

## SECOND FURTHER AMENDED COMMERCIAL LIST RESPONSE

### COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial (Class Action)
Registry	Sydney
Case number	2018/00371447

### TITLE OF PROCEEDINGS

Plaintiff	<b>Richmond Valley Council</b> <b>ABN 54 145 907 009</b>
Defendant	<b>JLT Risk Solutions Pty Ltd</b> <b>ABN 69 009 098 864</b> <b>(formerly called Jardine Lloyd Thompson Pty Ltd)</b>

### PREPARATION DETAILS

Prepared for	<b>JLT Risk Solutions Pty Ltd</b> <b>ABN 69 009 098 864</b> <b>(formerly called Jardine Lloyd Thompson Pty Ltd)</b> Defendant
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**SECOND FURTHER AMENDED COMMERCIAL LIST RESPONSE****A NATURE OF DISPUTE**

- 1 On 22 March 1994, the Defendant (**JLT**) and a number of local councils in New South Wales (**Members**) entered into a deed pursuant to which a mutual liability scheme was established for the joint purchase by Members of certain lines of insurance, and the provision of a discretionary indemnity for Members in respect of liability not covered by such insurance (**Statewide Scheme**).
- 2 Under the terms of the Statewide Scheme, a Board of Management determined, among other things, certain insurance arrangements to be put in place by JLT for the Members.
- 3 The effect of the Statewide Scheme was, among other things, to enable the collective sourcing of insurance (**Primary Insurance**) by the Members.
- 4 The terms of the Statewide Scheme also allowed, among other things, for the return of surplus funds to Members in certain circumstances, the provision of a discretionary indemnity out of the Members' collective funds for loss or liability not covered under the Primary Insurance, and the provision of advice to Members in relation to loss prevention and risk minimisation.
- 5 Under the Statewide Scheme, JLT was obliged to obtain Primary Insurance at the instruction of the Board of Management and each of the Members (including the Plaintiff) appointed it to do so. JLT carried out this obligation.
- 6 Under the terms of the Statewide Scheme, JLT was entitled to be paid fees and/or commission in respect of the services it provided to Members via the Statewide Scheme. The fact and/or the quantum of those fees and commission was disclosed to the Plaintiff. The Plaintiff elected to continue JLT's appointment under the Statewide Scheme to obtain Primary Insurance on its behalf.
- 7 The Plaintiff alleges breaches of general law and contractual duties because it alleges that alternative insurance arrangements in respect of certain of the risks covered by the Statewide Scheme could have been obtained for payment of a premium lower than the cost of the Plaintiff's contributions to the Statewide Scheme that related to

those risks, or that lower contribution prices could have been secured by JLT from Statewide. JLT denies such allegations and contends that:

- (a) the alleged duties did not exist;
  - (b) even if they did exist there was no breach of the alleged duties;
  - (ba) the Board of Management set the contributions payable by Members of the Statewide Scheme collectively;
  - (c) the comparison of direct insurance premiums from an insurance company, or CivicRisk contributions, with contributions to the Statewide Scheme is not valid:
    - (i) without taking into account the differences in principle between commercial insurance or CivicRisk products and the Statewide Scheme;
    - (ii) without taking into account the differences in specific features of insurance or CivicRisk products actually purchased or available for purchase and the cover provided by the Statewide Scheme (both as to Primary Insurance and the discretionary indemnity for Members in respect of liability not covered by the Primary Insurance); and
    - (iii) to the extent that the insurance premiums or CivicRisk contributions are considered net of taxes, statutory charges, broking fees or any other service fees, and contributions to the Statewide Scheme are considered gross of all taxes, statutory charges and fees;
  - (d) it is not possible to compare insurance premiums or CivicRisk contributions with contributions to the Statewide Scheme charged in respect of different policy years without taking into account differences in commercial conditions over time;
  - (e) the Plaintiff and Group Members have suffered no loss; and
  - (f) the Plaintiff's and Group Members' claims are statute barred either in part or, for some Group Members, in whole.
- 8 The Plaintiff further alleges breaches of certain fiduciary duties owed by JLT as an insurance broker to the Plaintiff, arising from the payment of fees and/or commission to JLT. JLT denies the existence of the duties alleged by the Plaintiff and says that, to

the extent that it owed fiduciary duties to the Plaintiff as its insurance broker, JLT's conduct was at all times consistent with the discharge of those duties and those duties were not breached. This is including on the basis that at all times JLT had informed consent.

- 9 Further, JLT denies that there was a conflict between its entitlement to be paid fees and/or commission in respect of the services it provided to Members via the Statewide Scheme and the interests of the Plaintiff and Group Members, as alleged by the Plaintiff or at all.
- 9A Further, if JLT<sub>7</sub> breached the fiduciary duties as alleged (which is denied) and JLT earned profits from any such breach (which is denied), just allowance should be made to compensate JLT for the expenses, skill, effort and resources required to make the profit.
- 10 Finally, JLT contends that the Plaintiff's and Group Members' claims in respect of alleged breaches of fiduciary duties are statute barred by analogy and/or the doctrine of laches either in part or, for some Group Members, in whole.

## **B ISSUES LIKELY TO ARISE**

1. The Defendant (JLT) does not admit that the questions set out in Part B of the Plaintiff's ~~Second~~ Third Further Amended Commercial List Statement (CLS) and framed as common issues of law or fact
  - (a) involve common issues of law or fact; or
  - (b) insofar as they do, that those questions are common with respect to all Group Members.
- ~~2. Insofar as the questions identified in Part B of the CLS are treated as issues arising in the proceeding only, JLT agrees that the questions identified in paragraphs 1 to 5 and 7 to 9 of Part B of the CLS arise for determination.~~
- ~~3. JLT does not admit that the question in paragraph 6 of Part B of the CLS arises for determination in the proceeding at all.~~
2. On 16 April 2021 and 9 June 2021, his Honour Justice Hammerschlag determined that the common questions of law and fact to be answered at the initial trial of the proceeding are those questions identified in Part B of the CLS: *Richmond Valley Council v JLT Risk Solutions Pty Ltd* [2021] NSWSC 383 and *Richmond Valley*

Council v JLT Risk Solutions Pty Ltd [2021] NSWSC 658. By written submissions dated 16 August 2021, and orally at a hearing before his Honour Justice Hammerschlag on 20 August 2021, the Plaintiff suggested that the words "Leaving aside any fact relevant to the issues which are peculiar to Richmond or a particular group member" be added in respect of those questions relating to the alleged fiduciary duties.

3. JLT says that it is appropriate for those words to be added to common questions 3, 4 and 6 and relies in that respect on the particulars set out in paragraphs 14 and 19 of this Second Further Amended Commercial List Response (CLR).
4. In addition, JLT considers that the following additional issues may arise: for determination at the initial trial, being issues that arise in relation to the Plaintiff's individual claim:
  - (a) The nature and scope of ~~JLT's~~ any duties JLT had as an insurance broker to the Plaintiff ~~and other Members of the Statewide Scheme~~, having regard to the terms of the contract entered into between JLT and Members (the 'Deed Establishing the NSW Local Government (Jardine Lloyd Thompson) Mutual Liability Scheme' (**Statewide Deed**) which, among other things, was a contract for the provision of broking services to the Members in respect of the Primary Insurance.
  - (b) The nature and scope of any duties to the Plaintiff pleaded in paragraph 19 of Part C of the CLS, having regard to the general law and the terms of the Statewide Deed.
  - (c) Whether the Plaintiff ~~or any Group Member~~ provided their informed consent in respect of any alleged breach of fiduciary duty.
  - (d) Whether any of the Plaintiff's ~~or Group Members'~~ claims are statute barred.

## **C DEFENDANT'S RESPONSES TO CONTENTIONS**

In answer to the Plaintiff's allegations as set out in Part C of the ~~Second Further Amended Commercial List Statement (CLS)~~, JLT says as follows:

- 1 JLT admits the allegations in paragraph 1 of the CLS.

- 2 In answer to the allegations in paragraph 2 of the CLS, JLT:
- (a) admits that the Plaintiff has purported to commence this proceeding as a representative proceeding under Part 10 of the *Civil Procedure Act 2005* (NSW);
  - (b) admits that from time to time during the Relevant Period (as defined in the CLS) some councils obtained Property and/or Public Liability and Professional Indemnity Insurance through the 'NSW Local Government (Jardine Lloyd Thompson) Mutual Liability Scheme' (**Statewide Scheme**);
  - (ba) says that to the extent that they are otherwise group members:
    - (i) Yass Valley Council became a group member in this proceeding from no earlier than 16 May 2019; and
    - (ii) each of Gunnedah Shire Council, Lismore City Council and Willoughby City Council became a group member in this proceeding from no earlier than 28 June 2019; and
    - (iii) each of Port Macquarie-Hastings Council and Kyogle Council became a group member in this proceeding from no earlier than 5 March 2020; and says and
    - (iv) Central Coast Council, Woollahra Municipal Council, Inner West Council, Narromine Shire Council, Bland Shire Council, Albury City Council, Snowy Monaro Regional Council and Northern Beaches Council became a group member in this proceeding from no earlier than 30 June 2021.
  - (c) says that group members in this proceeding are limited to those persons who had provided their consent to becoming a group member as at the date of the CLS; and
  - (d) otherwise does not admit the allegations in paragraph 2 of the CLS.



3 In answer to the allegations in paragraph 3 of the CLS, JLT:

- (a) says that a "Deed Establishing the NSW Local Government (Jardine Lloyd Thompson) Mutual Liability Scheme" was made on or about 22 March 1994 between JLT and the Councils whose names are set out in Schedule 1 to the deed (collectively "**Members**" and each a "**Member**") (**Statewide Deed**);
- (b) says that the Statewide Deed established the Statewide Scheme;
- (c) says that the Statewide Scheme is not a separate legal entity and is instead a contractual arrangement; and
- (d) otherwise does not admit the allegations in paragraph 3 of the CLS.

4 JLT denies the allegations in paragraph 4 of the CLS.

5 JLT admits the allegations in paragraph 5 of the CLS.

~~6 In answer to the allegations in paragraph 6 of the CLS, JLT:~~

~~says that from time to time during the Relevant Period it provided insurance broking services to some clients; and~~

6 ~~otherwise does not admit~~JLT admits the allegations in paragraph 6 of the CLS.

7 JLT does not admit the allegations in paragraph 7 of the CLS.

8 In answer to the allegations in paragraph 8 of the CLS, JLT:

- (a) admits that during the Relevant Period it subscribed to the Code of Practice of the National Insurance Brokers Association (**NIBA Code**);
- (b) admits that it held itself out to the Plaintiff as a subscriber to the NIBA Code; and

### Particulars

JLT Financial Services Guide dated March 2014, pg 7

JLT Financial Services Guide dated December 2015, pg 8

JLT Financial Services Guide dated December 2017, pg 11

(c) otherwise does not admit the allegations in paragraph 8 of the CLS.

9 In answer to the allegations in paragraph 9 of the CLS, JLT:

(a) repeats paragraph 3 above;

(b) says that the Plaintiff and each Group Member was a Member under the Statewide Deed at certain times during the Relevant Period;

(c) says that the Plaintiff and each Group Member was a Member under the Statewide Deed until such time as it elected to retire from the Statewide Scheme and gave notice in accordance with clause 10.3 of the Statewide Deed;

#### **Particulars**

Prior to 1 July 2013, the required period of notice for retirement was at least 3 months

From 1 July 2013, the required period of notice for retirement was at least 12 months

(d) says that the Statewide Deed recorded, and it was the fact that, each Member entered into the Statewide Scheme for the purpose of:

(i) purchasing insurance in respect of public liability (including personal injury, damage to property and products liability), professional indemnity, property and fidelity guarantee;

(ii) their indemnity in respect of Liability (as that term is defined in the Statewide Deed) not covered by such public liability, professional indemnity, property and fidelity guarantee insurance;

(iii) having their Claims Liability (as that term is defined in the Statewide Deed) managed and resolved; and promoting good risk management practices to minimise the occurrence and effect of Claims;



**Particulars**

Statewide Deed, clause 2.1.1

- (e) says that under the Statewide Deed, a Board of Management was constituted for the Statewide Scheme (**Board of Management**), which had responsibility for governing the Scheme;

**Particulars**

Statewide Deed, clause 2.4.1

- (f) says that the majority of the Board of Management was appointed by Eligible Members under the Statewide Scheme, which were local council Members of the Scheme that were members of the Public Liability Fund and the Fidelity Guarantee Fund and/or the Property Fund (as defined in the Statewide Deed);

**Particulars**

Statewide Deed, clauses 3.1.1, 1.1 ("Eligible Member", "Public Liability Fund", "Fidelity Guarantee Fund" and "Property Fund")

- (g) says that the Board of Management was responsible for managing the Statewide Scheme;

**Particulars**

Statewide Deed, clause 3.3.1

- (h) says that the functions of the Board of Management included:
- (i) determining the amount and terms of the Primary Insurance to be purchased by the Members jointly for the relevant class of risk contemplated by the Statewide Deed from time to time;
  - (ii) determining the initial and further Contributions to be made by a Member to an Annual Fund for a Fund Year (as those terms are defined in the Statewide Deed);

- (iii) determining the amount to be paid from an Annual Fund to a Claiming Member in respect of a Liability (as those terms are defined in the Statewide Deed);
- (iv) determining the amount of any surplus in an Annual Fund available for distribution to Members; and
- (v) such other functions as were contemplated by the Statewide Deed or which were reasonably necessary to manage and administer the Statewide Scheme;

**Particulars**

Statewide Deed, clauses 3.3.1, 6, 7, 8, 1 ("Annual Fund", "Claiming Member", "Fund Year", "Liability", "Primary Insurance")

- (i) says that each Member of the Statewide Scheme (including the Plaintiff) appointed JLT to advise on and effect insurance for the relevant classes of risk contemplated by the Statewide Deed from time to time on instructions of the Board of Management;

**Particulars**

Statewide Deed, clauses 3.3.1(a), 5.1(e) and 6.1

- (j) says that in the premises, the Statewide Scheme was not an insurer;
- (k) by reason of the matters pleaded in paragraph (j) above, denies that it was the case, or that it was possible, for insurance to be placed or arranged with the Statewide Scheme;
- (l) admits that, from time to time during the Relevant Period, it provided insurance broking services to the Plaintiff directly and individually, outside of the Statewide Scheme, in relation to certain lines of insurance that did not include public liability, professional indemnity, property or fidelity guarantee insurance; and
- (m) otherwise denies the allegations in paragraph 9 of the CLS.

10 In answer to the allegations in paragraph 10 of the CLS, JLT:

- (a) repeats paragraph 9 above;
- (b) says that, pursuant to the Statewide Deed, the Plaintiff and other Members appointed the Board of Management to receive advice and issue instructions to JLT for the purchase of Primary Insurance, being the insurance purchased by Members or any of them for the relevant class of risk as contemplated by the Statewide Deed from time to time;

**Particulars**

Statewide Deed, clauses 1.1 ("Primary Insurance"), 3.3.1(a), 5.1(e) and 6.1

- (c) says that, pursuant to the Statewide Deed, any advice given during the Relevant Period by JLT in respect of obtaining or renewing Primary Insurance covering the Members of the Statewide Scheme was given to the Board of Management, as required by the Statewide Deed;
  - (d) says that JLT was not appointed, whether under the Statewide Deed or otherwise, to give advice or recommendations to the Plaintiff or any Group Member as to whether to exercise the right to retire from the Statewide Scheme; and
  - (e) otherwise denies the allegations in paragraph 10 of the CLS.
- 11 In answer to the allegations in paragraph 11 of the CLS, JLT:
- (a) repeats paragraphs 9 and 10 above;
  - (b) says that in accordance with the appointment provided by the Plaintiff and Group Members under the Statewide Deed, it effected certain Primary Insurance for the Plaintiff and Group Members on the instructions of the Board of Management; and
  - (c) otherwise denies the allegations in paragraph 11 of the CLS.

- 12 In answer to the allegations in paragraph 12 of the CLS, JLT:
- (a) repeats paragraphs 9 to 11 above;
  - (b) admits that it had knowledge of the market for Property and/or Public Liability and Professional Indemnity insurance;
  - (c) does not admit that the Plaintiff or Group Members lacked knowledge of the market for Property and/or Public Liability and Professional Indemnity insurance;
  - (d) says that, in any event, the Members of the Statewide Scheme appointed the Board of Management to receive advice and issue instructions for the purchase of Primary Insurance; and
  - (e) otherwise denies the allegations in paragraph 12 of the CLS.
- 13 In answer to the allegations in paragraph 13 of the CLS, JLT:
- (a) repeats paragraphs 9 to 12 above; and
  - (b) otherwise denies the allegations in paragraph 13 of the CLS.
- 14 In answer to the allegations in paragraph 14 of the CLS, JLT:
- (a) repeats paragraphs 9 to 11 above;
  - (b) says that JLT's contractual relationship with the Plaintiff and Group Members in respect of the provision of insurance broking services relating to 'Property and/or Public Liability and Professional Indemnity insurance' (as referred to in the CLS) was governed by the Statewide Deed;
  - (c) says further that in the premises there was no scope for any separate contract to be implied from conduct; and
  - (d) otherwise denies the allegations in paragraph 14 of the CLS.

**Particulars**

The fact that the pleaded Broking Services Contracts between JLT and the Plaintiff and each Group Member were not made is demonstrated and/or may be inferred from the additional facts, matters and circumstances set out in Annexure A to this CLR.

15 In answer to the allegations in paragraph 15 of the CLS, JLT:

- (a) repeats paragraphs 9 to 11 and 14 above; and
- (b) otherwise denies the allegations in paragraph 15 above.

16 In answer to the allegations in paragraph 16 of the CLS, JLT:

(aa) says that the contributions payable by Members of the Statewide Scheme were determined by the Board of Management on a collective basis;

- (a) says that it is not possible to compare insurance premiums from insurers, or CivicRisk contributions, with contributions to the Statewide Scheme, without taking into account the differences in principle between commercial insurance products or the CivicRisk product, and the Statewide Scheme;

**Particulars**

- (1) The Statewide Scheme is not an insurance product.
- (2) The Statewide Scheme is an agreement, among other things, for the establishment of certain Funds (as defined in clause 1.1 of the Statewide Deed) to meet claims incurred by Members, for the purchase jointly by Members of Primary Insurance, for a discretionary indemnity in respect of Liability (as defined in clause 1.1 of the Statewide Deed) not covered by the Primary Insurance, for the management and resolution of Claims (as defined in clause 1.1 of the Statewide Deed), and for the promotion of good risk management practices to minimise the occurrence and effect of Claims.
- (3) The Statewide Scheme operated as a mutual scheme over a long period of time and was not limited to a single insurance year.

- (4) The Members of the Statewide Scheme have rights under the Statewide Deed in relation to the funds held by the Scheme.
- (b) says that it is not possible to compare insurance premiums or CivicRisk contributions with contributions to the Statewide Scheme, without taking into account differences in the specific features of both the Statewide Scheme, CivicRisk and relevant insurance products (whether actually purchased or available to a particular person for purchase), including the terms and conditions of the cover, the amount of cover provided, the risks and other matters covered by the policy, the level of deductibles, any right to receive a partial reimbursement of premium or another distribution after the end of the claim year, the risk of capital calls on members, additional services offered in connection with the products, the manner in which any premiums or contributions that were not paid out in respect of claims were treated, and the availability of discretionary cover;
- (c) says that it is not possible to compare insurance premiums or CivicRisk contributions with contributions to the Statewide Scheme, without equal treatment of all taxes, statutory charges and fees that are relevant to the comparison;

### **Particulars**

Taxes, statutory charges and fees may include, for example, goods and services tax, fire or emergency services levies, broking fees, and professional fees for other risk management-related services

- (d) says that it is not possible to compare insurance premiums with contributions to the Statewide Scheme charged in respect of different policy years without taking into account differences in commercial conditions over time; and
- (e) otherwise denies the allegations in paragraph 16 of the CLS.
- 17 In answer to the allegations in paragraph 17 of the CLS, JLT:
- (a) repeats paragraphs 9 to 16 above; and
- (b) denies the allegations in paragraph 17 of the CLS.



- 18 In answer to the allegations in paragraph 18 of the CLS, JLT:
- (a) repeats paragraphs 9 to 17 above;
  - (b) denies that the Plaintiff or Group Members have suffered loss or damage as alleged;
  - (c) says further that if JLT breached any duty as alleged (which is denied) and the Plaintiff or Group Members suffered any loss or damage (which is denied), any cause of action arose no later than the point in time at which the Plaintiff or a Group Member became liable to pay contributions to Statewide in respect of Property and/or Public Liability and Professional Indemnity insurance;
  - (d) says further that if JLT breached any contractual term as alleged (which is denied) and the Plaintiff or Group Members suffered any loss or damage (which is denied), any cause of action arose no later than the point in time at which the relevant breach occurred;
  - (e) says further that, by their nature, the breaches of contract alleged in paragraph 17 of the CLS must, if they occurred (which is denied), have occurred prior to the beginning of each renewal of cover under the Statewide Scheme, which in every year for each Group Member took effect on 30 June;
  - (f) says further that any claims by the Plaintiff or Group Members relating to causes of action arising prior to 3 December 2012 or 16 May 2013 in the case of Yass Valley Council or 28 June 2013 in the case of Gunnedah Shire Council, Lismore City Council and Willoughby City Council or 5 March 2014 in the case of Port Macquarie-Hastings Council and Kyogle Council or 30 June 2015 in the case of Central Coast Council, Woollahra Municipal Council, Inner West Council, Narromine Shire Council, Bland Shire Council, Albury City Council, Snowy Monaro Regional Council or Northern Beaches Council are statute-barred by operation of s 14 of the Limitation Act 1969 (NSW);

- (g) says further that by reason of the matters pleaded in sub-paragraphs (c), (d), (e) and (f), where a Group Member:
- (i) last became liable to pay contributions to Statewide before 3 December 2012; and
  - (ii) last renewed cover under the Statewide Scheme with effect before 3 December 2012, the claims of that Group Member are wholly statute-barred; and
- (h) says further that by reason of the matters pleaded in sub-paragraph (g), the claims of the following Group Members are wholly statute-barred:
- (i) Shellharbour City Council;

**Particulars**

Shellharbour City Council last became liable to pay contributions to Statewide on 2 July 2010 and last renewed cover under the Statewide Scheme with effect from 30 June 2010

- (ii) Kiama Municipal Council; and

**Particulars**

Kiama Municipal Council last became liable to pay contributions to Statewide on 11 July 2011 and last renewed cover under the Statewide Scheme with effect from 30 June 2011

- (iii) Burwood Council.

**Particulars**

Burwood Council last became liable to pay contributions to Statewide on 29 June 2012 and last renewed cover under the Statewide Scheme with effect from 30 June 2012

- 19 In answer to the allegations in paragraph 19 of the CLS, JLT:
- (a) repeats paragraphs 9 to 11 above;
  - (b) says that the relationship between JLT, the Plaintiff and Group Members was governed and regulated by the terms of the Statewide Deed;
  - (c) says further that the Statewide Deed contained terms including that:
    - (i) the Members (including the Plaintiff) appointed JLT to effect Primary Insurance for the relevant class of risk contemplated by the Statewide Deed from time to time on instructions of the Board of Management;
    - (ii) JLT was required to arrange Primary Insurance for the relevant class of risk contemplated by the Statewide Deed from time to time for a particular Fund Year (as defined in the Statewide Deed) following notification by the Board of Management;
    - (iii) the Members (including the Plaintiff) agreed to pay JLT such fees as agreed with the Board of Management in consideration of the services it provided under the Statewide Scheme;
    - (iv) JLT was entitled to be indemnified out of the Annual Fund against all claims, costs and expenses which it paid or incurred in connection with the performance of its functions under the Statewide Deed or any action taken by it which in its opinion was necessary or desirable in connection with the Annual Fund;
    - (v) JLT was not liable for any loss to the Annual Fund except where the loss arose because of fraud, intentional breach of the Statewide Deed, other wilful misconduct or negligence;
    - (vi) each Member (including the Plaintiff) indemnified JLT against any loss, liability, cost or expense incurred in connection with JLT's obligations under the Statewide Deed; and
    - (vii) JLT had all powers which were reasonably necessary to perform its functions expressed in or implied by the Statewide Deed.

### Particulars

Statewide Deed, clauses 5.1(e), 6.2, 11.1.1, 11.2.1, 11.3.1, 11.4, 11.6

- (d) says that in the premises there was no fiduciary duty of the kind pleaded in paragraph 19 of the CLS;
- (e) further or in the alternative denies that it owed the Plaintiff and Group Members the duties alleged in paragraphs 19(c) and (d) of the CLS; and

### Particulars

The fact that the pleaded fiduciary duties between JLT and the Plaintiff and each Group Member did not exist is demonstrated and/or may be inferred from the fact that none of the group members had an expectation that JLT would act in its interests, none of the group members reposed trust or confidence in JLT to act in its interests and the additional facts, matters and circumstances referred to in respect of paragraph 14 above and set out in Annexure A to this CLR.

- (f) otherwise does not admit the allegations in paragraph 19 of the CLS.

20 In answer to the allegations in paragraph 20 of the CLS, JLT:

- (a) says that it had contractual obligations pursuant to the Statewide Deed to provide services to the Members of the Statewide Scheme;
- (b) will rely on the terms of the Statewide Deed for their full force and effect;
- (c) says that Statewide is not a legal person; and
- (d) otherwise denies the allegations in paragraph 20 of the CLS.

21 In answer to the allegations in paragraph 21 of the CLS, JLT:

- (a) says that it had contractual obligations pursuant to the Statewide Deed;
- (b) says that pursuant to the Statewide Deed, the Members (including the Plaintiff) agreed to pay JLT such fees as agreed with the Board of Management in consideration of the services it provided under the Statewide Scheme;

- (c) admits that from time to time it received fees and commissions in consideration for performing its obligations under the Statewide Deed;
- (d) says that the Annual Reports for the Statewide Scheme disclosed the fees paid to JLT from time to time;
- (e) says that at all times during the Relevant Period, JLT disclosed to the Plaintiff the fact it was entitled to receive fees or commissions and/or the quantum of those fees and commissions;

#### **Particulars**

The disclosure was contained in documents issued to the Plaintiff and/or Group Members including:

- (1) Renewal reports;
  - (2) Financial Services Guides;
  - (3) Insurance declarations;
  - (4) Insurance invoices; and
  - (5) Annual Reports in respect of the Statewide Scheme.
- (ea) admits that from time to time during the Relevant Period its wholly owned subsidiary, Echelon Pty Ltd, received fees in consideration for providing services to Members of the Statewide Scheme;
  - (eb) says that pursuant to the Statewide Deed, the Members (including the Plaintiff) agreed to make such payments from the Annual Fund as determined by the Board of Management;

#### **Particulars**

Statewide Deed, clause 9.3(e).

- (ec) says that Echelon Pty Ltd provided services to the Members of the Statewide Scheme pursuant to a determination from the Board of Management; and

- (f) otherwise denies the allegations in paragraph 21 of the CLS.
- 22 In answer to the allegations in paragraph 22 of the CLS, JLT:
- (a) repeats paragraphs 19 and 21 above; and
- (b) otherwise denies the allegations in paragraph 22 of the CLS.
- 23 In answer to the allegations in paragraph 23 of the CLS, JLT:
- (a) repeats paragraphs 9, 10, 11, 19, and 21 above;
- (b) says that, subject to receiving the required notice from the Plaintiff and/or a Group Member of retirement from the Statewide Scheme with effect from the end of a Fund Year, JLT was contractually obliged under the Statewide Deed to arrange Primary Insurance to be purchased jointly by the Plaintiff, Group Members and other Members for each Fund Year; and
- (c) otherwise denies the allegations in paragraph 23 of the CLS.
- 24 In answer to the allegations in paragraph 24 of the CLS, JLT:
- (a) repeats paragraphs 19, 21, 22 and 23 above;
- (b) otherwise denies the allegations in paragraph 24 of the CLS;
- (c) says further that if it owed the alleged fiduciary duty (which is denied), the Plaintiff provided its informed consent in respect of any alleged breach of duty;

#### **Particulars**

JLT repeats paragraphs 21(b) and 21(e) above and the Particulars subjoined thereto. In the face of that disclosure, the Plaintiff elected to continue to instruct JLT to place insurance.

- (d) says further that to the extent that JLT disclosed to any Group Member the fact and/or quantum of any fees received by it and that Group Member elected to continue to instruct JLT, then if JLT owed the alleged fiduciary duty (which is



denied), that Group Member has provided its informed consent in respect of any alleged breach.

25 In answer to the allegations in paragraph 25 of the CLS, JLT:

- (a) denies the allegations in paragraph 25 of the CLS;
- (b) says further that if JLT breached any duty as alleged (which is denied) and the Plaintiff or Group Members suffered any loss or damage (which is denied), any cause of action arose no later than the point in time at which the relevant breach occurred or, alternatively, the point in time at which the Plaintiff or a Group Member became liable to pay premiums in respect of Property and/or Public Liability and Professional Indemnity insurance; and
- (c) says further that any claims by the Plaintiff or Group Members relating to causes of action arising prior to 3 December 2012 or 16 May 2013 in the case of Yass Valley Council or 28 June 2013 in the case of Gunnedah Shire Council, Lismore City Council and Willoughby City Council or 5 March 2014 in the case of Port Macquarie-Hastings Council and Kyogle Council or 30 June 2015 in the case of Central Coast Council, Woollahra Municipal Council, Inner West Council, Narromine Shire Council, Bland Shire Council, Albury City Council, Snowy Monaro Regional Council or Northern Beaches Council are statute-barred by operation of s 23 of the Limitation Act 1969 (NSW) and/or by analogy with ss 14 or 15 of the Limitation Act 1969 (NSW) and/or the doctrine of laches; and
- (d) repeats paragraphs 18(c), (d), (e), (f), (g) and (h) above.

26 In answer to the allegations in paragraph 26 of the CLS, JLT:

- (a) denies the allegations in paragraph 26 of the CLS;
- (aa) says further that if JLT breached any duty as alleged (which is denied) and JLT earned profits from any such breach (which is denied), any cause of action arose no later than the point in time at which the relevant breach occurred or, alternatively, the point in time at which the Plaintiff or a Group Member

became liable to pay or paid premiums in respect of Property and/or Public Liability and Professional Indemnity insurance; and

- (ab) says further that if JLT, breached any duty as alleged (which is denied) and JLT earned profits from any such breach (which is denied), just allowance should be made to compensate JLT for the expenses, skill, effort and resources required to make the profit;
  - (b) further repeats paragraphs 25(b) and (c) and (d) above.
- 27 In answer to the allegations in paragraph 27 of the CLS, JLT denies that the Plaintiff or the Group Members are entitled to the relief set out in the accompanying Summons, or any relief at all.
- 28 As to the whole of the Plaintiff's claim, JLT says that, by reason of the matters pleaded in paragraph 18(h) and repeated in paragraphs 25(d) and 26(b), each of Shellharbour City Council, Kiama Municipal Council and Burwood Council have no claims against JLT arising out of the same, similar or related circumstances as those pleaded in the CLS and are therefore not represented by the Plaintiff in this proceeding.

### Annexure A

i. In respect of Albury City Council (**Albury**):

- A. during the Relevant Period, Albury was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon;
- B. throughout the Relevant Period, Albury had a practice of conducting tenders to identify available property and liability risk cover, which tenders were conducted independently of JLT, and Albury in fact conducted such tenders in 2010 and 2015;
- C. further or alternatively to (A), from the conduct of the tenders referred to in (B) above, Albury was aware of the existence of such alternatives to risk cover through Statewide as existed;
- D. at all times during the Relevant Period (and now) Albury remained as a member of Statewide and continued to deal with JLT despite knowing that JLT identified to it only risk cover through the Statewide scheme in respect of property and liability exposures and knowing of the allegations made in this proceeding;
- E. at no stage during the Relevant Period (or now) has Albury expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- F. further particulars may be provided following the determination of the common questions and the provision of discovery.

ii. In respect of Bland Shire Council (**Bland**):

- A. during the Relevant Period, Bland was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon;
- B. at all times during the Relevant Period (and now), Bland remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures and knowing of the allegations made in this proceeding;
- C. at no stage during the Relevant Period (or now) has Bland expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- D. during the course of a JLT Roadshow conducted in October 2020, Mr Ray Smith, the General Manager of Bland since in or around 2010, expressed to the forum his appreciation for the services that Statewide Mutual and JLT provide to local government;
- E. further particulars may be provided following the determination of the common questions and the provision of discovery.

iii. In respect of Burwood Council (**Burwood**):

- A. during the Relevant Period, Burwood was aware of alternative cover for property and liability exposures other than Statewide;
- B. in the period up to 30 June 2013, Burwood remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through the Statewide scheme in respect of property and liability exposure;
- C. at no stage during the Relevant Period (or now) did Burwood express the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- D. with effect from 30 June 2013, without seeking any advice from or otherwise involving JLT, Burwood gave notice of an intention to withdraw from the Statewide scheme and thereafter itself approached and obtained cover for its property and liability exposures from the CivicRisk scheme;
- E. further particulars may be provided following the determination of the common questions and the provision of discovery.

iv. In respect of Central Coast Council (**Central Coast**):

- A. during the Relevant Period, Central Coast, including the former councils of Wyong Shire (**Wyong**) and Gosford City (**Gosford**), which on 12 May 2016 amalgamated and became Central Coast, was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon and CivicRisk;
- B. on or about 29 May 2015, Wyong (which was amalgamated with Gosford on 12 May 2016) received indicative pricing from Aon in respect of cover for property and its liability exposures;
- C. further or alternatively to (A), from the circumstances referred to in (B) above, Wyong was aware of the existence of such alternatives to risk cover through Statewide as existed;
- D. at all times during the Relevant Period (and now) Central Coast remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through the Statewide scheme in respect of property and liability exposure and knowing of the allegations made in this proceeding;
- E. at no stage during the Relevant Period (or now) did Central Coast express the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- F. with effect from 30 June 2018, Central Coast gave notice of an intention to withdraw from the Statewide scheme but subsequently withdrew that notice;
- G. further particulars may be provided following the determination of the common questions and the provision of discovery.

v. In respect of Gunnedah Shire Council (**Gunnedah**):

- A. during the Relevant Period, Gunnedah was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon;
- B. in or about 2019, Gunnedah conducted a tender independently of JLT to identify available property and liability risk cover;
- C. at all times during the Relevant Period (and up to 30 June 2020) Gunnedah remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through the Statewide scheme in respect of property and liability exposure and knowing of the allegations made in this proceeding;
- D. at no stage during the Relevant Period (or now) did Gunnedah express the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- E. with effect from 30 June 2020, without seeking any advice from or otherwise involving JLT, Gunnedah gave notice of an intention to withdraw from the Statewide scheme and thereafter itself approached and obtained cover for its property and liability exposures from the CivicRisk scheme;
- F. further particulars may be provided following the determination of the common questions and the provision of discovery.

vi. In respect of Inner West Council (**Inner West**):

- A. during the Relevant Period, Inner West including the former councils of Ashfield and Leichhardt, which on 12 May 2016 (with Marrickville, which was not at that time nor any time during the Relevant Period a member of Statewide) amalgamated and became Inner West, were aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon and CivicRisk;
- B. in 2016, Inner West engaged Inscon, a third party consultant, independently of JLT to conduct an analysis of its risk cover requirements;
- C. further or alternatively to (A), from the circumstances referred to in (B) above, Inner West was aware of the existence of such alternatives to risk cover through Statewide as existed;
- D. at all times during the Relevant Period (and now), Inner West remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures and knowing of the allegations made in this proceeding;
- E. at no stage during the Relevant Period (or now) has Inner West expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;



- F. in 2016, Inner West affirmed that it had no expectation that JLT would source insurance quotes for its property and liability insurance from the open market by recording in its minutes dated 25 October 2016 that it had a "desire...to remain with a mutual arrangement".
- G. further particulars may be provided following the determination of the common questions and the provision of discovery.
- vii. In respect of Kiama Municipal Council (Kiama):
- A. during the Relevant Period, Kiama was aware of alternative cover for property and liability exposures other than Statewide, including that offered through CivicRisk;
- B. in the period from 1994 to 2001, Brian Petschler (who between 1986 and 2016 held the roles of General Manager, councillor and Mayor) of Kiama served as the Chairman of Statewide, and in the period from in or about 2012 to 2016, served as the Chairman of CivicRisk;
- C. at all times during the Relevant Period up to 30 June 2012 Kiama remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through the Statewide scheme in respect of property and liability exposure;
- D. at no stage during the Relevant Period (or now) did Kiama express the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- E. with effect from 30 June 2012, without seeking any advice from or otherwise involving JLT, Kiama gave notice of an intention to withdraw from the Statewide scheme and thereafter itself approached and obtained cover for its property and liability exposures from the CivicRisk scheme;
- F. further particulars may be provided following the determination of the common questions and the provision of discovery.
- viii. In respect of Kyogle Council (Kyogle):
- A. during the Relevant Period, Kyogle was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon, Arthur J Gallagher, Marsh and Willis;
- B. Kyogle conducted tenders independently of JLT in relation to the provision of risk cover expressly other than for property and/or liability exposures in 2011, and in relation to the provision of risk cover for property and/or liability exposures in 2016;
- C. further or alternatively to (A), from the conduct of the tender in 2016 referred to in (B) above, Kyogle was aware of the existence of such alternatives to risk cover through Statewide as existed;
- D. at all times during the Relevant Period (and now) Kyogle remained as a member of the Statewide scheme and continued to deal with JLT despite



knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures and knowing of the allegations made in this proceeding;

- E. at no stage during the Relevant Period (or now) has Kyogle expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- F. further particulars may be provided following the determination of the common questions and the provision of discovery.
- ix. In respect of Lismore City Council (**Lismore**):
- A. during the Relevant Period, Lismore was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon;
- B. Lismore conducted tenders independently of JLT in relation to the provision of risk cover expressly other than for property and/or liability exposures in 2011;
- C. in the period from December 2015 to June 2018, Gary Murphy, the General Manager of Lismore, served as a member of the Statewide Board;
- D. during the Relevant Period, Lismore did not have any expectation or understanding that JLT would seek to procure risk cover for its property and liability exposures other than through Statewide as set out in the affidavit of Mr Gary Murphy sworn 16 June 2020;
- E. at all times during the Relevant Period (and now) Lismore remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures and knowing of the allegations made in this proceeding;
- F. at no stage during the Relevant Period (or now) has Lismore expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- G. with effect from 30 June 2019, without seeking any advice from or otherwise involving JLT, Lismore gave notice of an intention to withdraw from the Statewide scheme with a view to tendering for the provision of alternative property and liability risk cover, but subsequently withdrew that notice;
- H. further particulars may be provided following the determination of the common questions and the provision of discovery.
- x. In respect of Orange City Council (**Orange**):
- A. during the Relevant Period, Orange was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon and CivicRisk;

- B. in or around 2015, Orange engaged an independent consultant PFS, independently of JLT, to conduct a review of its insurances;
  - C. in or around 2018 Orange conducted a tender independently of JLT to identify available property and liability risk cover;
  - D. further or alternatively to (A), from the conduct of the review and tender referred to (B) and (C) above, Orange was aware of the existence of such alternatives to risk cover through Statewide as existed;
  - E. at all times during the Relevant Period up to 30 June 2018, Orange remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures;
  - F. at no stage during the Relevant Period (or now) has Orange expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
  - G. with effect from 30 June 2018, without seeking any advice from or otherwise involving JLT, Orange gave notice of an intention to withdraw from the Statewide scheme and thereafter itself approached and obtained cover for its property and liability exposures from the CivicRisk scheme;
  - H. further particulars may be provided following the determination of the common questions and the provision of discovery.
- xi. In respect of Mid-Western Regional Council (**Mid-Western**):
- A. during the Relevant Period, Mid-Western was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon, Arthur J Gallagher, Marsh and Willis;
  - B. in or around 2016, Mid-Western conducted a tender independently of JLT to identify available property and liability risk cover;
  - C. further or alternatively to (A), from the conduct of the tender referred to in (B) above, Mid-Western was aware of the existence of such alternatives to risk cover through Statewide as existed;
  - D. at all times during the Relevant Period up to 30 June 2017, Mid-Western remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures;
  - E. at no stage during the Relevant Period (or now) has Mid-Western expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
  - F. with effect from 30 June 2017, without seeking any advice from or otherwise involving JLT, Mid-Western gave notice of an intention to withdraw from the Statewide scheme and thereafter itself approached and obtained cover for its property and liability exposures through Marsh;

G. further particulars may be provided following the determination of the common questions and the provision of discovery.

xii. In respect of Narromine Shire Council (**Narromine**):

- A. during the Relevant Period, Narromine was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon;
- B. at all times during the Relevant Period (and now) Narromine remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures and knowing of the allegations made in this proceeding;
- C. at no stage during the Relevant Period (or now) has Narromine expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- D. in or around 2016, Narromine, following a presentation by LG Procurement Australia and Marsdens, obtained independent legal advice and gave consideration as to whether it should tender its property and liability cover by itself, or with the assistance of an independent tender consultant, and chose not to do so and to remain a member of Statewide;
- E. further particulars may be provided following the determination of the common questions and the provision of discovery.

xiii. In respect of Northern Beaches Council (**Northern Beaches**):

- A. during the Relevant Period, Northern Beaches, including the former councils of Manly, Pittwater and Warringah, which on 12 May 2016 amalgamated and became Northern Beaches, was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon and CivicRisk;
- B. at all times during the Relevant Period (and now) Northern Beaches remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures and knowing of the allegations made in this proceeding;
- C. at no stage during the Relevant Period (or now) has Northern Beaches expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- D. further particulars may be provided following the determination of the common questions and the provision of discovery.

xiv. In respect of Parkes Shire Council (**Parkes**):

- A. at all times during the Relevant Period, Parkes was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon, Arthur J Gallagher, Marsh and Willis;
- B. in or around 2015, Parkes engaged an independent consultant PFS, independently of JLT, to conduct a review of its insurances
- C. in or around 2016, Parkes conducted tenders independently of JLT to identify available property and liability risk cover;
- D. further or alternatively to (A), from the conduct of the review referred to in (B) above and the tender referred to in (C) above, Parkes was aware of the existence of such alternatives to risk cover through Statewide as existed;
- E. at all times during the Relevant Period up to 30 June 2017, Parkes remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures;
- F. at no stage during the Relevant Period has Parkes expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- G. with effect from 30 June 2017, without seeking any advice from or otherwise involving JLT, Parkes gave notice of an intention to withdraw from the Statewide scheme and thereafter itself approached and obtained cover for its property and liability exposures through Aon;
- H. further particulars may be provided following the determination of the common questions and the provision of discovery.

xv. In respect of Port Macquarie-Hastings Council (**Port Macquarie**):

- A. during the Relevant Period, Port Macquarie was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon;
- B. in the period from December 2016 to September 2018, Brian Hancock, the risk manager of Port Macquarie-Hastings, served as a member of the Statewide Board;
- C. prior to 2010 and in or about 2018, Port Macquarie conducted tenders independently of JLT to identify available property and liability risk cover;
- D. at all times during the Relevant Period (and now) Port Macquarie remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures and knowing of the allegations made in this proceeding;

- E. at no stage during the Relevant Period (or now) has Port Macquarie expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- F. further particulars may be provided following the determination of the common questions and the provision of discovery.
- xvi. In respect of Richmond Valley Council (**Richmond Valley**):
- A. during the Relevant Period, Richmond Valley was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon, Arthur J Gallagher, Marsh and Willis;
- B. during the Relevant Period, Richmond Valley did not have any expectation or understanding that JLT would seek to procure risk cover for its property and liability exposures other than through Statewide;
- C. in or about 2010, Richmond Valley gave consideration to conducting a tender in respect of all lines of insurance or risk cover, including in respect of its cover with Statewide;
- D. in or about September 2013, independently of JLT, Richmond Valley was aware of the availability of alternative cover in respect of cover for its property and liability exposures from Willis.
- E. on or about 23 June 2015, Richmond Valley received indicative pricing from Aon in respect of cover for its property and liability exposures.
- F. in or around 2016, Richmond Valley conducted a tender independently of JLT to identify available property and liability risk cover;
- G. further or alternatively to (A), from the events and circumstances referred to in (C)-(F) above, Richmond Valley was aware of the existence of such alternatives to risk cover through Statewide as existed;
- H. at all times during the Relevant Period up to 30 June 2017, Richmond Valley remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures;
- I. at no stage during the Relevant Period did Richmond Valley express the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- J. with effect from 30 June 2017, without seeking any advice from or otherwise involving JLT, Richmond Valley gave notice of an intention to withdraw from the Statewide scheme and thereafter itself approached and obtained cover for its property and liability exposures through Aon.



xvii. In respect of Shellharbour City Council (**Shellharbour**):

- A. during the Relevant Period, Shellharbour was aware of alternative cover for property and liability exposures other than Statewide, including that offered through CivicRisk;
- B. at all times during the Relevant Period up to 30 June 2011, Shellharbour remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures;
- C. at no stage during the Relevant Period (or now) has Shellharbour expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- D. with effect from 30 June 2011, without seeking any advice from or otherwise involving JLT, Shellharbour gave notice of an intention to withdraw from the Statewide scheme and thereafter itself approached and obtained cover for its property and liability exposures from the CivicRisk scheme;
- E. further particulars may be provided following the determination of the common questions and the provision of discovery.

xviii. In respect of Snowy Monaro Council (**Snowy Monaro**):

- A. during the Relevant Period, Snowy Monaro, including the former councils of Snow River Shire, Bombala Shire and Cooma-Monaro Shire, which on 12 May 2016 amalgamated and became Snowy Monaro, was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon and CivicRisk;
- B. prior to 2009, former Bombala council conducted a conceptual tender independently of JLT to identify available property and liability risk cover;
- C. in or about 2012/2013, the former councils of Snowy Monaro (Snowy River, Bombala and Cooma-Monaro), independently of JLT, investigated with Willis the possibility of establishing a small pool risk cover arrangement;
- D. in or about 2019, Snowy Monaro conducted a tender independently of JLT to identify available property and liability risk cover;
- E. further or alternatively to (A), from the events and circumstances referred to in (B)-(D) above, Snowy Monaro was aware of the existence of such alternatives to risk cover through Statewide as existed;
- F. at all times during the Relevant Period (and up to 30 June 2020) Snowy Monaro remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures and knowing of the allegations made in this proceeding;



- G. at no stage during the Relevant Period (or now) has Snowy Monaro expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- H. with effect from 30 June 2020, without seeking any advice from or otherwise involving JLT, Snowy Monaro gave notice of an intention to withdraw from the Statewide scheme and thereafter itself approached and obtained cover for its property and liability exposures from the CivicRisk scheme;
- I. further particulars may be provided following the determination of the common questions and the provision of discovery.
- xix. In respect of Willoughby City Council (**Willoughby**):
- A. during the Relevant Period, Willoughby was aware of alternative cover for property and liability exposures other than Statewide, including that offered through CivicRisk;
- B. during the Relevant Period, Willoughby did not have any expectation or understanding that JLT would seek to procure risk cover for its property and liability exposures other than through Statewide as set out in the affidavit of Mr Nick Tobin sworn 17 June 2020;
- C. at all times during the Relevant Period (and up to 30 June 2020) Willoughby remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures and knowing of the allegations made in this proceeding;
- D. in or about 2018, Willoughby engaged Inscon, a third party consultant, independently of JLT, to review its risk cover;
- E. at no stage during the Relevant Period (or now) has Willoughby expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- F. with effect from 30 June 2020, without seeking any advice from or otherwise involving JLT, Willoughby gave notice of an intention to withdraw from the Statewide scheme and thereafter itself approached and obtained cover for its property and liability exposures from the CivicRisk scheme;
- G. further particulars may be provided following the determination of the common questions and the provision of discovery.
- xx. In respect of Woollahra Municipal Council (**Woollahra**):
- A. during the Relevant Period, Woollahra was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon;
- B. at all times during the Relevant Period (and now) Woollahra remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in

respect of property and liability exposures and knowing of the allegations made in this proceeding;

- C. in or about 2016, Woollahra engaged a third party consultant, independently of JLT, to review its risk cover;
- D. at no stage during the Relevant Period (or now) has Woollahra expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- E. further particulars may be provided following the determination of the common questions and the provision of discovery.

xxi. In respect of Yass Valley Council (Yass):

- A. at all times during the Relevant Period, Yass was aware of alternative cover for property and liability exposures other than Statewide, including that offered through Aon and CivicRisk;
- B. in or about 2012/2013, Yass, independently of JLT, investigated with Willis the possibility of establishing a small pool risk cover arrangement;
- C. in or about 2017, Yass conducted a tender independently of JLT to identify available property and liability risk cover;
- D. further or alternatively to (A), from the events and circumstances referred to in (B) and (C) above, Yass was aware of the existence of such alternatives to risk cover through Statewide as existed;
- E. at all times during the Relevant Period (and now) Yass remained as a member of the Statewide scheme and continued to deal with JLT despite knowing that JLT identified to it only risk cover through that scheme in respect of property and liability exposures and knowing of the allegations made in this proceeding;
- F. at no stage during the Relevant Period (or now) has Yass expressed the understanding that JLT was required to source for it cover in respect of property and liability exposures other than through Statewide;
- G. with effect from 30 June 2017, Yass gave notice of an intention to withdraw from the Statewide scheme and thereafter conducted the tender referred to above at (C) above, and retained cover for its property and liability exposures through Statewide;
- H. further particulars may be provided following the determination of the common questions and the provision of discovery.

**D QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE**

- 29 The Defendant does not consider that any questions are appropriate for referral to a referee.

**E MEDIATION STATEMENT**

- 30 The parties participated in a mediation conducted by Ray Finkelstein AO QC on 16 October 2020. The mediation was unsuccessful. The Defendant does not consider that a further mediation is necessary.

**SIGNATURE**

I certify under clause 4 of the Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the response in these proceedings has reasonable prospects of success.

Signature of legal representative

Capacity

Date of signature



Solicitor for the Defendant

~~31 July 2020~~ 1 September 2021