

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
COMMERCIAL LIST – LYONS J**

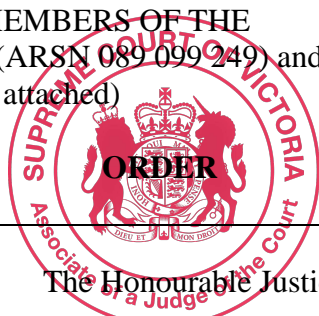
S ECI 2022 02457

BETWEEN:

VASCO TRUSTEES LIMITED (ACN 138 715 009) (as responsible entity for the Heritage Lodge Scheme) Plaintiff

-and-

AUSTRALIAN AND PACIFIC INVESTMENT CORPORATION PTY LTD (ACN 005 445 107) IN ITS OWN CAPACITY AND IN ITS CAPACITY AS REPRESENTATIVE OF THE MEMBERS OF THE HERITAGE LODGE SCHEME (ARSN 089 099 249) and others (according to the schedule attached) Defendants



JUDGE: The Honourable Justice Lyons

DATE MADE: 1 March 2023

ORIGINATING PROCESS: Originating Motion filed on 30 June 2022

HOW OBTAINED: Pursuant to Rule 59.07 of the *Supreme Court (General Civil Procedure) Rules 2015*

ATTENDANCE: N/A

OTHER MATTERS: A. This Order is signed by the Judge of the Court making the Order pursuant to Rule 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*

THE COURT ORDERS BY CONSENT THAT:

1. Paragraphs 3 to 15 of the Order of the Honourable Justice Lyons made 22 December 2022 (**'December Order'**) are vacated.
2. By **4:00pm** on **22 February 2023**, the defendants shall file and serve:
 - (a) points of issue in respect of the matters set out in Vasco's amended originating motion; and

- (b) any affidavits on which they wish to rely.
3. By **4:00pm** on **1 March 2023**, Vasco shall file and serve on the defendants any requests for discovery of categories of documents, not including documents in the defendants' affidavits on which they wish to rely.
4. By **4:00pm** on **6 March 2023**, Vasco shall serve on each of the Members:
- (a) a copy of the Order of the Honourable Justice Lyons made 21 November 2022 ('**November Order**');
 - (b) a copy of the December Order;
 - (c) a copy of this Order;
 - (d) a copy of the amended originating motion;
 - (e) a copy of the defendants' points of issue; and
 - (f) the notice set out in Schedule A to this Order.
5. Vasco shall serve each of the Members by sending the materials set out in paragraph 4 to the email address recorded in Vasco's books for each Member.
6. By **4:00pm** on **20 March 2023**, the defendants shall provide discovery in response to such requests, subject to proper objection.
7. By **4:00pm** on **3 April 2023**, Vasco shall file and serve any evidence in reply.
8. Notwithstanding paragraph 4 of the November Order, any Member that wishes to be heard at the trial of this proceeding shall by no later than **4:00pm** on **6 April 2023**:
- (a) file and serve an affidavit setting out the reasons why that Member should be joined as a party to the proceeding, and its attitude in relation to the relief sought in the proceeding; and
 - (b) make an application for joinder to be listed on a date prior to the trial in this proceeding.
9. The amended originating motion be listed for determination on the first available date after **15 May 2023** on an estimate of 1 day.
10. By **4:00pm** on **11 April 2023**, Vasco shall file and serve any written submissions.
11. By **4:00pm** on **18 April 2023**, the defendants shall file any written submissions in response.
12. By **4:00pm** on **25 April 2023**, Vasco shall file and serve any written submissions in reply.
13. Costs reserved.



14. Liberty to apply.

DATE AUTHENTICATED:

1 MARCH 2023



THE HONOURABLE JUSTICE LYONS

SCHEDULE OF PARTIES

S ECI 2022 02457

BETWEEN:

VASCO TRUSTEES LIMITED (ACN 138 715 009) (as
responsible entity for the Heritage Lodge Scheme)

Plaintiff

- and -

AUSTRALIAN AND PACIFIC INVESTMENT
CORPORATION PTY LTD (ACN 005 445 107) IN ITS OWN
CAPACITY AND IN ITS CAPACITY AS REPRESENTATIVE
OF THE MEMBERS OF THE HERITAGE LODGE SCHEME
(ARSN 089 099 249)

First Defendant

AUSTPAC PROPERTIES PTY LTD (ACN 140 675 216)

Second Defendant

YARRA VALLEY LODGE PTY LTD (ACN 159 460 303)

Third Defendant

DATED: 1 MARCH 2023



SCHEDULE A

IMPORTANT NOTICE TO OWNERS IN THE HERITAGE LODGE SCHEME ARSN 089 099 249

IN THE MATTER OF VASCO TRUSTEES LIMITED (ACN 138 715 009) (as responsible entity for the Heritage Lodge Scheme)

Plaintiff

and

AUSTRALIAN AND PACIFIC INVESTMENT CORPORATION PTY LTD (ACN 005 445 107) & Ors

Defendants

THIS NOTICE IS SENT BY ORDER OF THE SUPREME COURT OF VICTORIA

IT IS IMPORTANT YOU READ THIS NOTICE CAREFULLY BECAUSE IT MAY AFFECT YOUR LEGAL RIGHTS.

Q. WHY AM I RECEIVING THIS NOTICE?

- A. You are receiving this notice because you are a member of the Heritage Lodge Scheme ARSN 089 099 249 (**Scheme**). Legal proceedings have been commenced in the Supreme Court of Victoria which relate to the Scheme.

The Court has authorised the issue of this notice to make members aware of the nature of the proceedings and each member's right to participate in those proceedings.

Q. WHAT ARE THE PROCEEDINGS ABOUT?

- A. Members will be aware a key document governing the rights and obligations of various stakeholders in the Scheme is the Hotel Management Agreement (**HMA**). The term of the HMA and the original version of the room management agreements (**RMA**s) entered into by members is calculated with reference to the meaning of the definition "Opening Date" under the HMA. The HMA does not nominate a specific date, but says the Opening Date is the latest date on which a series of conditions relating to the Scheme and the hotel were fulfilled.

There is uncertainty about what the Opening Date is.

Three separate legal proceedings have been filed with the Supreme Court of Victoria which concern the Scheme and the definition of Opening Date.

The *first* proceeding (S ECI 2022 02457) has been commenced by Yarra Valley Heritage Estate Pty Ltd (**YVHE**), Austpac Properties Pty Ltd and Yarra Valley Lodge Pty Ltd (as plaintiffs) against Vasco Trustees Ltd as Responsible Entity of the Scheme (as defendant) (**YVHE Proceeding**). The plaintiffs in the YVHE Proceeding are asking the Court to make orders which will allow YVHE to buy the management lot and the hotel management rights.

The *second* proceeding (S ECI 2022 02457) was originally commenced by Vasco seeking direction from the Court regarding its involvement in the YVHE Proceeding (**Vasco Proceeding**). This notice is issued in the Vasco Proceeding.



The *third* proceeding (S ECI 2022 02906) has been commenced by Australian Pacific and Investment Corporation Pty Ltd (**APIC**) against Vasco (**APIC Proceeding**). APIC is asking the Court to make orders declaring that the RMAs it has signed over its two rooms in the Scheme have been terminated and, therefore, APIC is entitled to take possession of its rooms.

Because the meaning of the term Opening Date needs to be determined in the APIC Proceeding and may affect the outcome of the YVHE Proceeding, the Court has ordered its meaning be determined in the Vasco Proceeding and bind all owners and the parties to the HMA. It has ordered the following parties be joined as defendants to the Vasco Proceedings:

1. The other parties to the HMA, being Austpac and Yarra Valley Lodge Pty Ltd (the current hotel operator) and
2. APIC, in its personal capacity, and as a representative in respect of the subject matter of the Vasco Proceeding for all members of the Scheme.

The court has ordered the above approach to help to minimise costs and avoid the same issue being determined in all three proceedings.

Vasco's current position in the Vasco Proceeding is the Opening Date was, at the latest, 8 May 2006, and that this means the term of the HMA will expire on 8 May 2026. APIC's current position is that the HMA expired no later than 16 April 2022.

Q. Do I need to do anything in response to this notice?

- A. No. Each member has a *right* to participate in the Vasco proceedings but is *not required* to participate if they are happy for APIC to be their representative. The purpose of this notice is to alert members to the existence of the Vasco Proceeding and the order made by the Court appointing APIC as representative for all the members.

Q. What do I need to do if I don't want APIC to act as my representative?

- A. Paragraph 8 of the order of the Supreme Court made 1 March 2023 enclosed with this notice sets out the steps members must take, if they do not wish APIC to act as their representative. This includes filing and serve the following documents by **6 April 2023**:
- (a) An affidavit setting out the reasons why that member should be joined as a party to the Vasco Proceeding and its attitude in relation to the relief sought in the Vasco Proceeding.
 - (b) An application for joinder to be listed on a date prior to the trial in the Vasco Proceeding.

You can obtain a blank copy of a notice of appearance and affidavit from the Supreme Court's website: <https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines>

If you choose to file a notice of appearance, this means you will be joined as a defendant to the proceedings, and you will be responsible for obtaining your own



legal advice, and paying your own costs in respect of your participation in the Vasco Proceedings.

Q. Will I be bound by the Court’s decision in the Vasco Proceeding even if I choose not to participate?

A. Yes. All owners, even if they choose not to participate, will be bound by the Court’s decision.

Q. Do I have to pay any money as a result of the proceedings?

A. If you are happy for APIC to act as your representative, you do not have to pay any money. If you do not wish APIC to act as your representative and, instead, choose to participate in the Vasco Proceeding yourself, you will be responsible for payment of your own legal costs, unless the Court orders otherwise.

Owners may indirectly contribute to the legal costs associated with all three proceedings through payment of the Scheme’s legal costs from Scheme assets.

Q. Where can I obtain copies of relevant documents?

A. Copies of relevant documents may be obtained from Vasco by emailing Lyn Ridley at lr Ridley@vascofm.com, or by inspecting them at the Commercial Court Registry of the Supreme Court of Victoria at ground floor, 450 Little Bourke Street, Melbourne VIC 3000.

Q. Who should I contact if I have questions?

A. If you have any questions you can:

- (a) contact Lyn Ridley at Vasco by email at lr Ridley@vascofm.com or by telephone on 03 8352 7120.
- (b) seek independent legal advice.

The Supreme Court should **not** be contacted for legal advice.

This notice was approved by the Supreme Court and published pursuant to Orders made on 1 March 2023.

You should not delay in making any decision to participate in the Vasco Proceeding, or seek further advice.

