parties such as auditors providing information or services to investors free from any bias, undue influence or conflict of interest. These goals are intended to be achieved by a combination of legislation (see Div 3 of Part 2M.4 of the Act) and rules laid down in the professional codes of conduct. Similarly the standards relating to audit evidence and documentation are also key requirements supporting the credibility and reliability of auditors' reports. If an audit opinion is not supported by sufficient appropriate audit evidence or the

audit work is not sufficiently documented in the audit working papers, the value of the audit opinion may be significantly reduced.

- 21.6** ASIC submits that our findings in this case justify the conclusion that Mr Walker is an incompetent auditor who has demonstrated ignorance of or indifference to important statutory requirements and a lack of understanding of or indifference to rudimentary professional requirements. In the circumstances, ASIC submits that the protection of the public requires the cancellation of Mr Walker's registration.
- 21.7** The seriousness of Mr Walker's failures is exacerbated by the fact that he has not satisfied us that he fully understands or acknowledges the failures we have found in our Determination. He has not sought to improve his understanding by studying the relevant statutory provisions or professional standards, nor is there any evidence that he has seen the error of his ways and has formulated a plan for immediate action for rectification of his deficiencies. At the sanctions hearing, (after Mr Walker had received a copy of our Determination) Mr Walker made the following submission:

"The fact is that ASIC have never actually attacked the figures and said that these figures are incorrect. As an auditor, ASIC has, I would contend, probably picked on the fact that perhaps I haven't dotted my i's and crossed my t's, but as a general thrust I think the only matter regarding the figures that ASIC raised was when I put inventory as one figure and work in progress as another, or something like that. I think there was \$2.5 million involved, but I corrected it in the following year in 2006."

As this passage illustrates, Mr Walker gave no indication at the sanctions hearing that he understood the seriousness of the contentions which were established – on the contrary, he categorises the matters complained of by ASIC as "dotting i's and crossing t's".

- 21.8** There was no audit plan in evidence for any of the three audits in question and the audit working papers in each case were quite inadequate or, in the case of the RVP 2005 Audit, non-existent. In our Determination (and see para 14.3(i) above) in connection with the Crane 2006 Audit, we expressed concern about Mr Walker's submission that there was "a full set of working papers" because that appeared to indicate a mistaken view of what is required in an adequate set of audit working papers.
- 21.9** In our Determination (and see paras 8.2(f) and 9.9 above), we also expressed concern about what appeared to us to be the extent of Mr Walker's lack of understanding about the nature of the independence required of an auditor and the ways in which conflicts of interest can arise for an auditor and must be dealt with. It seems to us that Mr

Walker has learnt nothing from our Determination – he still has not studied the relevant statutory provisions, nor has he undertaken any other research or study, particularly in relation to the general requirement of independence. He said at the sanctions hearing that "the independence problem has been solved" and explained that by reference to the fact that RVP has gone into administration (in June 2008) and by reference to his having sold his practice. He did not seem to understand that in our Determination we expressed concern about his lack of understanding of the general concept of independence and that our concern was not just in the context of his acting as auditor of RVP.

21.10 Mr Walker has said nothing in the final hearing to cause us to reconsider any of the views we have expressed about the state of his understanding in these important areas.

21.11 When asked for his comments on why his registration should not be cancelled, he replied:

"I would probably only say that had ASIC sat down earlier in the piece and perhaps pointed out these deficiencies in 2005 and perhaps achieved a more educational role, then the problems that occurred in 2006 would not have occurred."

We have seen no evidence to support any suggestion that any action or lack of action by ASIC or its officers in connection with the investigation or these proceedings could legitimately be subject to criticism. A registered auditor, let alone one with the seniority of Mr Walker should not need ASIC to give guidance but should be capable of understanding and observing all professional duties by themselves.

21.12 In summary, we are satisfied that Mr Walker does not have an adequate understanding of or is indifferent to important standards of professional conduct relating, in particular, to independence and conflict of interests. We are also satisfied that he does not have an adequate understanding of what constitutes sufficient appropriate audit evidence or of the need for or the nature of working papers which are sufficiently complete and detailed to provide an understanding of the audit. We believe Mr Walker is not a competent auditor and he should not be allowed to continue auditing.

21.13 Mr Walker stated that he "probably would practise possibly for only another four years, if that." He submitted, in effect, that he could be suspended for six months (during which time he would "sit with" a registered auditor and see how things were done correctly) followed by a further six months during which his audit work would be subject to a peer review. We do not believe that such a proposal would be likely to resolve the problems which we see in this case. In fact we are not

satisfied that there could be any proposal involving only a suspension which could resolve those problems. We are not satisfied that there is any realistic possibility that the deficiencies which we have found in Mr Walker's understanding of his professional duties and responsibilities can be rectified (with the result that he could resume practice as an auditor) within a suitable time frame. In such circumstances, we believe that we have no alternative but to cancel Mr Walker's registration as an auditor.

22. Decision

For the reasons set out above, we have decided to exercise our powers under s1292 of the Corporations Act and we order that the registration of Allan Gregory Walker as an auditor be cancelled.

23. Notice

Formal notice of this Decision will be given to Mr Walker under section 1292(1)(a) of the Act and a copy of that notice will be lodged with ASIC under s1296(1)(b).

Donald Magarey
Chairman of the Panel

22 December 2008
Melbourne

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| Solicitor for the Applicant | Mr S Miriklis |
| Counsel for the Applicant | Mr N Hopkins Mr R Strong |
| The Respondent appeared in person | |