

## ANNEXURE A

### IMPORTANT NOTICE

#### “MOUNT VICTORIA BUSHFIRE” CLASS ACTION

#### NOTICE OF SETTLEMENT AND PROPOSED DISTRIBUTION OF SETTLEMENT FUND

This notice relates to a class action that has been commenced in the Supreme Court of New South Wales. The Supreme Court has ordered that this notice be published to inform people about the settlement of the class action, and the proposed distribution of a Settlement Fund.

You are receiving this notice because you have registered with Maddens Lawyers, the plaintiff’s solicitors, as a group member in the class action.

You should read this notice carefully as the matters set out below may affect your legal rights.

#### **What is the Mount Victoria Bushfire Class action?**

The Mount Victoria Bushfire Class Action was commenced in 2015. It has the Court title *Laurence Kelvin Eades v Endeavour Energy ABN 59 053 130 878, Asplundh Tree Experts (Australia) Pty Ltd (ABN 83 055 140 424) and Pinnacle Career Development Pty Ltd (ABN 73 115 138 326); proceeding 2015/00310264*. It relates to a bushfire that started in Mount Victoria on 17 October 2013 (**Mount Victoria Bushfire**). The trial of the class action commenced on 8 October 2018.

The plaintiff in the class action is Laurence Eades, who lost his home in the Mount Victoria Bushfire. He is suing Endeavour Energy, Asplundh Tree Experts (Australia) Pty Ltd (**Asplundh**) and Pinnacle Career Development Pty Ltd (**Pinnacle**).

Mr Eades has brought the action on his own behalf, and on behalf of all other persons who fit the definition of “**group members**” in the class action. This definition is set out below.

Mr Eades alleges that Endeavour Energy, Asplundh and Pinnacle were responsible for the events that led to the bushfire and are liable for his loss and damage arising from the fire. The plaintiff claims compensation, for himself and on behalf of the group members, for injury, loss and damage suffered in connection with the Mount Victoria Bushfire.

The claims made by the plaintiff are set out in the “Third Amended Statement of Claim” which has been filed in the Court. Each defendant denies that it is liable to the plaintiff or to the group members. The defendants have filed “defences” which set out the grounds on which they dispute the plaintiff’s claims.

Copies of the Third Amended Statement of Claim and each defendant's Defence may be inspected on the website of the plaintiff's solicitors, Maddens Lawyers. The website address is <http://maddenslawyers.com.au/class-actions/2013-mount-victoria-bushfire/>

### **Who are the "group members"?**

The group members who are represented in the class action are defined as:

1. *all persons who suffered personal injury (whether physical injury, or psychiatric injury as defined below) as a result of:*
  - a. *the Mount Victoria Bushfire: and/or*
  - b. *the death of or injury to another person as a result of the Mount Victoria Bushfire,*  
*where "psychiatric injury in this group definition means nervous shock or another psychiatric or psychological injury, disturbance, disorder or condition which has been diagnosed as such in a diagnosis given to the person by a medical practitioner prior to 30 June 2016; and*
2. *all those persons who suffered loss of or damage to property as a result of the Mount Victoria Bushfire; and*
3. *all those persons who at the time of the Mount Victoria Bushfire resided in, or had real or personal property in, the Mount Victoria Bushfire area and who suffered economic loss, which loss was not consequent upon injury to that person or loss of or damage to their property; and*
4. *the legal personal representatives of the estates of any deceased persons in 2 and/or 3 who were group members as at the date of commencement of the proceeding.*

You have received this notice because you have contacted Maddens Lawyers and have provided information that indicates that you are a group member.

Accordingly, it is essential that you read this notice very carefully. This notice explains ways in which the settlement of the class action affects your legal rights, especially your rights to claim compensation from the defendants.

### **Settlement of the class action against Endeavour Energy, Asplundh and Pinnacle**

The plaintiff has reached agreements upon terms for the settlement of the class action against Endeavour Energy, Asplundh and Pinnacle.

The terms of the settlements are set out in Deeds of Settlement that have been signed on behalf of Mr Eades and Endeavour Energy, Asplundh and Pinnacle (**Deeds**).

Copies of the Deeds that set out the terms of the settlements are available from Maddens Lawyers if you wish to inspect a copy. Please be aware that the Deeds

are confidential and you may not disclose terms of the settlements to third parties other than your legal and financial advisors.

In summary, the Deeds provide that there will be a payment of \$2,680,000 inclusive of interest and costs to resolve all claims in the class action (**Settlement Fund**). Endeavour Energy, Asplundh and Pinnacle do not admit any responsibility for the events leading to the Mount Victoria Bushfire. Endeavour Energy is not making any payment.

It is important that you are aware that, as a result of the Deeds and the Court approval of the settlement, if you are a group member, you are bound by the settlement and will not be able to commence your own proceedings against Endeavour Energy, Asplundh and/or Pinnacle or otherwise make any claim against them arising out of the Mount Victoria Bushfire at a later date.

Because of the Supreme Court's rules for class actions, a settlement cannot take effect unless and until it is approved by the Court.

The Supreme Court approved the settlement:

1. with Asplundh on 12 October 2018;
2. with Endeavour Energy and Pinnacle on 9 November 2018.

The Court has also made a *preliminary* assessment that as the likely costs of and incidental to the class action substantially exceed the Settlement Fund, that no distribution will be made to group members as a result of the settlements, and that all of the Settlement Fund will need to be applied towards payment of the plaintiff's costs of the class action.

But before making a *final* determination about those matters, the Court has ordered that this notice be published to inform the group members about the settlements and give them an opportunity to make an **objection** to the proposed distribution of the Settlement Fund, if they wish.

### **Will group members be liable for legal costs under the Deeds?**

Part but not all of the costs which the plaintiff has incurred in running the class action on behalf of group members will be paid out of the amounts received from Asplundh and Pinnacle under the Deeds and paid into a Settlement Fund. The Settlement Fund is not sufficient to meet all of the costs of and incidental to the class action, however there will not be any additional liability, in respect of those additional costs for the plaintiff or group members.

Group members are not liable for any legal costs under the Deeds or otherwise.

### **What group members must do**

There are only two (2) options which you must consider.

**Option A** *If you do not wish to object to the proposed distribution of the Settlement Fund* then you do not need to do anything. If this aspect of the settlement is approved, you will not be entitled to receive any share of the Settlement Fund.

**Option B** *If you oppose the proposed distribution of the Settlement Fund and wish to object* then you must complete the "Notice of Objection to Proposed Distribution of Settlement Fund" which is Annexure A to this Notice. You must return the Notice of Objection to Maddens Lawyers before **4pm** on **30 November 2018**, and be ready to come to Court to argue your objection.

If you are not sure what to do, you must contact Maddens Lawyers or obtain independent advice. You must act quickly because the deadline for objections is 4pm on **30 November 2018**.

### **What will happen in the coming weeks?**

The Court has ordered that any objections from group members will be heard by the Court at Law Courts Building, 184 Phillips Street, Sydney NSW at 9.30am on Wednesday, 12 December 2018.

If there are no objections, or the objections are overruled, then the proposed distribution of the Settlement Fund will be given final approval by the Court. It will then take effect. When it takes effect, the Settlement Fund will be applied towards part-payment of the costs of the class action. There will be no distribution to group members.

Mr Eades will receive \$10,000 from the Settlement Fund for taking on the responsibility and risks associated with being lead plaintiff.

### **Addresses for questions**

If you have any questions about the settlement of the class action, the Deeds, the proposed distribution of the Settlement Fund or this notice, you can contact Maddens Lawyers at any time, or seek your own independent legal advice.

### **Contact details for Maddens Lawyers**

Att: Brendan Pendergast  
Mount Victoria Bushfire Class Action  
Maddens Lawyers  
219 Koroit Street  
Warrnambool VIC 3280  
Telephone: (03) 5560 2000

Email: [kae@maddenslawyers.com.au](mailto:kae@maddenslawyers.com.au)

**Contact details for the Supreme Court of NSW**

Note: Questions you have concerning the matters contained in this notice should not be directed to the Court.

Level 5, Law Courts Building, 184 Phillip Street, Sydney NSW 2000

GPO Box 3, Sydney NSW 2001

Telephone: 1300 679 272

Email: [supremecourt.enquiries@courts.nsw.gov.au](mailto:supremecourt.enquiries@courts.nsw.gov.au)

**[Annexure A to Notice to Group Members]**

***Laurence Kelvin Eades v Endeavour Energy, Asplundh Tree Experts  
(Australia) Pty Ltd (ABN 83 055 140 424) and Pinnacle Career Development Pty  
Ltd (ABN 73 115 138 326) 2015/310264***

*(Mount Victoria Bushfire Class Action)*

**NOTICE OF OBJECTION TO PROPOSED DISTRIBUTION OF  
SETTLEMENT FUND**

The person identified below:

1. was affected by the Mount Victoria bushfire;
2. is a group member in this class action;
3. wishes to object to the proposed distribution of the Settlement Fund.

The group member's contact details are as follows:

Name:

Telephone number:

Postal address:

Email address:

Signed:

(If not the named group member, please  
state the relationship to group member)

The group member has read the "Notes for Objectors" below: Yes / No (circle one)

***Notes for Objectors:*** Order *[insert order number]* of the Court's Orders made on 9 November 2018 require that Objectors deliver to Maddens Lawyers, by 4.00 pm on **30 November 2018**, any written submissions (not exceeding 2 pages in length) and any affidavit evidence the Objector wishes to rely on in support of their objection to the proposed distribution of the Settlement Fund.