

**IN THE MATTER OF PROPERTY TUITION PTY LTD
(ACN 129 421 281)**

Proceeding No: VID407/2015

Australian Securities and Investments Commission
Applicant

Jamie Neville McIntyre First Respondent

Dennis McIntyre Second Respondent

**Archery Road Pty Ltd
(ACN 162 921 735)** Third Respondent

**Secret Valley Estate Pty Ltd
(ACN 602 817 532)** Fourth Respondent

**Kingsway South Holdings Pty Ltd
(ACN 159 230 976)** Fifth Respondent

**Bendigo Vineyard Estate Pty Ltd
(ACN 600 088 211)** Sixth Respondent

**Melbourne Tarniet Estate Pty Ltd
(ACN 603 945 393)** Seventh Respondent

**Property Tuition Pty Ltd
(ACN 129 421 281)** Eighth Respondent

**Education Holdings Pty Ltd
(ACN 129 551 917)** Ninth Respondent

**Sourcing Property Pty Ltd
(ACN 602 474 779)** Tenth Respondent

Fifth Respondent's Report

**Kingsway South Holdings Pty Ltd
(Provisional Liquidators Appointed)
15 December 2015**



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Definitions

21 st Century Group	Education Holdings Pty Ltd, Property Tuition Pty Ltd, Archery Road Pty Ltd, Secret Valley Estate Pty Ltd, Kingsway South Holdings Pty Ltd, Bendigo Vineyard Estate Pty Ltd, Melbourne Tarniet Estate Pty Ltd, Sourcing Property Pty Ltd and other entities controlled by Dennis and / or Jamie McIntyre
21 st Century Media Holdings Pty Ltd	Media Holdings
805 ARPL	805 Archer Road Pty Ltd (In Liquidation) (Subject to Deed of Company Arrangement)
ARITA	Australian Restructuring Insolvency and Turnaround Association
ARPL	Archery Road Pty Ltd
ASIC	The Australian Securities & Investments Commission
ATO	Australian Taxation Office
Bendigo property or Bendigo Vineyard Estate and Resort	51 St Andrews Road, Maiden Gully
Bendigo Scheme	Bendigo Vineyard Estate Scheme
Bendigo Vineyard	Bendigo Vineyard Estate Pty Ltd
Botanica	805 Archer Road, Kialla, Victoria
Broadview	Broadview Pinkett Pty Ltd
Corporate Respondents	Education Holdings Pty Ltd, Property Tuition Pty Ltd, Archery Road Pty Ltd, Secret Valley Estate Pty Ltd, Kingsway South Holdings Pty Ltd, Bendigo Vineyard Estate Pty Ltd, Melbourne Tarniet Estate Pty Ltd, Sourcing Property Pty Ltd
Date of Appointment	7 October 2015
Deloitte	Deloitte Touche Tohmatsu
Developments	805 Archer Road, Kialla, Victoria, 1955 Old Sydney Road, Bylands, Victoria, 124 Booth Road, Brookhill, Queensland, 51 St Andrews Road, Maiden Gully, Victoria and 1491 Dohertys Road, Mount Cottrell, Victoria
Development Companies	Archery Road Pty Ltd, Secret Valley Estate Pty Ltd, Kingsway South Holdings Pty Ltd, Bendigo Vineyard Estate Pty Ltd and Melbourne Tarniet Estate Pty Ltd
DIRRI	Declaration of Independence and Relevant Relationships and Indemnities
DOCA	Deed of Company Arrangement
Education Holdings	Education Holdings Pty Ltd, formerly 21 st Century Education Pty Ltd
ERV	Estimated Realisable Value
FME	Farm Management Enterprises Pty Ltd
Henry River	Henry River Pty Ltd
IOC3	Isle of Capri 3 Pty Ltd
Kialla property	805 Archer Road, Kialla
KS Holdings	Kingsway South Holdings Pty Ltd
LRA	Lot Reservation Agreement
LRD	Lot Reservation Deed
Management	Management of the Company
McIntyre Controlled Entities	Broadview Pinkett Pty Ltd, Pinnacle Event Management Pty Ltd, Financial Educators Association Pty Ltd, Salarium Services Pty Ltd, 21st Century Media Holdings Pty Ltd, Isle of Capri 2 Pty Ltd, Isle of Capri 3 Pty Ltd, Property Direct (International) Pty Ltd, GC

	Princess Boatshare Pty Ltd, Farm Management Enterprise Pty Ltd, Siddha Holdings Pty Ltd and Phoenix Investment Holdings LLC
Melbourne Grove Estate or Mt Cottrell Property	1491 Dohertys Road, Mount Cottrell, Victoria
MGE Scheme	Melbourne Grove Estate Scheme
MIS	Managed Investment Scheme
NAB	National Australia Bank Ltd
Oak Valley Lakes Estate and Resort	124 Booth Road, Brookhill, Queensland
Order	Order made by Middleton J. on 7 October 2015 in the Federal Court of Australia, Victoria General Division No. VID 407/2015
OVE Scheme	Oak Valley Estate Scheme
Pinnacle	Pinnacle Event Management Pty Ltd
POD	Proof of Debt
PPSA	Personal Properties Security Act
PPSR	Personal Property Securities Register
Proceeding	Federal Court of Australia, Victoria General Division No. VID 407/2015 between ASIC and Jamie Neville McIntyre &OR's commenced by Originating Process dated 3 August 2015
PDI	Property Direct (International) Pty Ltd
Provisional Liquidators	Simon Wallace Smith and Robert Scott Woods appointed pursuant to s472(2) of the Act as joint and several provisional liquidators of each of the Corporate Respondents pursuant to the Orders
PSA	Property Sourcing Agreement
PT	Property Tuition Pty Ltd formerly 21 st Century Property Pty Ltd
RATA	Report as to Affairs
Salarium Services	Salarium Services Pty Ltd
Schemes	Botanica, Secret Valley Estate, Oak Valley Lakes Estate and Resort, Bendigo Vineyard Estate and Resort and Melbourne Grove Estate
Secret Valley	Secret Valley Estate Pty Ltd
Secret Valley Estate or Wallan Property	1955 Old Sydney Road, Bylands, Victoria
Sourcing Property	Sourcing Property Pty Ltd
SV Scheme	Secret Valley Estate Scheme
Tarniet	Melbourne Tarniet Estate Pty Ltd
The Act	Corporations Act 2001
The Court	The Federal Court of Australia or any of the state Supreme Courts
The Regulations	Corporations Regulations 2001
Townsville Property	124 Booth Road, Brookhill, Queensland
WBC	Westpac Banking Corporation Ltd
www	What Working Women Want
Xero	Xero Accounting Software Program

Kingsway South Holdings Pty Ltd

The report should be read in conjunction with the Summary Report.

KS Holdings was incorporated on 27 June 2012. Dennis Hugh McIntyre is the sole Director and Secretary of KS Holdings. The sole shareholder of KS Holdings is Henry River. We note that Jamie McIntyre is the sole shareholder of Henry River.

Since October 2014, KS Holdings registered office and principal place of business was level 8, 96-100 Albert Road, South Melbourne, Victoria. Prior to this it was level 9, 222 Kings Way, South Melbourne, Victoria.

A copy of the historical company extract maintained by the ASIC is attached as **annexure KS-1**.

1. Company Background

KS Holdings was incorporated to purchase a single floor in an office building located at 222 Kings Way, South Melbourne, Victoria (“Kings Way property”). The Kings Way property was purchased by KS Holdings in March 2012¹ for \$930,000, plus GST. We note that KS Holdings, the Corporate Respondents and the 21st Century Group operated from the Kings Way property before moving to the Albert Road premises.

The NAB held a first registered mortgage over the Kings Way property and a registered PPSR security interest over KS Holdings.

The Kings Way property was sold by KS Holdings in September 2014 for \$950,000, with settlement taking place on or around 22 September 2014. NAB received \$594,603 in repayment of its mortgage. NAB has confirmed that no funds remain outstanding under the mortgage and / or any other facility. We note that our investigations have revealed following settlement and discharge of the NAB mortgage and other outgoings, from the surplus proceeds of sale an amount of \$300,000 was transferred to Broadview on 25 September 2014. This payment was classified as a loan to Broadview in the KS Holdings Xero accounts. This is discussed in further detail later in this report.

We note that following sale of the Kings Way property, it was intended that KS Holdings would purchase and develop the Townsville property. The development was referred to as Oak Valley Estate (“OVE”).

Our investigations have not revealed any other trading activities. We note that KS Holdings did not employ any staff.

1.1 Sale of lots in the Townsville property

In late 2014, PT commenced promotion of the sale of lots in the Townsville property on behalf of KS Holdings.

As outlined in the Summary Report, the sale of these lots was promoted as follows:

- Contacting persons listed on the database of 21st Century Group².

¹ We note that the initial purchaser of the Kings Way Property was the Isle of Capri 3 Pty Ltd and upon incorporation KS Holdings became the nominated purchaser.

² According to the affidavit of Jamie McIntyre, there are over 250,000 people on the database. We were advised that the database was owned by the McIntyre Family Trust and licenced to various 21st Century companies by a licence agreement. We have not been provided with the licence agreement as evidence of same.

- Through the website “www.landbanking.com.au” (the “Land Banking Website”) that promoted the Schemes and multiple other websites which redirected internet traffic to the Land Banking Website;
- Events such as cocktail parties, information nights and day trips;
- Contacting potential investors through publications; and
- Contacting potential investors through social media such as Facebook.

PT issued a marketing and due diligence kit to prospective investors regarding the opportunity to purchase a lot in the unregistered plan of subdivision of the Townsville property (“concept plan”).

Due to the Queensland Land Sales Act the way investors obtained their lot in the unregistered subdivision was different from the other proposed developments in Victoria. This is discussed further below.

A copy of the due diligence kit and marketing brochure are attached as **annexures KS-2** and **annexure KS-3** respectively.

According to the due diligence kit, the OVE Scheme would comprise approximately 1,000 to 1,500 lots and would provide a beach style setting with white sand and palm trees. It would be a 20 year project with an estimated value of \$600m.

Investors were marketed the opportunity to reserve a lot on the OVE concept plan by payment of a lot reservation fee. By virtue of reserving a lot and paying a reservation fee, investors were granted an option to purchase the lot for a pre-agreed option price sometime in the future in the event that development approval of the plan of subdivision in relation to the Townsville property was obtained.

Investors entered into a Lot Reservation Deed (“LRD”) with KS Holdings, as the developer of the Townsville property. According to the terms of the LRD, KS Holdings would reserve the lot for the investor and develop the Townsville property in accordance with the concept plan. The price recorded in the LRD was the price for the investor to purchase the lot in the event that development approval was obtained. Clause 5.3 of the LRD however provided that investors would have no liability to pay any money under the LRD. The KS Holdings LRD is attached as **annexure KS-4**.

Investors also signed a Property Sourcing Agreement (“PSA”) with Sourcing Property Pty Ltd (“Sourcing Property”). Dennis McIntyre is the sole director of Sourcing Property. Our investigations have revealed that investors were required to sign the PSA. A copy of the PSA is attached as **annexure KS-5**.

The PSA provided the following:

- Investors would become members of Sourcing Property (“investors”);
- Investors would be entitled to acquire an interest in a lot in land development (“investment opportunity”) sourced by Sourcing Property by payment of a project sourcing fee (“sourcing fee”);
- In the event that the investment opportunity did not proceed within 20 years, the investor would have **45 days** to request a refund of the project sourcing fee;

- If investors did not exercise their right to a refund within the 45 days then their investment would roll over for a further 5 year period; and
- If approval was not obtained following the expiration of the additional 5 year period, the PSA would terminate and “no monies paid by the member pursuant to this agreement shall be refundable”³

The PSA also provided members with a charging right over the assets of Sourcing Property for all monies that are or may become due and payable. This right was enforceable if Sourcing Property defaulted under the PSA. Under the LRD however, there was no provision for any refund payable to investors and as outlined above, no monies were actually payable by investors pursuant to same.

We note that we have not identified any assets of Sourcing Property. Furthermore, on the basis of our interview with both Jamie and Dennis McIntyre we consider that Sourcing Property was never intended to own assets. Accordingly, we do not consider there to be any value in the charging rights given to investors who paid funds to reserve a lot in the Townsville property.

We note that at the time of marketing and selling these lots, KS Holdings did not own the Townsville property. This is discussed in further detail below.

By virtue of ASIC filing winding up proceedings, Sourcing Property has defaulted under the PSA⁴ and accordingly investors have enforceable and registrable charging rights over the assets of Sourcing Property in relation to all monies due and payable to them. As outlined above however, members were only entitled to a refund if, following the expiration of the 20 year period for development approval, they requested same within 45 days⁵.

According to the marketing material issued to investors, OVE was estimated to be a 20 year project. We note however that clause 6 of the LRD provided that it would terminate after a period of 3 years from the date of signing, if not terminated earlier. The LRD required the land to be subdivided within 3 years from the Commencement Date (the PSA requires that the seller has 18 months to provide the buyer with a transfer for the subdivided lot, which is capable of registration). The PSA is for a term of 20 years (and can be extended). The marketing material for OVE also provides for a period of 20 years. The fact that the LRD only provides for a term of 3 years is inconsistent. We consider the marketing material to be both misleading and deceptive in this regard.

Following our appointment, we made enquiries with the Townsville City Council (“Council”) in relation to the Townsville property and the likelihood of rezoning it as residential. The Council has confirmed its position⁶ in relation to the property, as follows:

- Townsville property is in a dam catchment area;
- There is 30-40 years of land supply in Townsville outside the dam catchment area; and
- Council is not supporting any further rural residential development within the dam catchment area.

We note that Council had advised KS Holdings and / or its advisors of this position in or around October 2014.

A copy of the correspondence received from the Council is attached as **annexure KS-6**.

³ Clause 4.1(c) of the Property Sourcing Agreement

⁴ Clause 11.2(d) of the Property Sourcing Agreement

⁵ Clause 4.1(a) of the Property Sourcing Agreement

⁶ As outlined in paragraph 91 of the Affidavit of Andrew James Price, sworn on 3 August 2015

We further note that our investigations reveal that despite investors paying sourcing fees totalling \$704,697, only \$22,818 was actually used for costs associated with the development of the property. This amount related to consultancy costs paid in relation to development of the “concept plan” for the OVE Scheme.

In our opinion, the use of the LRD and PSA appear to be a deliberate attempt to circumvent the *Land Sales Act 1984* (Qld) (**LS Act**) which requires that any monies paid under an agreement whereby proposed lots are sold, subject to being subdivided, are required to be held on trust. Where funds are released from trust, they are required to be repaid immediately. By using the PSA to sell “membership services” to investors, commission was paid and released, without, purportedly, Sourcing Property, KS Holdings or PT being in breach of the LS Act.

Whilst the LRD is arguably void at the option of the investor because of non-disclosure issues under the LS Act, the LRD does not fall foul of the requirements to hold money on trust as no monies were payable under it.

Under section 89 of the *Property Occupations Act 2014* (Qld) (“PO Act”), if a company wishes to keep the sourcing fee, otherwise than on trust, the company is required to:

- a) hold a property agent's licence; and
- b) be authorised under the licence to perform the activity they are seeking a reward for; and
- c) be properly appointed under part 4 by the person to be charged with the reward or expense (by entering into a Property Occupations Form 6).

We note that a person who keeps a “reward” for the performance of an activity as a property agent other than as set out above commits an offence. Our investigations indicate that neither Sourcing Property nor PT are, or were at the time of release of the sourcing fee, licensed estate agents. Further, our investigations do not indicate that the requisite Form 6 was provided to investors in relation to the PSA.

Investors may have rights to recover from Sourcing Property and PT the sourcing fees not held on trust for them and released however we note that both entities are in provisional liquidation.

On 20 October 2015, we were provided with a client list from Carlton Ross on behalf of Swarit Verma, the CFO of KS Holdings and the 21st Century Property group. This list indicates that 8 lots were sold in the Townsville property for a total amount of \$568,000. This client list also indicates that amounts totalling \$110,697 were paid by investors in relation to another 5 lots however that they were awaiting paperwork from these investors (presumably signed PSAs). We have identified one further investor who paid \$25,000 to reserve a lot however the status is marked as “cancelled”. We note however that we cannot confirm that any amounts paid by the investor were refunded to them. Furthermore, the investor has advised that they paid \$26,000 to reserve a lot in the Townsville property.

Accordingly, on the basis of investigations conducted to date, we consider that a total of 14 lots were sold to 14 investors and that sourcing fees of \$704,697 were paid in relation to same.

A copy of the investor list is attached as **annexure KS-7**.

Our investigations have revealed that investors were issued with a tax invoice from PT in relation to the sourcing fees which were payable to Sourcing Property under the PSA. They have also confirmed that these sourcing fees were not paid into any bank account maintained by KS Holdings (or Sourcing Property) but rather to PT and recorded as a loan to PT in the KS Holdings Xero accounts. KS Holdings recognised the sourcing fees paid to PT as revenue in its accounts

According to Dennis and Jamie McIntyre, in consideration for promoting the sale of lots in OVE on behalf of KS Holdings (as developer), PT was entitled to, pursuant to a commission agreement between the respective companies, receive 50% of the lot reservation fees paid by investors. This fee was to satisfy “administrative expenses, marketing expenses and commissions paid to PT.”⁷ We note that we have not been able to locate a copy of the commission agreement.

During separate interviews with both Jamie and Dennis McIntyre on 19 October 2015 and 20 October 2015, respectively we requested that a copy of the commission agreement be provided to our office. On 20 October 2015, a list of documentation / information required to be provided to our office (including the commission agreement) was emailed to Michaela Prince of Carlton Ross.⁸ On 23 October 2015, Michaela Prince of Carlton Ross emailed our office and advised that Dennis McIntyre believed that a copy of the commission agreement had been provided to ASIC. We note that ASIC has advised that they have not been provided with or sighted a copy of the agreement. On 2 November 2015, Ms Stephanie Forgione of our office emailed Michaela Prince and requested details of who provided the commission agreement to ASIC and asked that they seek a copy of the agreement from that person. On 10 November 2015, we received a reply email advising that they were unsure who provided the commission agreement to ASIC and accordingly were unable to provide our office with this information.

On this basis, we have concerns regarding the existence of a documented commission agreement between the respective development companies and PT. Further, we consider the payment of a 50% commission to be excessive and unreasonable in the circumstances and based on our investigations conducted to date it does not appear that this arrangement was disclosed to investors. This is discussed in further detail later in this report.

None of the monies paid by investors by way of lot reservation fees or otherwise were deposited into the KS Holdings bank account. They were recorded as being deposited into PT. It appears that PT actually received 100% of funds paid by investors as it invoiced investors and these invoices required payment of the sourcing fee to PT.

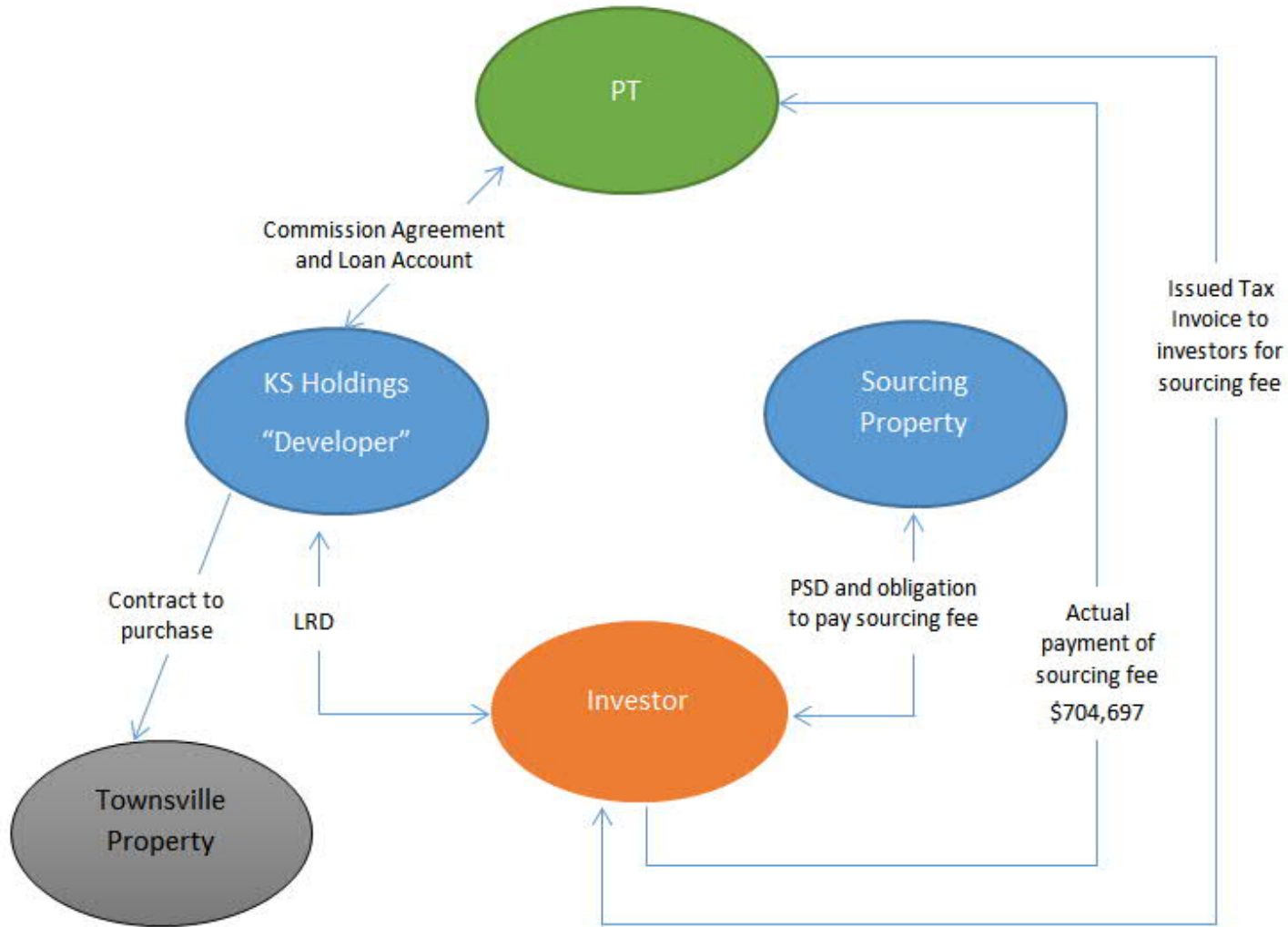
A copy of an invoice issued by PT to investors is attached as **annexure KS-8**.

We query whether PT has the right to retain this fee or the amounts received. A liquidator, if appointed, would be required to conduct further investigations regarding these payments and the ability of PT to retain same.

⁷ Para 23 of affidavit of Jamie McIntyre, sworn on 31 August 2015

⁸ Carlton Ross represent Dennis and Jamie McIntyre

A summary of the above is provided in the following diagram:



2. Assets and Liabilities

On 8 October 2015, we were provided access to the Xero accounting software maintained by the Corporate Respondents in relation to 7 of the 8 Corporate Respondents over which we were appointed, including KS Holdings.

Dennis McIntyre provided our office with a completed RATA on 4 November 2015. A copy of the RATA is attached as **annexure KS-9**. We lodged the RATA with ASIC on 5 November 2015.

A summary of the RATA and the Xero accounts is provided below together with our ERV of assets and liabilities from the investigations we have conducted to date. A copy of the balance sheet as extracted from Xero is attached as **annexure KS-10**.

Category	Provisional Liquidators' ERV (\$)	RATA (\$)	Management Accounts (Xero) (\$)
ASSETS			
<u>Current Assets</u>			
Cash at Bank	784	Nil	794
Planning and Development Costs	Nil	Nil	22,819
Trade Debtors	Nil	112,837	112,837
Pre-Payments - Deposits for land	Nil	Nil	190,000
	784	112,837	326,450
<u>Non-Current Assets</u>			
Interest in Land	Nil	Nil	Nil
Related Party Loans	Unknown	Nil	464,298
	Unknown	Nil	464,298
Total Assets	Unknown	112,837	790,748
LIABILITIES			
<u>Current Liabilities</u>			
Accounts Payable	596	596	596
GST	Unknown	Nil	40,935
Holding Deposits	Nil	Nil	4,000
	Unknown	596	45,531
<u>Non-Current Liabilities</u>			
Related Party Loans	860	Nil	860
Contingent Liability	Nil	Nil	Nil
	860	Nil	860
Total Liabilities	Unknown	596	46,391
Net Surplus / (Deficiency) (Before the costs of the provisional liquidation)	Unknown	\$112,241	\$744,357

2.1 Current Assets

2.1.1 Cash at Bank

Following our appointment, we issued correspondence to all the major financial institutions in order to determine whether the Company operated any accounts.

Westpac advised that the Company operated a transaction account which at the date of our appointment had a credit balance of \$284. We have placed a freeze on this account and taken control of the balance.

The Xero accounts also record a bank account held with the NAB. NAB has confirmed that at the date of our appointment, there was a credit balance of \$500 in this bank account.

No further accounts have been located.

We note that no cash at bank was disclosed in the RATA.

2.1.2 Development Costs

The Xero accounts record as a current asset amounts incurred by way of planning and development consultancy costs in the amount of \$22,819. This relates to the Townsville property which is discussed in further detail below.

We consider that these costs would be able to be added to the cost base of the Townsville property however as the KS Holdings does not own same we do not consider these costs to be an asset and able to be recovered by KS Holdings.

2.1.3 Trade Debtors

The Xero accounts and RATA both record trade debtors in the amount of \$112,837.

This amount comprises:

- An amount of \$105,702 is recorded as owing by investors who had reserved lots in the Townsville property; and
- Outstanding rental for office space at 222 Kings Way, South Melbourne owed by Pinnacle in the amount of \$7,135.

Investors

According to the KS Holdings Xero accounts, these amounts relate to outstanding land option fees from investors. As outlined above, no amount was payable by investors under the LRD to KS Holdings. The amount recorded in the Xero accounts appears to reflect the outstanding sourcing fees which were payable to Sourcing Property under the PSA.

At present there is insufficient evidence to support an enforceable agreement to recover the amount recorded as owing to KS Holdings by investors as the obligation to pay did not arise under the LRD.

The uncertainty is further evidenced by the absence of a letter, contract or agreement that will make enforcement of the balance. Even though the accounts receivable amount represents the portion of “sourcing fees” which remain outstanding, it is highly unlikely that it is recoverable by KS Holdings.

Rent

The 21st Century Group left these premises in September 2014.

We note that Dennis McIntyre is the sole director and secretary of Pinnacle. During the interview with Dennis McIntyre on 20 October 2015, he advised that Pinnacle was unable to repay this debt.

We further note that we have reviewed the financial accounts for Pinnacle which record a net asset deficiency in excess of \$3.7m as at 30 June 2015⁹ and a net loss for the financial year ended 30 June 2015 of over \$2.4m.

On this basis and given the age of the debt, we do not consider this amount to be collectible.

2.1.4 Pre-Payments – Deposits for Land

The KS Holdings Xero accounts record a current asset by way of pre-payments for deposits for land in the amount of \$190,000. This relates to deposits paid by KS Holdings for the purchase of the Townsville property.

In September 2014, KS Holdings entered into a contract for the purchase of the Townsville property for \$1.9m, with settlement due 365 days from the date of the contract. A copy of the contract of sale is attached as **annexure KS-11**.

Pursuant to the contract of sale, KS Holdings was to pay \$190,000 by way of deposit. We have been advised by Michaela Prince of Carlton Ross¹⁰ that the deposit of \$190,000 was made by Broadview on 6 October 2014.

We cannot confirm that the deposit was paid by Broadview as we do not have access to Broadview's accounts. We have however reviewed the KS Holdings accounts and cannot identify any payment of the deposit being made by KS Holdings. Further, the KS Holdings Xero accounts record the deposit as being made by Broadview, however this appears to be a repayment of the loan previously made by KS Holdings to Broadview on 25 September 2014 in the amount of \$300,000.

We have issued correspondence to the vendor's solicitor in relation to the purchase of the property, the deposit held and the status of the contract. They have advised that they are investigating the matter and would respond shortly. We note that we are currently awaiting a response.

2.1.5 Related Party Loans

The Xero accounts record the following amounts owed to KS Holdings by related parties. We note that these were recorded as negative liabilities in the Xero accounts and accordingly represent amounts owed to KS Holdings.

	Amount as per Xero (\$)	ERV (\$)
PT	327,248	Nil
Broadview	110,000	Unknown
Isle of Capri 3 Pty Ltd	3,750	3,750
Pinnacle	23,300	Nil
Total	\$464,298	Unknown

⁹ Balance sheet as at 30 June 2015 shows a date stamp as being printed on 12 June 2015

¹⁰ Carlton Ross represent Dennis and Jamie McIntyre

We note that Dennis McIntyre is the director of all five (5) entities.

We note the following in relation to the collectability of these amounts:

- **Property Tuition (“PT”)**

The amount owed by PT relates to deposits and lot reservation fees paid by investors in relation to lots in the Townsville property which were invoiced by PT and deposited directly into an account maintained by PT.

Our investigations have revealed that investors paid amounts totalling \$716,697 directly to PT and that these payments were recorded against the PT loan account in the KS Holdings Xero accounts. We note that of this, \$704,698 relates to sourcing fees paid, the balance appears to relate to holding deposits paid by investors.

The PT Xero accounts also record the balance of this loan account as \$327,248. The \$716,697 is offset by what appears to be expenses paid by PT on behalf of KS Holdings and also an amount of \$328,257 by way of manual journal with the narration “50% of income belongs to 21C Property,” presumably referring to the alleged commission agreement between KS Holdings and PT. We note that this manual journal entry was entered as at 30 June 2015 however the date stamp in Xero indicates that it was not actually created in the accounts until 25 August 2015.

We consider that the amounts payable by investors to reserve a lot in the Townsville property were in fact payable to Sourcing Property under the PSA and not to KS Holdings. Accordingly, any loan amount for the amounts paid by investors to PT are between PT and Sourcing Property, not KS Holdings.

In any case, we note that we were appointed Provisional Liquidators of PT on 7 October 2015. We note that as at the date of our appointment, being 7 October 2015 PT had a net asset position of \$2.7m, with its major asset being a loan payable by Pinnacle in the amount of \$4m. During the interview with Dennis McIntyre on 20 October 2015, he advised that Pinnacle was unable to repay this debt. We further note that we have reviewed the financial accounts for Pinnacle which record a net asset deficiency in excess of \$3.7m as at 30 June 2015¹¹ and a net loss for the financial year ended 30 June 2015 of over \$2.4m. Accordingly, we do not consider that any debt which is or may become payable by PT to KS Holdings to be collectible.

- **Broadview**

As discussed above, our investigations have revealed that on 25 September 2014, an amount of \$300,000 was withdrawn from the KS Holdings NAB account. The Xero accounts record this amount as being paid to Broadview by way of loan. On 6 October 2014, the Xero accounts record the payment of the deposit for the Townsville property being made by Broadview on behalf of KS Holdings in the amount of \$190,000. We have been unable to confirm this and accordingly whether the amount owing by Broadview is \$300,000 or \$110,000 (being the net difference of the movements in the loan account).

We note that Broadview is the Trustee for the McIntyre family trust. During the interview with Jamie McIntyre on 10 October 2015, he advised that he was unsure if Broadview could repay this debt. Dennis McIntyre advised during his interview that Broadview *should* be able to repay this debt.

¹¹ Balance sheet as at 30 June 2015 shows a date stamp as being printed on 12 June 2015

We have requested a statement of assets for Broadview from Dennis and Jamie McIntyre however have been advised that as the company does not form part of the companies over which we have been appointed, they will not provide this information. Accordingly, we are unable to confirm whether this amount is collectible.

- **Isle of Capri 3 Pty Ltd (“IOC3”)**

Both Dennis and Jamie McIntyre have advised that IOC3 can repay this debt. We are unable to confirm whether this is accurate.

- **Pinnacle**

We note that our investigations have revealed amounts totalling \$23,300 being paid to Jamie McIntyre. These payments were recorded against the Jamie McIntyre loan account in Xero. On 14 August 2015, the balance of this loan account in Xero was \$23,300.

We note that as a result of a series of manual journal entries in the Xero accounts between 14 August 2015 and 25 August 2015, this loan account was reduced to \$0 and the Pinnacle loan account increased to \$23,300. The narration for these journal entries is “funds repaid by Jamie to PCM for Kingsway”.

As noted above, Jamie McIntyre has advised and our investigations confirmed that Pinnacle is unable to repay this debt.

We consider that this amount however is properly owed by Jamie McIntyre and not Pinnacle.

2.2 Current Liabilities

The Xero accounts record total current liabilities of \$45,531, as follows:

	Amount (\$)
Accounts Payable	596
GST	40,935
Holding Deposits	4,000
Total	<u>\$45,531</u>

2.2.1 Accounts Payable

The Xero accounts and RATA record an amount payable to Casonato lawyers of \$596 in relation to an invoice for professional services rendered in November 2014. We note that we have not called for proofs of debts and therefore cannot verify the amount recorded as payable.

2.2.2 GST

The Xero accounts record a GST liability owed by KS Holdings in the amount of \$40,935. We note that no GST liability was disclosed in the RATA.

Following our appointment, we issued correspondence to the Australian Taxation Office (“ATO”) in order to determine whether KS Holdings had any taxation liability.

The ATO has advised that KS Holdings has a current debt owed to the ATO in the amount of \$169 however that the following lodgements are outstanding:

- Business activity statements from August 2014 to September 2015 (inclusive); and
- Income tax returns for the financial years ended 30 June 2014 and 2015.

The ATO has advised that there may be further liability owed by KS Holdings once these are lodged.

As outlined above, PT issued investors with a tax invoice in relation to the sourcing fee. The GST collected and accordingly the liability to the ATO however was recorded in the KS Holdings Xero accounts. We note, the sourcing fee was payable to Sourcing Property and invoiced by PT and accordingly we do not consider that KS Holdings has any GST liability in relation to the sourcing fees paid by investors.

We note that the deposit paid in relation to the purchase of the Townsville property may have included GST to the vendor. KS Holdings would be entitled to offset amounts owed to the ATO (if any) against any GST claimable in relation to the deposit paid.

Furthermore, KS Holdings was previously the registered proprietor of level 6, 222 Kings Way, South Melbourne ("Kings Way property"). This property was sold in November 2014. We note that the Xero accounts do not record any GST or capital gain as being payable to the ATO in relation to the sale. We note that we have not been able to confirm whether there is any additional debt to the ATO by virtue of the sale of the Kingsway property.

We further note that when KS Holdings purchased the Kings Way property in 2012, it paid GST on the purchase price of \$93,349. We have been unable to confirm whether KS Holdings has claimed the refund in relation to this payment. The ATO however would be entitled to offset this refund against any taxation liability.

2.2.3 Holding Deposits

The holding deposit liability of \$4,000 recorded in Xero relates to deposits paid by investors in relation to securing a lot in the Townsville property. We note, as outlined above, that these funds were actually property sourcing fees payable to Sourcing Property under the PSA.

We note that we have been unable to confirm whether these investors signed LRDs and accordingly further investigations would need to be conducted in relation to same.

If the terms of the deposit were 'non-refundable' then the investors may not have any right nor could they be classified as contingent creditors.

2.3 Contingent Liabilities

As outlined above, no funds were payable by investors to KS Holdings under the LRDs. Furthermore, the LRDs did not provide any rights to investors to claim any refund in the event that any amounts were paid.

Accordingly, we do not consider investors to have any claim against KS Holdings, contingent or otherwise.

2.4 Non-Current Liabilities

2.4.1 Related party creditors

The Xero accounts record an amount of \$860 owed to Property Direct (International) Pty Ltd (“PD”). Dennis McIntyre is the sole director of PD.

We have not confirmed the amount recorded as being owed to PD.

3. Opinion as to Solvency

Pursuant to Section 95A of the Act:

- a) a person is solvent if, and only if, the person is able to pay all the person's debts, as and when they become due and payable.
- b) a person who is not solvent is insolvent.

Solvency can be assessed on both a balance sheet and cash flow test.

According to the KS Holdings Xero accounts, the Company had a positive net asset position as at the date of our appointment and the financial years ended 30 June 2014 and 2015 and as at October 2015 as follows:

	7 October 2015 ¹² (\$)	30 June 2015 (\$)	30 June 2014 (\$)
Total Current Assets	326,450	330,400	(553,131)
Total Non-current Assets	464,298	466,307	987,173
Total Assets	790,748	796,707	434,042
Total Current Liabilities	45,531	50,246	12,126
Total Non-Current Liabilities	860	860	860
Total Liabilities	46,391	51,106	12,986
Net Assets	\$744,356	\$745,601	\$421,056

We make the following comments in relation to the above accounts:

- Current assets as at 30 June 2015 and 7 October 2015 comprise amounts owed by investors (\$112,837) and prepayment for the deposit on the Townsville property (\$190,000). We note:
 - We consider any amounts payable by investors to be payable to Sourcing Property under the PSA and not KS Holdings; and
 - We do not consider that the deposit paid in relation to the Townsville property to be collectible.
- Non-current assets as at 30 June 2015 and 7 October 2015 relate solely to amounts owed by related parties to KS Holdings.

¹² We note that the Xero accounts annexed to this report are as at 31 October 2015. We note that Xero is only able to produce a balance sheet as at month end not between specified periods. This does not alter the amounts recorded in the financials.

As outlined above, we do not consider the debt recorded as being owed by PT in the amount of \$327,248 to be payable to KS Holdings and / or is in any case uncollectible.

We do not consider that the debt of \$23,300 recorded as being owed by Pinnacle to be collectible, however as outlined above, we have queries as to whether this amount is actually owed by Pinnacle and not Jamie McIntyre.

We cannot confirm whether the amount payable by Broadview is collectible.

- As a result of outstanding tax lodgements we are unable to confirm whether there is any debt owed by KS Holdings to the ATO. As outlined above, there may be a liability in relation to the sale of the Kings Way property.

Given the poor quality of information and corresponding level of uncertainty regarding the collectability of debts owed to KS Holdings, the rights of investors who paid sourcing fees and any taxation liability, we are unable to comment on the solvency of KS Holdings beyond the above at this time.

4. Likely return to creditors

We consider it unlikely that there will be any return to any class of creditor in KS Holdings as it does not own any assets with which to satisfy its present, future and any potential contingent liabilities.

We note that if KS Holdings is placed into liquidation, a liquidator would conduct further investigations into the affairs of the company and determine whether there are any claims which may be made, or any transactions which may be recoverable for the benefit of creditors. Any likely return would be dependent on the successful outcome of any recovery proceedings.

5. Other information necessary to enable the Company's financial position to be assessed

In order to enable a proper assessment of the financial position of KS Holdings and each of the Corporate Respondents we would require the following:

- Undertake a complete funds tracing exercise of each of the bank accounts operated;
- Proofs of debt from each investor;
- Proofs of debt from each creditor;
- Obtain executed LRDs and PSAs in relation to each investor to understand any variation of rights afforded to investors and their obligations and / or rights under each document;
- Source documents in order to verify and explain transactions;
- Income tax returns and business activity statements; and
- Any other documentation required in order to properly investigate KS Holding's affairs.

6. Suspected contraventions of the Act

6.1 Failure to maintain proper books and records

Pursuant to Section 286 of the Act, a company must keep written financial records that correctly record and explain its transactions, financial position and performance and would enable true and fair financial statements to be prepared and presented in accordance with the accounting standards.

As outlined in the Summary Report, from an examination of the books and records we have obtained it appears that there has been a failure to maintain proper books and records including, but not limited to the following:

- We have been unable to locate a complete set of LRDs signed by investors;
- We have been unable to locate a copy of the purported commission agreement between KS Holdings and PT; and
- Whilst the Company maintained Xero accounts, the transactions underlying the compilation of these accounts were not supported by primary source records such as vouchers, invoices, loan agreements, journals and/or an explanation of the purpose of intercompany transactions.

In our opinion, the deficiency in primary source records and the absence of records explaining the significant movement of funds between director related entities did not enable an accurate set of financial statements to be prepared.

6.2 Uncommercial Transactions

We consider the arrangement to make commission payments to PT to constitute uncommercial transactions pursuant to Section 588FB of the Act. As noted above, we have doubts as to the existence of a documented commission agreement between the respective development companies and PT.

Section 588FB defines an uncommercial transaction as a transaction where it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to:

- a) the benefits (if any) to the company of entering into the transaction; and
- b) the detriment to the company of entering into the transaction; and
- c) the respective benefits to other parties to the transaction of entering into it; and
- d) any other relevant matter.

We provide the following summary in relation to the funds paid by investors to reserve a lot in the Townsville property:

- A sourcing fee was paid by investors under the PSA executed with Sourcing Property;
- PT invoiced investors for the sourcing fee;
- Sourcing fees were paid to PT;
- KS Holdings recorded sourcing fees paid as revenue and the payments received by PT against the PT loan account; and

- KS Holdings credited this loan account for an amount equal to 50% of the sourcing fees paid by investors pursuant to the purported commission arrangement thereby reducing the balance of the loan account and the amount payable by PT.

We consider that entering into such an agreement, whether written or verbal, to be excessive for the following reasons:

- It does not reflect actual costs incurred by PT in promoting the Schemes;
- Accordingly to both Jamie and Dennis McIntyre, no adjustments were made between the development companies and PT in the event that these costs were less than 50% of the funds raised by the development companies;
- PT undertook promotion activities for all five (5) Schemes and accordingly there were economies of scale as the fixed costs incurred by PT, including marketing, wages and other overheads, would have been spread across the respective Schemes; and
- Accordingly to both Jamie and Dennis McIntyre, when PT undertook promotion activities for developers outside the 21st Century group, it charged a commission rate of 20% to cover the same costs.

Furthermore, we note that the above arrangement was not adequately communicated to prospective investors. In this regard, we comment as follows:

- The LRD's refer to the developer incurring project expenses. Project expenses are defined as "the expenditure and all capital and operating costs, charges, expenses, fees, taxes.....and other payments and expenditures incidental to the conduct of the project."¹³

They do not include reference to any obligation to pay to PT any commission. We note that we do not consider that an agreed commission of 50% to fall within the definition of "project expenses" as per the LRD.

- The FAQ's issued to investors do not make any reference to a commission payable to PT.

Below is an extract from the FAQs:

16. What's in it for 21st Century Property?

21st Century Property gains a membership fee for providing education on advanced property strategies and a project sourcing fee for acting as a facilitator between the developer and sophisticated investors. 21st Century Property also offers the service of connecting potential reservation agreement holders with developers, including development projects of associated companies.

These FAQs are attached as **annexure KS-12**.

6.3 Breach of Directors Duties

Section 9 of the Act defines a director to include a person who, despite not being validly appointed as a director, acts in that capacity or the directors of the company are accustomed to acting in accordance with that person's instructions.

¹³ Clause 1.1 of the Oak Valley Lakes Estate and Resort Lot Reservation Deed.

We consider that Jamie McIntyre is a director of KS Holdings within the definition of section 9 of Act by virtue of the following:

- He held out, liaised with and made representations to ASIC regarding the Company's financial position;
- It is clear, from interviews conducted with the group's Chief Financial Officer and General Manager that they were all accustomed to acting in accordance with the instructions of Jamie McIntyre;
- Swarit Verma (the CFO) advised during his interview that transactions from the bank account were approved by Jamie McIntyre; and
- Dennis McIntyre, the Director was accustomed to acting in accordance with his instructions.

We further consider that both Dennis and Jamie McIntyre (the "Directors") have breached the following duties as directors.

6.3.1 Failure to act in good faith, in the best interests of the Company and for a proper purpose

We note that KS Holdings was the development company of the OVE Scheme, but not entitled to receive funds under the LRD until development approval was obtained. This indicates that the company was creating obligations to investors with no benefit to KS Holdings.

In addition, we consider that the Directors have failed to act in good faith, in the best interests of the Company and for a proper purpose, by virtue of the following:

- allowing KS Holdings to enter into transactions that produced no benefit to the company;¹⁴ and
- failing to ensure that KS Holdings met basic legal obligations, such as record keeping.
- acting in conflict to the interests of KS Holdings by entering into the commission agreement between KS Holdings and PT.
- authorising or using or transferring the funds of KS Holdings to related parties; and
- entering into or making loans to related parties.

6.3.2 Provisional Liquidators' Recommendation

Given the nature of the breaches identified and the financial position of KS Holdings, we recommend that KS Holdings be wound up to enable proper investigations to be conducted into its affairs and to identify any transactions which may be recoverable for the benefit of creditors.

¹⁴ See paragraphs 2.1.5 and 6.2

6.4 Unregistered Managed Investment Scheme

Section 9 of the Act contains the following definition of a managed investment scheme:

- a) *'a scheme that has the following features:*
- i. *people contribute money or money's worth as consideration to acquire rights (**interests**) to benefits produced by the scheme (whether the rights are actual, prospective or contingent and whether they are enforceable or not);*
 - ii. *any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people (the **members**) who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders);*
 - iii. *the members do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions); or*
- b) *a time-sharing scheme;*

A scheme that falls within the definition of section 9 of the Act above must be registered if:

1. it has more than 20 members;¹⁵
2. it was promoted by a person, or an associate of a person, who was, when the scheme was promoted, in the business of promoting managed investment schemes;¹⁶ or
3. if ASIC has determined and provided the operator written notice that the scheme, as a part of a number of closely related schemes, has to be registered when the total number of members of the schemes exceeds 20 members.¹⁷

However, a scheme does not have to be registered if all the issues of interests in the scheme that have been made would not have required the giving of a Product Disclosure Statement under Division 2 of Part 7.9 of the Act.¹⁸

In this regard and as referred to in paragraph 2 of the Originating Process, as part of the OVE Scheme, investors were offered the opportunity to reserve a lot on the concept plan (of an unregistered plan of subdivision) by payment of a sourcing fee to sourcing property.

By reserving a lot and paying a fee, investors were granted the benefit of an option to purchase the lot for a pre-agreed option price sometime in the future in the event that development approval of the plan of subdivision in relation to the Townsville property was obtained.

The development of the Townsville property was to be controlled entirely by KS Holdings to which a total of 14 investors paid sourcing fees for the purposes of reserving lots on the concept plan.

We note the following:

- i. Investors paid a contribution by way of a lot reservation fee;

¹⁵ Section 601ED(1)(a) of the Act

¹⁶ Section 601ED(1)(b) of the Act

¹⁷ Section 601ED(1)(c) and (3) of the Act

¹⁸ Section 601ED(2) of the Act

- ii. This contribution was paid to reserve a lot on the concept plan (and thereby acquired a contingent right to exercise an option in the future in the event that development approval was obtained);
- iii. More than 20 lots were available to be, and intended to be sold to investors; and
- iv. The investors did not have day to day control in relation to any activities of the development company, including the development of the property and the sale of lots.

By the manner in which funds were raised, we consider that it would be open to the Court to determine that KS Holdings was operating a Scheme within the definition of the Act and that it was required to be registered in accordance with Section 601ED of the Act.

Ultimately however, it will be for the Court to determine this issue.

As referred to at paragraph 3.4.4 of the Originating Process, if investors' rights are clarified and declarations are made that the OVE Scheme was required to be registered and is therefore an unlawful unregistered managed investment scheme in accordance with paragraphs 3 and 4 of the Originating Process filed in the Proceedings, the investors may:

1. pursuant to section 601MB(1) of the Act, render the lot reservation deeds entered into by them to subscribe for an interest in the OVE Scheme voidable at their option by providing notice to the person(s) who offered an interest in the scheme; and
2. if such a notice was validly given, have the potential to seek restitution.

If orders are made in accordance with paragraphs 9 and 11 of the Originating Process filed in the Proceedings to wind up the OVE Scheme and appoint the Provisional Liquidators as liquidators, further investigations will be required to investigate whether:

1. KS Holdings breached section 911A of the Act which requires person(s) who carry on a financial services business to hold an Australian Financial Services Licence;
2. the person(s) who offered an interest in the OVE Scheme may have contravened section 1012B of the Act; and
3. KS Holdings and any other person(s), either alone or together, carried out the OVE Scheme for a purpose (that is not incidental) of avoiding the application of any provision of Part 7.7A of the Act.¹⁹

The above matters require further investigation for the purposes of providing a Section 533 report to ASIC and for civil recoveries from directors and/or other parties.

¹⁹ This would be a breach of section 965 of the Act

7. Oak Valley Estate Scheme (“OVE Scheme”)

Although the OVE Scheme appears to have been marketed on behalf of KS Holdings, amounts paid by investors were in fact paid pursuant to the PSA entered into with Sourcing Property.

A liquidator, if appointed, would need to conduct further investigations with regards to the rights of investors and any potential obligations / liability of KS Holdings.

In any case, we make the following comments with regards to the OVE Scheme.

7.1 Scheme Property

The OVE Scheme relates to the Townsville property. In September 2014, KS Holdings entered into a contract for the purchase of the Townsville property for \$1.9m, with settlement due in November 2015.

We have issued correspondence to the vendor’s solicitor in relation to the purchase of the property, the deposit held and the status of the contract. We are waiting on a response in relation to same.

In any case, we note that we had not seen any documentation or been provided with any information which would suggest that it was intended for KS Holdings, if able to settle on the contract of sale, to hold the Townsville property on trust or otherwise for any other party, including investors.

Accordingly, we do not consider that any property is owned by the OVE Scheme.

7.2 Third party claims against Scheme property

We have been unable to identify any property owned by the OVE Scheme and accordingly there are no third party rights attaching to any property.

7.3 Investors

We have identified 14 investors who paid \$704,697 to purportedly reserve lots in the Townsville property.

These amounts were paid by way of sourcing fees and paid pursuant to the PSA entered into between Sourcing Property and the respective investors.

In the absence of a declaration that the OVE Scheme is an unregistered managed investment scheme, we consider that these investors may have rights as contingent creditors, however, we consider that their rights may be limited to claims as contingent creditors of Sourcing Property and not KS Holdings. Further investigations would need to be conducted in relation to same before determination regarding their claims can be made.

7.4 Scheme liabilities

Our investigations have not revealed any separate liabilities of the OVE Scheme.

7.5 Solvency of the Schemes

We have not identified any assets or liabilities of the OVE Scheme and therefore cannot comment on the solvency of same.

7.6 Realisation of scheme property

We have been unable to identify any property owned by the OVE Scheme.

7.7 Recovery of money owed to Schemes

Our investigations have not revealed any money owed to the OVE Scheme.

7.8 Recommendation regarding the Scheme

In the event that the Court makes the declarations referred to in paragraph 3.4.4 of the Originating Process that the OVE Scheme is an unregistered managed investment scheme,²⁰ orders should be sought from the Court appointing the Provisional Liquidators as liquidators of the OVE Scheme or such other orders as the Court considers appropriate for the winding up of the OVE Scheme.

This is to enable the liquidators of the OVE Scheme to carry out further investigations into contraventions of the Act by persons who offered interests in the OVE Scheme.

²⁰ Refer to s601EE of the Act

Annexures

Document No.	Description of Document
1	Historical company extract as at 7 October 2015
2	Due diligence kit for the Oak Valley Lakes Estate & Resort
3	Marketing brochure for the Oak Valley Lakes Estate & Resort
4	Lot reservation deed executed by [REDACTED] dated 9 January 2015
5	Property sourcing agreement executed by [REDACTED] dated 9 January 2015
6	Response from Townsville City Council
7	Investor list
8	Tax invoice issued by Property Tuition to investor for option fee
9	RATA of Dennis McIntyre dated 4 November 2015
10	Comparative balance Sheet as at 31 October 2015
11	Contract of sale for the Townsville property between [REDACTED] and KS Holdings dated 16 September 2014
12	FAQs