

## Attachment 1

### IMPORTANT NOTICE

#### “SPRINGWOOD BUSHFIRE” CLASS ACTION

#### NOTICE OF PROPOSED SETTLEMENT

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 a proposed settlement of the class action.

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 Springwood Bushfire Class action?**

The Springwood Bushfire Class Action was commenced in 2014. It has the Court title *Sean Johnston v Endeavour Energy (ABN 59 053 130 878) (2014/148790)*. It relates to a bushfire that started in Linksvie Road, Springwood, on 17 October 2013 (**Springwood Bushfire**). The trial of the class action commenced on 17 February 2016.

The plaintiff in the class action is Sean Johnston, who lost his home in the Springwood Bushfire. He is suing Endeavour Energy. Mr Johnston has brought the action on his own behalf, and on behalf of all other persons who suffered injury and/or loss and damage in connection with the Springwood Bushfire and who are not group members in *More and More v Endeavour Energy (ABN 59 053 130 878) & Anor (2014/313883)*. Those persons are called “**group members**” in the class action.

Mr Johnston alleges that Endeavour Energy was responsible for the events that led to the bushfire and are liable for his loss and damage arising from the fire. Mr Johnston claims compensation, for himself and on behalf of the group members.

The claims made by Mr Johnston are set out in the “Fifth Further Amended Statement of Claim” which has been filed in the Court. Endeavour Energy denies that it is liable to Mr Johnston or to the group members. It has filed a defence in which it sets out the grounds on which it disputes Mr Johnston's claims.

Copies of the Fifth Further Amended Statement of Claim and Endeavour Energy's Defence to Mr Johnston's Statement of Claim may be inspected on the website of the plaintiff's solicitors, Maddens Lawyers. The website address is <http://maddenslawyers.com.au/class-actions/2013-springwood-winmalee-fire/legal-documents>.

#### **Who are the “group members”?**

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

1. *all persons who suffered personal injury (whether physical injury, or psychiatric injury as defined below) as a result of:*
  - a. *the Springwood Bushfire: and/or*
  - b. *the death of or injury to another person as a result of the Springwood 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 6 May 2016; and*
2. *all those persons who suffered loss of or damage to property as a result of the Springwood Bushfire; and*
3. *all those persons who at the time of the Springwood Bushfire resided in, or had real or personal property in, the Springwood 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 this 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 the rest of this notice very carefully. This notice explains ways in which the proposed settlement of the class action is likely to affect your legal rights, especially your rights to claim compensation from Endeavour Energy.

### **Proposed Settlement of the class action.**

Mr Johnston and Endeavour Energy have agreed to settle the class action. The terms of the settlement are set out in a Deed of Settlement that has been signed on behalf of Mr Johnston and Endeavour Energy (**Deed**).

A copy of the Deed that sets out the terms of the settlement is available from Maddens Lawyers if you wish to inspect a copy. Please be aware that the Deed is confidential and you may not disclose it to third parties other than your legal and financial advisors.

In summary, Endeavour Energy has agreed to pay an amount of \$18,000,000 inclusive of interest and costs to settle Mr Johnston’s claim and the claims of all group members in the class action. Endeavour Energy does not admit any responsibility for the events leading to the Springwood Bushfire.

It is important that you are aware that a result of the proposed settlement is that if you are a group member you will be bound by the settlement and will not be able to commence your own proceedings against Endeavour Energy or otherwise make any claim against it arising out of the Springwood Bushfire at a later date.

Because of the Supreme Court’s rules for class actions, the settlement agreement between Mr Johnston and Endeavour Energy cannot take effect unless and until it is approved by the Court.

The Supreme Court has examined the Deed and the arrangements which the plaintiff’s solicitors have proposed for assessing group members’ individual claims and sharing the compensation sum between them (called a “Settlement Distribution Scheme” or “**Scheme**”).

The Court has made a *preliminary* assessment that the Deed and the Scheme appear to be reasonable, such that they should be approved by the Court and permitted to take effect. 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 settlement and give them an opportunity to make an **objection** to the settlement, if they wish.

### **How will the settlement sum be distributed?**

Each group member's loss and damage either has been or will be assessed by the Administrator under the Scheme. However, as the settlement sum is less than the total amount claimed by Mr Johnston and the group members, each group member's compensation sum must be adjusted to reflect the amount of the settlement.

If the Court approves the proposed settlement, the settlement sum of \$18,000,000 (plus any accumulated interest) less legal costs will be distributed to group members in accordance with the Scheme. The Scheme also provides that Mr Johnston will receive \$25,000 to compensate him for the personal burden of being lead plaintiff which role has benefitted the class as a whole. The amount available for distribution to group members is referred to as the **Compensation Pool**.

Under the Scheme, the compensation payable to each group member shall be calculated by multiplying the amount of the Compensation Pool by the proportion which the individual group member's assessed loss and damage bears to the total value of all loss and damage assessed in relation to the plaintiff and group members.

The Administrator anticipates that the entitlement to compensation of each group member will be approximately 4.5% of the group member's assessed loss.

Some group members have received insurance payouts for part or all of their loss and damage, and the Scheme recognises that these insurers may have rights under the various insurance contracts, including a right to recover a portion of the insurance payouts made to group members. Accordingly, the Scheme also provides that a partial reimbursement to insurers will be made in relation to some insurance payments which will result in an adjustment to some group member's compensation sum, as explained below.

### **Summary of entitlement of group members to compensation:**

#### **A. *If group members have no insurance***

If group members have no insurance, no adjustment will be made to compensation payable to those group members. The Administrator anticipates that the pro rata entitlement to compensation of each wholly uninsured group member will be approximately 4.5% of the group member's assessed loss.

#### **B. *If group members are partially insured by:***

- a. *the Insurance Australia Group (including NRMA, CGU, Swann, WFI, Coles) ("IAG");***
- b. *Allianz (including Club Marine);***
- c. *AAI Limited (including AAMI, GIO, Apia, Suncorp, Shannons, Vero, Resilium, CIL Insurance, Bingle and AMP) ("AAI"); and/or***
- d. *Commlnsure***

If group members have received insurance payments from any one or more of these insurers for some but not all of their loss and damage, then the compensation payable to the

group member will be adjusted to effect a partial reimbursement to the insurer(s) who made the insurance payouts.

There is considerable legal uncertainty as to the extent of the insurers' rights under the various insurance contracts with group members. The Administrator of the Scheme considers that it is in the interests of all group members to reach agreement with insurers who have asserted a right to reimbursement of insurance payouts to group members. Separate in-principle agreements were negotiated with each insurer group.

If the settlement is approved, these insurers will not be able assert any further right to reimbursement of insurance payouts against group members insured by them.

(i) *Insurer reimbursement agreements*

A summary of the in-principle agreements with insurers as to the extent of reimbursement of insurance payments to partially insured group members is set out in the following table.

**Table 1: Agreed insurer reimbursements for insurance payments to partially insured group members**

<b>Insurer</b>	<b>Payment to group members ("GMs") as a result of the fire</b>	<b>Total agreed insurer reimbursement</b>	<b>Insurer % reimbursement amount</b>
IAG – partially insured GMs	\$43,648,645	\$1,500,000	3.44%
AAI – partially insured GMs	\$50,848,734	\$700,000	1.38%
Allianz – partially insured GMs	\$ 14,132,456	\$206,400	1.46%
CommInsure – partially insured GMs	\$8,973,209	\$105,713	1.18%

In each case the insurer reimbursement as a proportion of total payment to group members as a result of the Springwood Bushfire is less than the amount of approximately 4.5% of total assessed losses expected by the Administrator to be recovered by individual group members.

The total agreed insurer reimbursement in **Table 1** above shall be deducted from distributions under the Scheme to group members who have received an insurance payment from any one or more of these insurers for part of their loss and damage, and paid by the Administrator to the insurers on behalf of group members.

The reimbursement payable by each group member shall be calculated by multiplying the amount of the **Total agreed insurer reimbursement** in **Table 1** above by the proportion which the individual insurer payment to a group member bears to the total insurance payout made to group members by the relevant insurer.

**C. If group members are partially insured by other insurers**

If group members have received insurance payments from any other insurer for part of their loss and damage, and they also have uninsured losses, then:

1. no adjustment will be made to compensation payable to those group members to reimburse their insurer(s); and
2. no payment will be made by the Administrator from the Compensation Pool to the insurers on behalf of group members to reimburse their insurer(s).

Payments to group members who are partially insured by other insurers under this Scheme do not determine any matter between that group member and their insurer(s), including any rights that these insurers may have under the various insurance contracts to recover a portion of the insurance payouts made to group members as a consequence of the settlement.

**D. If group members are wholly insured**

If group members are wholly insured and have received insurance payments for all of their loss and damage, then under the Scheme the group member's compensation is payable direct to the group member's insurer(s). Group members with these "insurance only" type claims will not otherwise be entitled to receive any payment of compensation under the Scheme.

A summary of the in-principle agreements with insurers as to the reimbursement of insurance payments to wholly insured group members is set out in the following table.

**Table 2: Agreed insurer reimbursements for insurance payments to wholly insured group members**

<b>Insurer</b>	<b>Payment to group members ("GMs") as a result of the fire</b>	<b>Total agreed insurer reimbursement</b>	<b>Insurer % reimbursement amount</b>
AAI – wholly insured GMs	\$9,090,000	\$300,000	3.3%
Allianz – wholly insured GMs	\$3,303,377	\$193,600	5.86%
CommInsure – wholly insured GMs	\$3,134,517	134,287	4.28%
IAG – wholly insured GMs	\$16,756,269	\$188,833	1.13%

Where there is no agreement with an insurer as to the reimbursement of insurance payments to wholly insured group members, the group members' compensation will be calculated and paid by the Administrator to the insurer(s) on behalf of group members.

### **The Scheme**

The Scheme sets out the process of calculation of group member compensation in more detail. A copy of the Scheme can be obtained on the website of Maddens Lawyers at the following web address: <http://maddenslawyers.com.au/class-actions/2013-springwood-winmalee-fire/legal-documents>. Because it is confidential, access to this document is password protected. To obtain the password, you will need to contact Bridgid Madden of Maddens Lawyers on (03) 5560 2000.

A copy of the Scheme is also available for inspection at Maddens Lawyers if you wish to inspect a hard copy.

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

The costs which the plaintiff has incurred in running the class action for the benefit of all of the eligible group members will be paid out of the overall compensation sum received from Endeavour Energy. There will not be any additional liability in respect of those costs for group members.

In relation to the costs associated with assessing each group member's entitlement to compensation, the Scheme proposes a procedure for assessing individual claims according to various guidelines and information you have provided or will provide to Maddens Lawyers.

The assessment procedures are intended to minimise the overall costs of the process, and also to minimise the need for group members to engage separate lawyers to represent them. It is expected that most group members will not need to or want to engage separate lawyers. For those group members the costs of having their claims assessed will be paid as "administration costs" of the Scheme, which also will be paid out of the settlement sum.

Group members will be entitled to engage separate lawyers to represent them in the claims assessment process, if they wish, but they will need to pay the costs charged by those lawyers.

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

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

**Option A** *If you support the settlement* then you do not need to do anything. If the proposed settlement is approved, you will be entitled to receive your share of the settlement sum in accordance with the Scheme.

**Option B** *If you oppose the settlement and wish to object* then you must complete the "Notice of Objection to Proposed Settlement" which is **Annexure A** to this Notice. You must return the Notice to Maddens Lawyer before **4pm** on **17 August 2016** and be ready to come to Court to argue your objection. Please note: even if you take this Option B and the Court approves the proposed settlement, you will still be entitled to receive your share of the settlement sum in accordance with the Scheme.

If you are not sure what to do, you should contact Maddens Lawyers or seek independent legal advice. You must act quickly because the deadline for objections is **4pm on 17 August 2016**

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

The Court has ordered that any objections to the proposed settlement (from group members who take Option B above) will be heard by the Court at Law Courts Building, 184 Phillip Street, Sydney, NSW, at **9.30am on 26 September 2016**.

If there are no objections, or the objections are overruled, then the proposed settlement will be given final approval by the Court. It will then take effect. When it takes effect, group members who have registered claims with Maddens Lawyers will have their claims assessed to determine their compensation entitlements.

### **Addresses for questions.**

If you have any questions about the settlement 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  
Springwood Bushfire Class Action  
Maddens Lawyers  
219 Koroit Street  
Warrnambool VIC 3280  
Telephone: (03) 5560 2000  
Email: [blm@maddenslawyers.com.au](mailto:blm@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**

***Sean Johnston v Endeavour Energy & Anor (2014/148790)***

*Springwood Class Action*

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

The person identified below:

1. Was affected by the Springwood bushfire
2. Is a group member in this class action;
3. Wishes to object to the proposed settlement of the class action.

The group member's contact details are as follows:

Name:

Telephone number:

Postal address:

Email address:

Medicare No:

Signed:

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

The group member has also registered as a group member: Yes / No (circle one)

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

**Notes for Objectors:** Order 13 of the Court's Orders made on 15 July 2016 require that Objectors deliver to Maddens Lawyers, by **31 August 2016** 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 settlement.