

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTYLIST

VCAT REFERENCE NO. BP350/2016

CATCHWORDS

Domestic building – application for discovery provided to by the Building Practitioners Board to parties the subject of disciplinary proceedings – application of Harman Undertaking – whether documents are relevant – discovery ordered

APPLICANTS

Owners Corporation No.1 of PS613436T,
Owners Corporation No. 2 of PS613436T,
Owners Corporation No. 4 PS613436T,
Sammy Yip and Nancy Chen, Nie Fong Lie,
Hans Roderico Lianto and Owen Ricardo
Lianto, Sam Loncar and Anita Renata Loncar,
Kevin John Marsh and Christine Marsh, Ms
Patricia Frances Miller, Ms Sarah Shu, Biplab
Kumer Roy and Shahana Roy, Simon Philip
Tannard and Suzanne Jacqueline Tannard, Mr
Wai Leung Raymond Cheung, Mr Khoon Lim
Chuah, Mr Daniel Patrick Loughnan, Huynh
Le Vo and Elizabeth Rachel Van Den Aakster,
Hartono Kuswanto, Meily Kuswanto Kam and
Kho Eng Eng, Man Chi Chung and Tuyet
Chung, Interimpex Pty Ltd (ACN: 097 734
622), Mr Limin Zhou, Chong Lok Ho and Sau
Ling Wong, Mr I-Mei Li, Dayong Jin and
Zhihong Li, Zhao Min Xue and Wei Ming Yao,
Mr Xingyang Wang, Cheng Chang Wang, Ms
Cherrie Ann Ramos MacAhilig, Ms Mandy
Yee Fung, Robert Kevin Peter Campbell and
Julie Susan Edge, Lee Foo Keong Lee and
Wong Huey Shyan, Xiao Ling Huang, Lan
Zhao, Mr Gary Michael De Bruyn, Hong Wang
and Jiaping Xie, Rebecca Lee Pig Hah, Farah
Binti Gulamoydeen and Sarah Binti
Gulamoydeen, Lai You Kim, Liza Jane
Hammersley and Sonya Margarete Szymanski,
Rosendo Baltazar and Elvira Baltazar, Viet
Cuong Nguyen, Junwei Zhu, Bi Yong Zhang
and Ren Wang, Jinsheng Gao and Rongqing
Gu, Wai Yee Wong, Hoang Long Vu, Marlowe
De Chavez Ricamora, Chei How Ng and Lai
Fong Low, Hon Kong Liew, Simon Cee and

Karen Wang, Mr George Angel, Rishi Shatrughan Singh, Mr Mathew Alexander, Mr Johanes Kwistianus, Mr George Stamatakis, Tan Swee Seong, Low Ping Lin and Cheow Wai Yee, Nonato De Chavez and Maria Jesusa De Chavez, Adam James Gawne, Peter Thomas Gawne and Julie Elizabeth Gawne, Mr Joseph Gerard Philip, Mr Bary Besfari, Woo Wai Lek and Suzanna Tan Ren Tsyr, Sook Yin Hon, Steven Wayne Roberson and Leonie Christine Roberson, Beng Lee Tan and Dee Jun Ong, Mr Suparman Edhie Wahidin, Lim Cheng Seng and Tai Yuet Ying, Jun Li, Yanzhuo Li, Mr Michael Hon Lien, John Joseph Mottolini and Tammy Lee Mottolini, John Andrew Kus and Kelli Jean Kus, Jie Yun Huang, Ngoc Tan Mai, Mr Rohan Paul Cherry, Annakkarage Uthpala Kanchana Peiris, D & K Blowes Pty Ltd (ACN 154 473 042), Mr Ulric Otto Walter Meffert, Zahar Mohd Hashim Bin Zainuddin and Shafinaz Binti Shaukat, Mr Hogun Lee, Nykes General Trading Pty Ltd (ACN 101 535 540), Ai Hue Truong, Xiao Min Mo and Kwong Leung William Chung, Ms Helen Monika Campbell, Qingzhi Liu and Qiqi Wang, Peter Martin Kennedy and Debra Jane Kennedy, Andrew James Millward and Bernadette Millward, Frank Gaston Hedley Bhujoharry and Marie Paquerette Maryse Clair Bhujoharry, Mr Peter Joseph Irvine, Xiao Wei Quan and Jia Xin Liu, Mr John James McKinlay, Ameer Adnan Alaraji and Sahira Alaraji, Steven Mark Angus and Geraldine Frances Angus, Shireen Bangah, Huat Beng Cheong and Mee Chin Lo, Kevin James Cann and Made Seneng Cann, Qing Zhao, Chow Shung Chee, Nor Shahidah Binti Khairullah, Hoang Long Vu, De Lima Custodian Pty Ltd (ACN 157 968 593), Ho Eun Jang, Lim Sook Luan, Kolap Hang, Glenn Robert Attenborough and Glenys Ann Attenborough, Ms Julie Krista Howes, Lillis Mario Abraham and Ann Abraham, Ping Shi and Xiaowan Bao, Ayu Trisana and Surya Tirtana The, Eddy Siu Tim Ng and May Mei Ling Wong, Lingjuan Jiang, Rhymney Pty Ltd (ACN 008 537 568), Hin

Chiong Tiong and Peak Tin Teo, Mark Campbell Brown and Christine Burke, Thi Hue Hoang, Chien-Jen Huang, Hsinag-Meng Liu, Lei Huang and Yen Huang, Xuan Loc Nguyen and Thi Thanh Sang Nguyen, Shuai Pei, Yuxuan Li, Chui Ngik Hwong, Sohail Ashraf, Kamil Akkurt and Nalan Akkurt, Mr Terry Bahat, Soon Chai Lim, Romulo Sevilena Dacaya and Arlene Canicula Dacaya, Yan Wang, Stephen Noel Whyte and Leesa Gaye Ryrie, Gang Fei, Yew Fong Lai and Choi Wah Kok, Julian Lee Hou Law and Bee Siew Chua, Weng Shin Leong and Kui Yoon Chong, Mr Scott Stephen Crawford, Li-Yu Tu, Yvonne Khanh Phung Chau, Thi Tuyet Co Tran, Mr Anthony Vincent Sammut, Mei Qing Herbst and Andreas Michael Helmut Karl Herbst, Mr Ethan Tony Chien, Janisha Pty Ltd (ACN 401 733 379), Phillip John Marriott and Carolyn Patricia Marriott, Sukumar Banala and Bianca Virginia Vaguez, Zalewski Property Investments Pty Ltd (ACN 156 576 831), Beng Kit Lim

FIRST RESPONDENT	Lu Simon Builders Pty Ltd (ACN: 006 137 220)
SECOND RESPONDENT	Stasi Galanaos
THIRD RESPONDENT	Gardner Group Pty Ltd (ACN 056 178 262)
FOURTH RESPONDENT	Elenberg Fraser Pty Ltd (ACN 081 961 855)
FIFTH RESPONDENT	Tanan Mereh Vic Pty Ltd (ACN 098 935 490) t/as Thomas Nicolas
SIXTH RESPONDENT	Gyeyoung Kim
SEVENTH RESPONDENT	Jean-Francois Gubitta
EIGHTH RESPONDENT	Property Development Solutions (Vic) Pty Ltd
WHERE HELD	Melbourne
BEFORE	Deputy President C. Aird
HEARING TYPE	Hearing
DATE OF HEARING	21 May 2018
DATE OF ORDER	28 May 2018

CITATION

Owners Corporation No.1 of PS613436T v Lu
Simon Builders Pty Ltd (Building and
Property) [2018] VCAT 812

ORDERS

1. The fourth respondent and the first, second and third, and fifth respondents must use their best endeavours to agree proposed orders giving effect to these Reasons, noting that liberty is to be reserved to the first, second and third, and fifth respondents to object to the inspection of any document discovered in compliance with such orders.
2. If the parties referred to in order 1 are unable to agree proposed orders by 1 June 2018 liberty to them to apply for the proceeding to be listed for a directions hearing before Deputy President Aird for 1 hour to consider the form of such orders.
3. Costs reserved.

DEPUTY PRESIDENT C. AIRD**APPEARANCES:**

For Applicant	Excused
For First Respondent	Mr R Andrew of Counsel
For Second and Third Respondents	Ms V Blidman of Counsel
For Fourth Respondent	Mr J Forrest of Counsel
For Fifth Respondent	Mr S Donley, solicitor
For Sixth Respondent	No appearance
For Seventh Respondent	No appearance
For Eighth Respondent	Mr A Downie of Counsel, excused from the hearing of the fourth respondent's application

REASONS

- 1 In 2016 the Owners Corporations and individual lot owners commenced these proceedings against the first respondent builder, L.U. Simon Builders Pty Limited ('LUS') following the fire at the Lacrosse apartment building. On 29 March 2017 (the second to sixth respondents) and on 21 June 2017 (the seventh and eighth respondents), were joined as parties to the proceeding, upon application by the builder, both for the purpose of its defence under Part IVAA of the *Wrongs Act 1958* and also seeking contribution under s23B of that Act:
 - (i) Stasi Galanos and Gardner Group Pty Ltd as the second and third respondents – the building surveyor ('GG')
 - (ii) Elenberg Fraser Pty Ltd as the fourth respondent – the architect ('EF')
 - (iii) Tanah Mereh Vic Pty Ltd as the fifth respondent – the fire engineer ('TM')
 - (iv) Gyeyoung Kim – the tenant of the apartment where the fire is alleged to have started as the sixth respondent. Mr Kim has not participated in these proceedings.
 - (v) Jean-Francois Gubitta – the occupier - as the seventh respondent Mr Gubitta has not participated in these proceedings
 - (vi) Property Development Solutions (Aust) Pty Ltd ('PDS')
- 2 On 19 April 2018 EF filed an Application for Directions Hearing or Orders seeking further discovery from LUS, GG, TM and PDS. These Reasons are concerned only with EF's application for discovery by LUS, GG and TM of the documents provided to them by the Building Practitioners Board ('the BPB') in the course of disciplinary inquiries being conducted by the BPB into the conduct of the private building surveyor (Mr Galanos), the builder (Mr Moschoyiannis, of LUS) and the fire engineer (Con Nicolas of TM). For convenience, unless referring to them individually, I will refer to these parties as 'the building practitioner parties'.
- 3 TM has discovered the BPB documents but has not produced them for inspection, being concerned that to do so would breach the Harman undertaking – the implied undertaking to the BPB not to use the documents in another proceeding ('the implied undertaking'). LUS and GG have not discovered the BPB documents, also being concerned about breaching the implied undertaking.
- 4 During the directions hearing, the building practitioner parties conceded that if the implied undertaking applied, it only applied in relation to documents provided to them by the BPB and not to documents provided by them to the BPB.
- 5 In considering this application I need to determine:

- (i) whether the implied undertaking applies to proceedings before the BPB;
- (ii) if the implied undertaking applies, does the undertaking yield to the curial processes of the Tribunal and to the Tribunal?
- (iii) are the BPB documents relevant?
- (iv) should the Tribunal order the building practitioner parties to discover and produce the BPB documents for inspection?

DOES THE IMPLIED UNDERTAKING APPLY TO THE BPB DOCUMENTS?

6 The implied undertaking, in simple terms, is an undertaking not to use documents obtained in a proceeding for a collateral or ulterior purpose unrelated to the proceedings in which they were discovered or produced.

7 In *Hearne v Street*¹ the High Court described the undertaking as:

96 Where one party to litigation is compelled, either by reason of a rule of court, or by reason of a specific orders of the court, or otherwise, to disclose documents or information, the party obtaining the disclosure cannot, without the leave of the court, use it for a purpose other than that for which it was given unless it is received into evidence....

8 I accept that the implied undertaking also arises where documents are produced *under compulsion* in arbitration or tribunal proceedings. In this regard Ms Blidman, counsel for GG, referred me to *Otter Gold Mines Pty Ltd v Deputy President GL McDonald of the Administrative Appeals Tribunal*² where Sundberg J said:

471 The true basis of the implied undertaking lies in the fact that the documents, whether produced on discovery, subpoena or under any other order of the court, are produced under compulsion...

473 The power to release from the implied undertaking of confidentiality is incidental to the power to require the documents to be produced. Production under compulsion gives rise to the undertaking. The power to release is intrinsically associated with that undertaking. It is the other side of the coin...[underlining added]

9 However, in my view, it is far from clear whether the implied undertaking applies to documents produced to a party by a board conducting a disciplinary inquiry. Although it has been suggested in correspondence between the solicitors for NM and EF that the *board has taken the position that our client [NM] is not permitted to disclose the documents to any other parties other than as is necessary for the purposes of the inquiry involving our client*³, no evidence supporting this proposition has been provided by

¹ (2008) 235 CLR 125

² (1997) 76 FCR 467

³ Letter from NM's solicitor to EF's solicitor dated 1 March 2018

NM, or by any of the other building practitioner parties (except in relation to transcript which I will discuss later in these Reasons).

- 10 Further, by order dated 24 April 2018 I granted the Victorian Building Authority ('VBA')/BPB leave to intervene if they wished to be heard as to the applicability of the implied undertaking to the documents provided by them to each of the building practitioners in relation to the Inquiries being conducted in relation to the fire at the Lacrosse Building.
- 11 On 17 August 2017 the Victorian Government Solicitors Office (VGSO) provided to NM's solicitors the transcript of the hearing in the Inquiry concerning Mr Moschoyiannis (of LUS) on 7 and 8 August 2017. In the covering letter the VGSO states:

...We confirm the transcript is being provided under the Board's legal obligation to disclose documents in its possession relevant to the upcoming disciplinary hearing [concerning Mr Nicolas]. No part of it is permitted to be disclosed by your office other than is necessary for the purpose of the disciplinary proceeding...
- 12 On 30 April 2018 NM's solicitors wrote to the VGSO:

...

The fourth respondent's ('EF') solicitors, Norton Rose Fulbright, have asked us to confirm the basis on which the Building Practitioners Board (Board) provided its documents to Mr Nicolas in the disciplinary inquiry. We attach a copy of Norton Rose Fulbright's letter to us dated 26 April 2018.

To enable us to respond to Norton Rose Fulbright's request, we ask the Board to inform us of the following matters:

 1. the basis on which the Board considers that it provided documents to Mr Nicolas in the disciplinary inquiry; and
 2. whether the Board consider that Mr Nicolas is under a *Harman* undertaking in respect of those documents.
- 13 On 16 May 2018 VGSO replied to NM's solicitor:

We refer to the above matter and to your letter dated 30 April 2018 regarding the VCAT proceeding relating to the Lacrosse Apartments.

We are instructed that the Board takes no position on the questions posed in your letter.
- 14 On 17 May 2018 the VGSO advised the Tribunal that the BPB would not seek to intervene or be heard at the directions hearing on 21 May 2018.
- 15 All of the authorities I have been referred to relate to documents produced by compulsion in proceedings before courts or tribunals, not to inquiries conducted by a disciplinary board which is both prosecutor and judge.
- 16 In the BPB proceedings the building practitioner parties were each required to produce certain documents and provide certain information to the VBA and/or the BPB. The BPB then provided each of the building practitioners

with the Brief of Evidence and associated documents relevant to the Inquiry against them and the other two building practitioners.

- 17 Although the BPB has made directions for it and the building practitioners to provide to each other the information on which they will rely at the inquiry hearing,⁴ in my view, this is different to documents being produced by compulsion, whether pursuant to an order or a subpoena in adversarial proceedings in a court or tribunal. In each of those instances, there are at least two parties who give the implied undertaking to the court or tribunal not to use the documents so produced for any collateral or ulterior purpose. In BPB proceedings, it provides documents to the practitioner, the subject of the inquiry, in accordance with its obligations under schedule 2 to the *Building Act 1993* to afford the practitioner natural justice. Any orders the BPB makes for such documents to be provided to the practitioner, is simply setting a timetable consistent with its natural justice obligations.
- 18 The implied undertaking exists to prevent the disclosure of confidential information obtained as part of a court or tribunal process that would not otherwise have been known to the person who obtained it as part of that process. As noted above, only NM has discovered the BPB documents. These are included in the document headed 'Fire Engineer's List' attached to EF's Application for Directions Hearing or Orders dated 18 April 2018. In considering the list it is clear that many of the documents, which NM now claims are subject to the implied undertaking, would otherwise be discoverable in this proceeding. These include, what appear from their description, to be tender and contract documents, fire engineering reports from 2010, documents referring to composite panels. These are just a few examples. It could not be said that discovering these documents (and I make no comment about whose obligation it is to discover them) would offend any implied undertaking owed to the BPB. Any implied undertaking clearly cannot apply to what I will call 'project' documents relating to the construction of the Lacrosse Apartments. These are documents which will already be common to some, and possibly all, of the building practitioner parties, and to EF, which was the architect for the project. It would be a nonsense, if I was satisfied that the implied undertaking applied to the BPB proceedings, to suggest that these common documents were subject to the undertaking – they are not confidential to any of the parties, and the BPB has not requested they be kept confidential.

⁴ On 30 October 2017 various directions were made in relation to the Inquiry concerning Con Nicolas of NM including directions for the BPB to provide Mr Nicolas with copies of documents, including expert reports, that it would be relying upon to support the Inquiry. Although I have not been provided with any directions made in relation to the Inquiries into the other two building practitioners, for the purposes of this application, I accept that similar directions were made.

- 19 I note the BPB documents discovered by NM also include the VBA Investigation file, expert reports obtained by it and other related documents – again these are just a few examples from my consideration of the list
- 20 The implied undertaking operates to protect documents being used for a proceeding unrelated to the proceeding in which they were produced. These proceedings are clearly related to the disciplinary proceedings as they concern issues arising out of the same fire at the Lacrosse Apartment building.
- 21 Noting that the BPB takes no position in relation to whether the implied undertaking applies, I am not persuaded that the implied undertaking applies to documents produced by the BPB to practitioners when conducting an Inquiry.

RELEVANCE

- 22 As indicated to Mr Forrest, of counsel, for EF during the directions hearing, in my view the only documents which could possibly be relevant to its claims against each of the building practitioner parties are those concerning or relating to the cladding. Mr Donley, solicitor for NM, noted that there are six allegations against Mr Nicolas in the BPB disciplinary inquiry, only two of which relate to the cladding issues. As discussed at the directions hearing I am satisfied that only those documents which relate in some way to the cladding issues (which of course include any change to the specification, amendments to any permits and the like) should be discovered. The discovery sought by EF is far wider than what I will refer to as ‘cladding documents’.
- 23 I am not persuaded that all documents relating to the construction of the Lacrosse Apartments are discoverable. In considering possible orders to give effect to these Reasons I encourage EF to revisit its Points of Defence and to align the proposed orders in relation to each of the building practitioner parties to the basis upon which it alleges they are concurrent wrongdoers.

SHOULD THE BPB DOCUMENTS BE DISCOVERED?

- 24 If the implied undertaking applies (and for the reasons set out above I am not persuaded it does), GG submits that the discretion to order discovery of the BPB documents rests with the BPB and not this Tribunal. I am referred to the comments by Pagone J in *Oswal v Commissioner of Taxation (No 4)*⁵ where his Honour noted that whether documents subject to the implied undertaking should be produced pursuant to a subpoena *depends on the exercise of judicial discretion in which the achievement of justice must be the guiding principle*. I was also referred to the comments by Judge Bowman in *Zarah Garde-Wilson v Legal Services Board*⁶ where he said:

⁵ [2016] FCA 666 at [7]

⁶ [2007] VCAT 1406 at [64]

The release of documents, particularly if they contain what could be considered to be contentious or potentially prejudicial material, for a collateral purpose and before there has been any argument, much less a ruling, as to their admissibility strikes me as being important and requiring careful consideration.

- 25 However, the context in which the comments were made in *Zarah Garde-Wilson* is important. In that proceeding, which was a review by Ms Garde-Wilson of the refusal by the Legal Services Board to renew her practising certificate for the year 2006-7 the Legal Services Board sought to be released from the implied undertaking so that it could use material produced to the Tribunal in response to a subpoena in considering possible cancellation or renewal in other years: a very different situation to this proceeding.
- 26 Ms Blidman identified three categories of documents which are included in the BPB documents:
- (a) documents already discovered and/or available to the parties which she submits form the majority of the documents in the Inquiry Brief;
 - (b) documents which on their face are not relevant;
 - (c) documents which were generated during the course of and/or for the purpose of the BPB's investigation and instigation of disciplinary proceedings which she describes as the 'Inquiry Documents'.
- 27 Ms Blidman submitted that significant care should be exercised before compelling production of the Inquiry Documents because EF has failed to establish either a clear basis as to the relevance of this class of documents or why the 'achievement of justice' required them to be discovered. In this regard she relies on the Tribunal's obligations under ss97 and 98 of the VCAT Act.

If the undertaking applies to the BPB documents

- 28 If I am wrong and the implied undertaking applies to the BPB documents I am nevertheless satisfied that discovery and production of the documents for inspection by the building practitioner parties will not constitute a breach of the undertaking. At the heart of the implied undertaking is the prohibition on using information obtained through compulsion in one proceeding for a collateral or ulterior purpose in another proceeding. The parties who obtained the information in the disciplinary inquiries are not seeking to use that information in a totally unrelated proceeding. Rather they are seeking to rely on the implied undertaking not to discover, or allow inspection of the BPB documents in this proceeding. Further, they apparently have not taken, and do not intend to take any steps to apply to the BPB to be released from the undertaking they assert exists. This is particularly surprising in the case of NM who has discovered the documents

but has not produced them for inspection being concerned about not breaching the undertaking.

- 29 Although this proceeding concerns a civil dispute, and the proceeding before the BPB is a disciplinary inquiry, there is significant overlap between the two matters. Notwithstanding that different considerations will apply in determining this proceeding and the disciplinary inquiries, and the decision in the disciplinary inquiries will not inform the determination of the proceeding, there is considerable overlap between them.
- 30 In *Griffiths & Beerens Pty Ltd & Ors v Duggan & Ors (no 2)*⁷ Pagone J determined that a release from the undertaking was not required by a party which had filed an affidavit in a concluded proceeding so that it could be used in a subsequent proceeding. His Honour said:
4. The implied undertaking does not diminish the authority or power of the court in other proceedings and “must give way to any inconsistent statutory provision and to orders of a court in other proceedings for discovery and inspection” and I would add, any overriding compulsion or duty imposed by law or statute. The court hearing the winding up proceeding or the debt recovery proceeding has full power and authority to ensure that its decision is reached by reference to all material that is necessary and probative in the discharge of its jurisdiction and powers. [underlining added]
 5. The implied undertaking cannot restrict or fetter...on a court’s power in relation to its own processes in proceedings properly instituted before it.
- 31 I am satisfied his Honour’s comments are equally applicable to the current situation. It is therefore not necessary for me to consider whether the implied undertaking otherwise yields to the Tribunal’s curial processes.

If the undertaking does not apply

- 32 Under ss 97 and 98 of the VCAT Act the Tribunal is required to act fairly and according to the substantial merits of the case, and amongst other obligations to afford procedural fairness and natural justice to all parties. As mentioned during the directions hearing, it would, in my view, be inherently unfair for the building practitioner parties to each have access to the BPB documents and for the architect, who is not subject to the jurisdiction of the BPB, not to have access to the same documents (insofar as they are relevant). This could have the effect of possibly giving the building practitioner parties a forensic advantage to the detriment of the other parties. I reject the submission on behalf of GG that the veracity and probity of the Inquiry Documents has not been tested before the BPB and that their discovery in this proceeding carries a real risk of prejudice to GG. However, how the possibility of prejudice arises is not explained. It is trite

⁷ [2008] VSC 230

to comment that the veracity and probity of any discovered document has not been tested at the time of discovery. Further, as noted earlier in these Reasons the determination of the BPB cannot inform the Tribunal's decision in this proceeding.

- 33 Accordingly, I am satisfied it is appropriate to exercise the Tribunal's discretion and order discovery, limited to documents which relate in some way to the cladding issues. This does not include the transcript of the BPB proceedings, noting the confidentiality requirement referred to in the correspondence to Mr Nicolas and further that any transcript will cover all issues in the respective Inquiries which are apparently not limited to cladding issues. In this regard I note in passing that transcript is generally not regarded as being part of a file, at least in the Tribunal where transcript is only available to the Tribunal and the parties who have paid for it, and is not available for inspection during a file inspection.

CONCLUSION

- 34 Having determined the BPB documents should be discovered, and noting that there has already been extensive discovery, in the interests of avoiding unnecessary duplication and cost, each building practitioner party is only required to discover the relevant BPB documents (as discussed above) in relation to the BPB inquiry concerning them. Further, such discovery is limited to documents which have not already been discovered. I consider it appropriate to reserve to the building practitioners the right to object to the inspection of any particular discovered BPB document on proper material.
- 35 I will order that EF and the building practitioner parties do their best to agree orders to give effect to these Reasons, failing which they can apply for a further directions hearings for the determination of the appropriate form of orders. Costs will be reserved.

DEPUTY PRESIDENT C. AIRD