

ANNEXURE A

[PROPOSED] SETTLEMENT DISTRIBUTION SCHEME

Walla Walla Gerogery Bushfire Class Action

Sharon Patricia Weber v Greater Hume Shire Council | 2015 / 368036

This document is strictly confidential and subject to legal professional privilege. It must not be disclosed to any other person other than your legal and financial advisors.

BACKGROUND

This part of the Scheme does not have legal effect but is provided to assist group members understand how the Scheme will operate. It is important that you also read the operative provisions below as they may affect your rights.

- A. This Scheme establishes a procedure for distributing the settlement sum to be paid by the Greater Hume Shire Council pursuant to a settlement of Supreme Court of New South Wales Proceedings No. 2015 / 368036 as approved by the Court. In addition to the Plaintiff, Ms Sharon Weber, there are 63 Group Members registered to participate in the proceeding. Where Group Members suffered loss and damage jointly (for example spouses that jointly own property) they have been recorded as one (1) Group Member.
- B. This Scheme does not become operative until the Court has finally approved the settlement and is to be read with reference to the settlement deed between the parties to the proceeding.
- C. This Scheme provides for:
 - (a) the procedure for assessing the individual loss of Group Members using information already available (including any assessment by an Independent Loss Assessor such as MCS Group); and
 - (b) the pro rata calculation of the entitlement of each Group Member to a distribution from the Compensation Pool.
- D. Ms Kathryn Emeny, a principal in the Class Actions Department of Maddens will act as Administrator of the Scheme.

Assessment of Group Member entitlements:

Economic loss and property damage

- E. To assist the Administrator manage this Scheme:
- (a) Loss assessments prepared by Independent Loss Assessors and loss information and supporting documentation provided by Group Members, their insurers to date will provide the basis of assessments under this Scheme;
 - (b) the Administrator, at her discretion, may request additional information in relation to losses suffered by each Group Member.
 - (c) If the Administrator does not receive a Group Member's response to any request for further information within 14 days, she will assess that Group Member's entitlements in accordance with the information in her possession.

Personal Injury claims

- F. Any loss relating to a personal injury arising from the Walla Walla Gerogery Bushfire will be considered by a barrister experienced in personal injury law. An assessment of the Group Member's loss for personal injury will be made by the Administrator after this process.

Administration and costs

- G. The Administrator will be assisted by Maddens and will be entitled to recover the reasonable administration costs of this Scheme including reasonable costs related to the assessment of Group Members' loss and damage. Such costs are to be assessed by an Independent Costs Consultant and will form part of the Common Benefit Legal costs.
- H. Group Members who seek specific legal advice, or require other work beyond the routine information-gathering and assessment tasks undertaken by the Administrator, will be entitled to retain other solicitors as they wish but at their individual cost.
- I. The Court will have ongoing supervision over the implementation of this Scheme.
- J. The operative provisions of this Scheme are set out below.

OPERATIVE CLAUSES:

1. Interpretation

- 1.1 In this Scheme, the following terms have the meanings defined (clause references are references to the clauses of this document unless otherwise specified):

Act means the *Civil Liability Act 2002* (NSW).

Administration Costs means the disbursements (including the costs of any expert advisers and barristers) and costs incurred by the Administrator in connection with the

administration of this Scheme, including but not limited to, assessing Group Member claims and administering the Scheme (but not including costs associated with a referral to Reviewing Counsel under clauses 5.9 and 5.10 of this Scheme). These costs shall form part of the Common Benefit Legal Costs which will be assessed by an Independent Costs Consultant and approved by the Court.

Administrator means Ms Kathryn Emeny a principal in the Class Actions Department of Maddens or another person appointed by the Court as Administrator of the Scheme.

Agreement means the settlement deed executed by the plaintiff and Greater Hume Shire Council dated 5 March 2020.

Amended Statement of Claim means the Further Amended Statement of Claim filed in the Proceeding on 4 April 2017.

Assessment Entitlement means the value of a Group Member and/or Insurer's Claim calculated in accordance with clause 4.1 of Schedule A.

Assessed Loss means the loss assessed by the Administrator, inclusive of any interest, based on the information available as at the Settlement Date (including any assessment by an Independent Loss Assessor) and provided by Group Members and/or Insurers in relation to the quantum of the Group Member's loss and damage.

Claimant Records means a database or other records constructed by or on behalf of Maddens to contain the information for each Group Member and any information required to identify the Group Member, including names, addresses and telephone numbers and all insurance claims notified to Maddens.

Claims means all manner of actions, suits, causes of action, arbitrations, debts, dues, costs, claims, demands, verdicts and judgements either at law or in equity or arising under statute and whether or not the facts, matters or circumstances giving rise to those Claims are known to any Group Member at the date of the conclusion of the Scheme.

Common Benefit Legal Costs means professional fees and disbursements incurred by Maddens in relation to the proceeding and the assessment of Group Member claims for the purposes of mediation and preparation for trial and which have been assessed by an Independent Costs Consultant and approved by the Court.

Compensation Pool means the Settlement Sum less Common Benefit Legal Costs, less Administration Costs and less the Reimbursement Payment.

Council means Greater Hume Shire Council.

Court means the Supreme Court of New South Wales.

ELPD Claim/s means economic loss and property damage claims of Registered Group Members.

Group Member means a person:

- (i) defined as a Group Member in the Amended Statement of Claim;
- (ii) who has registered with Maddens pursuant to orders of the Court closing the class made 24 May 2019; and
- (iii) is identified in the List of Registered Group Members set out at Appendix 1 of the Agreement.

Independent Loss Assessors means independent experts engaged by Maddens for the purposes of undertaking assessments of the Group Members' ELPD Claims for the purpose of this Proceeding including MCS Group and Agribusiness Valuations Australia.

Insurer means any insurer which has notified Maddens of subrogated losses caused by the Walla Walla Gerogery Bushfire.

Maddens means Maddens Lawyers ABN 94 831 504 106.

PI Claim/s means personal injury claim/s of Group Members as defined in paragraph 5(c) of the Amended Statement of Claim.

Plaintiff means Sharon Patricia Weber.

Proceeding means *Weber v Greater Hume Shire Council*, Supreme Court of New South Wales, Proceeding No (2015 / 368036).

Reimbursement Payment means the payment referred to in Schedule B

Scheme means the terms of this Settlement Distribution Scheme as approved by the Court, including any Schedules and Appendices.

Settlement Approval means the approval of the terms of settlement of the Proceeding and the Scheme by the Court pursuant to section 173 of the *Civil Procedure Act 2005*.

Settlement Approval Date means the date on which orders are first made in the Proceeding granting Settlement Approval, including provisional approval by the Court (subject to determination of any objections to the settlement of the Proceeding and the Scheme).

Settlement Date means 5 March 2020.

Settlement Distribution Fund means a controlled monies account as defined in the *Legal Profession Act 2004* to be established by Maddens with Westpac Banking Corporation to hold monies for the purpose of the Scheme, and where the context admits, will include a reference to all monies in the account.

Settlement Sum means the amount of AUD\$16,000,000.00 plus any interest accruing on that Sum in the Settlement Distribution Fund.

Walla Walla Gerogery Bushfire means the fire that started on 15 December 2009 at the Walla Walla rubbish tip.

- 1.2 Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:
- (a) the singular includes the plural, and the converse also applies;
 - (b) a gender includes all genders;
 - (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (d) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
 - (e) a reference to dollars and \$ is to Australian currency;
 - (f) a reference to anything done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Agreement or this Scheme.
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2. Scheme Administrator

- 2.1 The Settlement Distribution Fund shall be administered and applied by the Administrator. The Administrator, at her discretion, may utilise the services of and may in administering the Settlement Distribution Fund or Scheme as applicable delegate any power under this Scheme to any persons employed or engaged by her including barristers, accounting or other experts and rely upon their work, information and opinions.
- 2.2 In acting as Administrator (including any incidental functions) the Administrator's obligation is to do so properly on behalf of the Group Members and Insurers as a whole. Neither the Administrator nor any person employed by it will act as the lawyer for any individual Group Member or Insurer in relation to his, her or its claim under the Scheme.
- 2.3 Following Settlement Approval and payment of the Settlement Sum in accordance with the Agreement, the Administrator shall hold the monies in the Settlement Distribution Fund subject to and in accordance with the terms of this Scheme.
- 2.4 The Administrator may rely on any information or declarations provided by the Insurer of any Group Member as if such information has been provided by the Group Member.

- 2.5 Notwithstanding anything elsewhere contained in this Scheme, the Administrator may at any time correct any error, slip or omission occurring in the course of her administration of the Scheme.
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3. Group Member Information

- 3.1 The Administrator shall maintain the Claimant Records and use reasonable endeavours to ensure the accuracy of the information they contain.
- 3.2 The Claimant Records shall contain the information for each Group Member, or as much of the information as the Group Member has been required to provide or has provided. The Claimant Records shall also contain information obtained by the Administrator or Maddens including any information provided by an Insurer.
- 3.3 The Claimant Records shall include:
- (a) Assessments of ELPD Claims undertaken by Independent Loss Assessors for the purpose of the Proceeding;
 - (b) Assessments of PI Claims conducted in accordance with clause 5.3 below; and
 - (c) Assessments of each Group Member's claim in accordance with the provisions of this Scheme.
- 3.4 The accuracy of the information in the Claimant Records shall be deemed to be accepted by each Group Member. The Administrator shall use reasonable endeavours to ensure the accuracy of the information recorded in the Claimant Records.
- 3.5 Subject to clause 3.6 a Group Member shall not be entitled to amend the information contained on the Claimant Records after the Settlement Date.
- 3.6 The Administrator may, in the Administrator's absolute discretion, request and take into account additional documentation or information in relation to a Group Member's claim.
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4. Information Held by Administrator and Basis of Assessment

- 4.1 Subject to clause 4.2:
- (a) for the purpose of the administration of this Scheme, information provided by Group Members or held by the Administrator may be relied upon as accurate by the Administrator, in her absolute discretion, when administering the Scheme; and
 - (b) each Group Member's distribution from the Compensation Pool will proceed on the basis of the information contained in the Claimant Records.

- 4.2 If in the Administrator's opinion, the information held in the Claimant Records or provided by any Group Member or otherwise:
- (a) insufficiently substantiates the claim or part of a claim made by a Group Member, the Administrator may, in her absolute discretion:
 - (i) determine that the claim or part of the claim as the case may be is not eligible for any distribution from the Compensation Pool;
 - (ii) by written notice require the Group Member to provide and verify by a further declaration or otherwise such further information as the Administrator may require. If the Group Member does not provide the further information in the form requested, within 14 days of such a request being made, the Administrator may determine that the claim or part of the claim as the case may be is not eligible for any distribution from the Compensation Pool;
 - (b) is sufficient to substantiate the claim or part of a claim made by a Group Member, notwithstanding that some information may not be included, the Administrator may, in her absolute discretion, determine that the claim or part of the claim as the case may be is eligible for distribution from the Compensation Pool.
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5. Assessment of Individual Entitlements

- 5.1 Within 42 days after the Settlement Approval Date, the Administrator shall determine the Assessment Entitlement for each Group Member in accordance with Schedule A.

ELPD Claims

- 5.2 In respect of ELPD Claims:

- (a) Each Group Member's information contained in the Claimant Records will be the basis of the assessment of the ELPD claim for each Group Member;
- (b) For the purposes of distribution of the Compensation Pool, each Group Member's ELPD Claim will be assessed pursuant to clause 2.3 of Schedule A.

Wholly or partly insured ELPD claims

- 5.3 Where a Group Member's claim is for loss that was wholly or partly insured, the Assessed Loss will not include any allowance for loss adjuster fees or other administration fees incurred by the insurer.
- 5.4 Where a Group Member's Assessed Loss includes insured loss, the Administrator will determine the amount the insurer is entitled to recover from the Group Member's Assessment Entitlement (**Insurance Repayment**) having regard to:
- (a) payment(s) made by an insurer to a Group Member under an individual group

- member's contract of insurance;
- (b) any excess paid by a Group Member; and
- (c) the likely insured component of that Group Member's Assessment Entitlement assessed in accordance with the common law.

PI Claims

5.5 In respect of PI Claims:

- (a) Each Group Member's information contained in the Claimant Records and any supporting documentation that has been received will be provided to Mr Timothy Tobin SC who is experienced in personal injury law;
- (b) Once Mr Tobin SC receives the information, he will consider whether a Group Member has suffered a compensable injury and if in his opinion there is such injury, deliver an assessment valuing the PI Claim within 21 days or such longer period as the Administrator considers in her absolute discretion to be warranted for any individual Group Member;
- (c) Mr Tobin SC, in considering the value of the PI Claim, may at his sole discretion confer with the Group Member;
- (d) The assessment of Mr Tobin SC referred to in 5.3(b) above will be limited to:
 - (i) an assessment of whether the magnitude of the Group Member's non-economic loss is likely to satisfy the threshold level under the Act, being at least 15% of the most extreme case and then in accordance with the Act;
 - (ii) whether a Group Member has suffered any loss of earnings or loss of capacity for employment; and
 - (iii) a desk top assessment of the Group Member's PI Claim undertaken on the basis of the information contained in the Claimant Records, any other available supporting documentation provided to Mr Tobin SC pursuant to clause 5(a) and any conference with the Group Member pursuant to clause 5(c).
- (e) The assessment of the Group Member's PI Claim shall be calculated as at the Settlement Date, and be inclusive of interest.

Assessment Entitlement Notices

- 5.6 A Group Member together with his, her or its Insurer will be advised in writing of their respective Assessment Entitlements including any Insurance Repayment in accordance with Schedule A prior to distribution.
- 5.7 A Group Member or Insurer will have 10 days, from the date of issue of their Assessment Entitlement, to notify the Administrator in writing of any error, slip or omission in the Assessment Entitlement including any Insurance Repayment (**Error Notice**).

- 5.8 In the event of an Error Notice, the Administrator shall: -
- (a) undertake a review of the Assessment Entitlement for the purposes of identifying or considering any error, slip or omission;
 - (b) at her sole discretion make a determination as to whether an error, slip or omission has occurred; and
 - (c) within 10 days issue a further Assessment Entitlement either correcting the error, slip or omission or restating the original Assessment Entitlement.

Review of Assessment Entitlement and/or Insurance Repayment

- 5.9 A Group Member or Insurer shall have a period of 10 days, from the date of issue of their Assessment Entitlement (or any further Assessment Entitlement issued pursuant to clause 5.8(c) above), to notify the Administrator in writing of the particulars of any substantive disagreement with the Administrator's determination of the quantum of Assessed Loss or the Insurance Repayment and to request a merits review of the relevant determination (**Notice of Disagreement**).
- 5.10 Upon receipt of a Notice of Disagreement the Administrator shall, within 5 days, refer the question of the determination of the Assessment Entitlement and/or Insurance Repayment to Mr Timothy Tobin SC (**Reviewing Counsel**) who is experienced in assessing ELPD claims.
- 5.11 Reviewing Counsel shall be provided with and have regard to payment(s) made by an insurer to a Group Member under an individual group member's contract of insurance along with the Claimant Records and any other information relied upon by the Administrator with respect to the basis of the Administrator's determination of the Group Member's Assessment Entitlement and the Insurance Repayment.
- 5.12 Subject to clause 3.6 above, neither the Group Member nor the Insurer will be entitled to submit any further materials to the Administrator or Reviewing Counsel in respect of a Notice of Disagreement.
- 5.13 The review of the Insurance Repayment shall be limited to:
- (a) the quantum of the Assessed Loss of the Group Member; and/or
 - (b) the calculation of the Insurance Repayment by reference to the amount of any payment(s) made by an insurer to a Group Member under an individual group member's contract of insurance likely to be recoverable from the defendant assessed according to law.
- 5.14 Reviewing Counsel shall deliver a determination in respect of the Assessment Entitlement and/or Insurance Repayment within 14 days of referral.
- 5.15 Reviewing Counsel's decision with respect to the Assessment Entitlement and/or

Insurance Repayment shall be final and binding upon the Group Member and/or the Insurer with no further right of review or appeal under the Scheme.

5.16 The reasonable costs associated with referral to Reviewing Counsel shall be fixed by the Administrator in advance to a maximum of \$5,000 (**Review Costs**).

5.17 If:

- (a) a Group Member's Notice of Disagreement results in that Group Member's reviewed Assessment Entitlement being greater than the Assessment Entitlement as determined by the Administrator; or
- (b) a Group Member's Notice of Disagreement results in the Insurance Repayment to be deducted from that Group Member's Assessment Entitlement being less than the Insurance Repayment as determined by the Administrator; or
- (c) an Insurer's Notice of Disagreement results in that Insurer's reviewed Insurance Repayment being greater than the Insurance Repayment as determined by the Administrator,

the Review Costs shall form part of the overall costs of the Scheme.

5.18 If:

- (a) a Group Member's Notice of Disagreement results in that Group Member's reviewed Assessment Entitlement being equal to or less than the Assessment Entitlement as determined by the Administrator; or
- (b) a Group Member's Notice of Disagreement results in the Insurance Repayment to be deducted from that Group Member's Assessment Entitlement being equal to or greater than the Insurance Repayment as determined by the Administrator; or
- (c) an Insurer's Notice of Disagreement results in that Insurer's reviewed Insurance Repayment being equal to or less than the Insurance Repayment as determined by the Administrator,

the Review Costs shall be paid by the party who provides Notice of Disagreement to the Administrator by deducting those costs:

- (i) in the case of a Group Member lodging a Notice of Disagreement, from that Group Member's Assessed Entitlement; and/or
- (ii) in the case of an Insurer lodging a Notice of Disagreement, from that insurer's Insurance Repayment.

Deemed Acceptance of Assessment Entitlement

5.19 The Assessment Entitlement including any Insurance Payment shall be deemed to

be accepted by a Group Member or Insurer and shall be final under the Scheme if the Group Member or Insurer fails to serve on the Administrator:

- (a) an Error Notice; or
- (b) Notice of Disagreement

within 10 days of the date of issue of the group member's (further) Assessment Entitlement.

6. Group Member's obligations, indemnities and reimbursement of statutory benefit receipts

- 6.1 Each Group Member shall act honestly, and do all things necessary to ensure that any agent or representative of the Group Member acts honestly, in anything done in or for the purposes of participating in this Scheme and any person discharging any function or office created by this Scheme shall be entitled to rely upon the honesty of the thing done.
- 6.2 Payment of compensation pursuant to this Scheme may be subject to obligations under statutes and regulations. Accordingly, each Group Member indemnifies the Administrator in respect of all such obligations, including but not limited to payments or repayments relating to the Australian Taxation Office, Social Security, Medicare, Worker Compensation or any other statutory benefits paid to or for the benefit of the Group Member under this Scheme.
- 6.3 If a Group Member has a legal obligation, whether by reason of statute, contract or otherwise, to an agency, compensation payer or insurer to pay or repay a sum from the amount payable to the Group Member under this Scheme, the Group Member shall, as a condition of its entitlement to receive payment, indemnify the Administrator in respect of any and all such obligations.
- 6.4 Without limiting any other obligation or discretion of the Administrator under this Scheme, for the avoidance of doubt the Administrator may make such adjustments or withholdings from any payment otherwise due to a Group Member pursuant to this Scheme as may be necessary to:
 - (a) comply with any statutory or regulatory obligation to pay or refund any amount to a statutory or other agency; or
 - (b) effect any indemnity given or equitable or contractual obligation owing by a Group Member under this Scheme.
- 6.5 Where the agency administering any State or Federal scheme notifies the Administrator in writing that any amount is payable to the agency from any payment payable to a Group Member under this Scheme, the Administrator:
 - (a) shall pay the said amount to the agency prior to any final distribution of the

balance of the Group Member's entitlements pursuant to this Scheme;

- (b) shall notify the Group Member of the payment to the agency; and
- (c) without affecting any other privilege or immunity under this Scheme, shall have no further obligation to the Group Member in respect of the said amount;

but nothing in this section shall affect any right the Group Member or the agency might have against each other in respect of the said amount.

7. Distribution

7.1 After receipt into the Settlement Distribution Fund of the Settlement Sum, and prior to any final distribution from the Settlement Distribution Fund pursuant to this Scheme, the Administrator will cause:

- (a) Common Benefit Legal Costs as approved by the Court to be paid to Maddens; and
- (b) the Reimbursement Payment, as approved by the Court, to be paid to the Plaintiff.

7.2 Administration Costs of and incidental to this Scheme shall form part of the Common Benefit Legal Costs as approved by the Court.

7.3 The Compensation Pool shall be allocated between Group Members on a pro-rata basis according to the relative values of their Assessment Entitlement.

7.4 At the Administrator's absolute discretion interim distribution of the Compensation Pool to Group Members may be made as Assessment Entitlements are determined. The proportion at which interim distributions may be paid to Group Members shall be determined by the Administrator having regard to the need to ensure sufficient funds are retained in the Compensation Pool to satisfy pending Assessment Entitlements and Administration Costs.

7.5 In the event the Administrator elects to make an interim distribution, such distribution shall not exceed 60% of the Group Member's Assessed Loss.

7.6 If after the final distribution of the Compensation Pool to Group Members:

- (a) any amount remains or is held in the Compensation Pool; or
- (b) any cheque remains un-presented for a period of 90 days or such further period that the Administrator otherwise deems appropriate;

the amount shall be distributed to Group Members, subject to clause 7.5.

7.7 At the Administrator's absolute discretion, the following amounts required to be distributed under clause 7.6 may instead be paid to the RSPCA New South Wales

Bushfire Appeal.

- (a) if the total amount to be distributed is less than \$3,000 the total amount; or
 - (b) if the amount to be distributed to any individual Group Member is less than \$100, that amount.
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8. Immunity from Claims

- 8.1 The completion of distributions made pursuant to clause 7 (including distributions made by cheques that remain un-presented for 90 days) shall satisfy:
- (a) all Claims made by Group Members (including the Plaintiff) in the Proceeding; and
 - (b) any Claims made by Group Members (including the Plaintiff) arising out of or relating in any way to the facts matters or circumstances set out in the pleadings in the Proceeding or any matter that is the subject of the Proceeding or has been the subject of the Proceeding.
- 8.2 Upon final distribution of the Settlement Distribution Fund in accordance with this Scheme, the Administrator shall have no further liability in respect of the Settlement Sum, the Compensation Pool or the implementation of this Scheme.
- 8.3 Without limiting any other provision for immunity in this Scheme, the Administrator in relation to this Scheme shall have the same immunities from suit as attach to the office of a judicial officer of the Court.
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9. Disclosures to agencies and insurers

- 9.1 Where necessary or reasonable for the purposes of this Scheme or compliance with any statutory or contractual obligation owed by, or in respect of any compensation payable to any Group Member, the Administrator may release to:
- (a) a statutory or other agency;
 - (b) an insurer; or
 - (c) the Australian Taxation Office;

details of a Group Member's name, address, identifying particulars, tax file number and any Assessment Entitlement relating to the claim.

10. Supervision by the Court

- 10.1. The Administrator may refer any issues arising in relation to the Scheme to the

Court for determination or advice.

- 10.2. Any costs incurred in any such referral to the Court made by the Administrator shall be deemed to be a part of the Administration Costs.
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11. Persons Under Disability

Personal Representative

- 11.1. Where the Administrator believes that a Group Member is or may be a person under disability
- (a) the Administrator shall provide any notices, correspondence, requests or information required by this Scheme to be given to the Group Member's personal representative or litigation guardian; and
 - (b) except where otherwise provided by this Scheme or by the Administrator, anything that is required by the Scheme or the Administrator to be done by a Group Member shall be done by his or her personal representative or litigation guardian.
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12. Administration Costs

- 12.1 Fees payable in respect of work performed by or on behalf of the Administrator pursuant to this Scheme shall be assessed by an Independent Costs Assessor and payment of those costs to the Administrator will be subject to approval of the Court.
- 12.2 Notwithstanding any other provision of this Scheme, and without reducing any other rights which the Administrator might have, any costs, expenses, taxes, levies, duties, charges, fees or other imposts or obligations arising in connection with the administration of this Scheme (including without limitation the creation, retention, investment or disbursement of any part of the Settlement Distribution Fund) incurred by the Administrator over and above the Administration Costs will be borne by the Administrator.

Approval of Administration Costs

- 12.3 Subject to the reasonable costs associated with a referral to Reviewing Counsel payable to the Administrator pursuant to clause 5.16, all fees and disbursements payable to any person in relation to the administration of this Scheme shall:
- (a) form part of the Common Benefit Legal Costs;
 - (b) be identified in a report to the Court prior to any disbursement from the Settlement Distribution Fund to the person claiming the costs or disbursements; and

- (c) be disbursed from the Settlement Distribution Fund upon and to the extent of approval by the Court.
- 12.4 Nothing in this Section shall affect any rights or obligations as between a solicitor and client of that solicitor in respect of costs incurred pursuant to any retainer or costs agreement between the solicitor and that client.
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13. Notice

- 13.1 Any notice or document to be given (or delivered) pursuant to this Scheme shall be deemed to be given (or delivered) and received for all purposes associated with this Scheme if it is:
- (a) addressed to the person to whom it is to be given; and
 - (b) either:
 - (i) delivered, or sent by pre-paid mail, to that person's postal address (being, in respect of any Group Member, the postal address recorded in the Claimant Records, as obtained from or directly from the Group Member);
 - (ii) sent by fax to that person's fax number (being, in respect of any Group Member, the fax number provided by the Group Member) and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) sent by email to that person's email address (being, in respect of a Group Member, the email address provided by the Group Member, and a server through which it is transmitted produces a report that states that the email has been "sent" to the inbox of the specified email address.
- 13.2 A notice or document that complies with clause 13.1 will be deemed to have been given (or delivered) and received:
- (a) if it was sent by mail to an addressee in Australia, three (3) clear business days after being sent;
 - (b) if it is sent by mail to an addressee overseas, five (5) clear business days after being sent;
 - (c) if it is delivered or sent by fax, at the time stated on the report that is produced by the machine from which it is sent; and
 - (d) if it is sent by email, at the time it is sent.
- 13.3 Where a Group Member is not a natural person and where one person has been nominated as the contact in respect of several Group Members, it is sufficient for the purpose of giving notice that any of the provisions of clause 13.1 are complied with in relation to that nominated person.

- 13.4 The Administrator's address, fax number and email address shall be as set out below unless and until the Administrator notifies the Group Members otherwise:

Attention: Kathryn Emeny

Walla Walla Gerogery Bushfire Class Action
Proceeding

Maddens Lawyers
219 Koroit Street
Warrnambool VIC 3280
Fax: (03) 5560 2000
Email: akc@maddenslawyers.com.au

14. Time

- 15.1 The time for doing any act or thing under this Scheme may be extended by order of the Court.

END OF SETTLEMENT DISTRIBUTION SCHEME

SCHEDULE A

SETTLEMENT DISTRIBUTION SCHEME ASSESSMENT AND DISTRIBUTION FORMULA

1. Introduction

- 1.1. As the Settlement Sum (less Common Benefit Legal Costs and the Reimbursement Payment) is less than the total amount claimed by the Group Members, each Group Member's compensation sum must be adjusted to reflect the amount of the settlement less costs. This schedule explains how that adjustment is to be calculated. The intent of the formula for calculation is that each individual Group Member will be compensated for an equal proportion of their total loss.
 - 1.2. For the purpose of the application of this formula and the Scheme more generally, the joint interest of a Group Member may be treated as one where appropriate. For example, claims by spouses that jointly own a property.
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2. Assessment Entitlement for each Group Member

- 2.1. The Administrator will create and maintain a "database" in the form of an Excel Spreadsheet recording each Group Member's Assessed Loss and Assessed Entitlement.
- 2.2. Each Group Member's Assessed Loss will be determined by the Administrator based upon the information held by Maddens in relation to that Group Member's loss, including assessment reports prepared by Independent Loss Assessors, and any adjustment to ELPD claims in accordance with clause 2.3 below.
- 2.3. For the purposes of the Compensation Pool, Group Member's ELPD claims will be assessed on the following bases:
 - (a) on the basis of the assessments conducted by Independent Loss Assessors and/or the Administrator subject to any reductions or increases considered necessary by the Administrator, in her absolute discretion pursuant to clause 4.2 of the Scheme or otherwise, to reflect difficulties of proof or erroneous assessment approaches; then
 - (b) an interest allowance of the cash rate plus 4% pursuant to section 100 of the *Civil Procedure Act 2005* to be applied to aspects of the assessments which attract interest, calculated from 15 December 2009 to the date of Settlement Approval.
- 2.6 For the purposes of distribution of the Compensation Pool, Group Members'

PI Claims will be assessed on the basis of Mr Tim Tobin SC's assessment in accordance with clause 5.3 of the Scheme.

Insurance Repayment

- 2.7 Where the Administrator determines that an Insurance Repayment must be deducted, then the Group Member's Assessment Entitlement will be distributed in accordance with clause 4.2.

3 Calculation of aggregate loss for all Group Members

- 3.1 The aggregate loss is the Assessed Loss for all Group Members added together (**group quantum**).

4 Calculate the Group Member Proportion from the Settlement Pool

- 4.1 Each Group Member's proportion of the Compensation Pool for distribution will be calculated using the following pro rata distribution formula:

$$\frac{(\text{Group Member Assessed Loss} / \text{group quantum}) \times 100}{\%} = \text{Assessment Entitlement}$$

then

$$\text{Compensation Pool} \times \text{Assessed Entitlement \%} = \text{Assessment Entitlement}$$

- 4.2 The Assessment Entitlement will be payable to the Group Member (net of any applicable Insurance Repayment and, where applicable, Review Costs in relation to a Group Member's Notice of Disagreement to the Administrator pursuant to clause 5.9 of the Scheme). The Insurance Repayment will be payable to the Group Member's insurer (where applicable, net of any Review Costs in relation to an Insurer's Notice of Disagreement to the Administrator pursuant to clause 5.9 of the Scheme).

SCHEDULE B

Reimbursement Payment

Person	Amount
Sharon Patricia Weber	\$40,000

Privileged & Confidential