

# Serious misconduct risks in a Housing Authority project

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## Project Stella Orion



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# INTRODUCTION

## Project Stella Orion

- [1] This report concerns the actions of officers of the Housing Authority relating to Project Stella Orion housing development in the City of Cockburn.
- [2] The Housing Authority (HA) is now part of Department of Communities (DoC). HA is a statutory authority and body corporate pursuant to the *Housing Act 1980* (Housing Act).<sup>1</sup> DoC is responsible for the delivery of disability services, child protection and family support, housing, and community and regional initiatives.<sup>2</sup>
- [3] Prior to machinery of government changes in 2017 the government department responsible for the HA was the Department of Housing (DoH).
- [4] Project Stella Orion (the Project) involved the development of a number of separate buildings containing apartments on land located at Lot 9001 Wentworth Parade, Success in Western Australia.
- [5] The Project initially planned for six development stages (and later expanded in 2012 to 11 stages). HA was involved in Stages 2 and 3.
- [6] Stages 2 to 3 aimed to increase the pool of affordable or social housing available in Western Australia.
- [7] Stage 2 was completed and is considered a success for HA. Stage 2 won Master Builder's Awards and is a good example for the provision of affordable housing.
- [8] Following the success of Stage 2, HA wished to continue with the Project.
- [9] Stage 3 was financed with the assistance of HA's investment in a proprietary limited company named Goldmaster Enterprises Pty Ltd (Goldmaster). The investment is a disaster.
- [10] Stages 4 to 11 have never been developed. The land is for sale.
- [11] The Commission estimates the current loss to DoC at \$29,049,936.
- [12] DoC queries this amount but is unable to offer an alternative figure. DoC took into account matters and outcomes not related to the developments of Stage 3 where the loss occurred.

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<sup>1</sup> *Housing Act*, s 7(1).

<sup>2</sup> Department of Communities ([www.wa.gov.au](http://www.wa.gov.au)).

## **No opinion of serious misconduct**

- [13] The Commission has jurisdiction over serious misconduct defined in the *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 4. Serious misconduct requires an element of corruption.
- [14] The Commission commenced Operation Skerryvore to enquire into the project. After extensive investigation the Commission has formed no opinion of serious misconduct. It is satisfied that the persons involved in the project did not act corruptly. They acted in good faith to support government policy and to provide affordable and social housing, but the way they went about it has exposed the State to risk and loss.

## **Misconduct risks exposed.**

- [15] The purpose of this report is to draw attention to the misconduct risks when usual procedures are not followed, and transactions are opaque.
- [16] Serious misconduct is defined in the CCM Act s 4. Essentially it is corrupt conduct.
- [17] A serious misconduct risk is conduct, circumstances or lack of governance that may expose a department to financial or other harm or loss.
- [18] A serious misconduct risk occurs when the circumstances create the potential for corrupt behaviour.
- [19] Project Stella Orion abounded in them:
  - a. Searches have failed to discover any business case for the project Stages 3 to 6.
  - b. Searches have failed to discover minutes of any oral briefings given to ministers. Ministers were provided with incomplete information as to risks in presentations accompanied by a short briefing note and a PowerPoint presentation.
  - c. The HA purchased shares in Goldmaster, one part of a group of companies one of which was heavily indebted to the Australian Taxation Office (ATO). A portion of the HA investment was used to reduce the tax bill.
  - d. Buying directly into a company instead of participating in a joint venture arrangement is a risk unless properly managed. This risk wasn't.
  - e. The designated HA employee who was appointed a director of Goldmaster had little idea of the project or his duties.

- e. When lending institutions refused to commit by way of further loans, HA became the lender of last resort.
- [20] HA entered into increasingly complex financial arrangements in undertaking the Project which increased the need for oversight. Despite this, there was a centralisation of power within the corporate executive, and the CFO and his team were not provided with key financial information at appropriate times.
- [21] Project documents were not stored on HA's electronic record keeping system and physical records were kept by the Corporate Executive not easily accessible by other HA employees.
- [22] HA failed to conduct appropriate due diligence or probity checks into Goldmaster and the Project prior to investment.
- [23] For a considerable time the CFO was unaware of the purchase of shares in Goldmaster or the liabilities the HA assumed.
- [24] A person engaged as a consultant made extensive managerial and commercial decisions without adequate supervision by the Director General.
- [25] HA lawyers were unaware of and so did not advise on the purchase of shares in Goldmaster.
- [26] The Director General improperly opened a bank account in contravention of the requirements of the *Financial Management Act 2006*.

### **Risks involving consultants**

- [27] Consultants play an important role in government, bringing particular expertise and knowledge to improve business systems or provide policy advice, to name but two benefits. For the 6 months January to June 2022 WA government departments (not including many statutory authorities) spent \$12.26 million on consultants. The full figure would be much higher.<sup>3</sup> It is estimated that the Australian government spent nearly \$20.8 billion on consultants in the year 2021/22.<sup>4</sup>
- [28] A misconduct risk emerges when a consultant becomes in fact, though not in law, a public officer performing tasks usually undertaken by public servants.

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<sup>3</sup> Report on Consultants engaged by Government 6 months ending June 2022.

<sup>4</sup> An audit of the Australian Public Service (APS).

- [29] There is a risk to proper governance when a consultant is allowed great latitude in financial decisions involving State funds especially when there is only superficial oversight.
- [30] A consultant is not subject to regulation by the Public Sector Commission or this Commission and is bound only by contractual obligations which may or may not be adequate to protect the public purse.
- [31] This report is intended to help prevent possible serious misconduct in government departments and agencies.
- [32] Ultimately DoC is left with a significant shareholding (87%) in Goldmaster, a worthless company, which has a retained loss of approximately \$38.5 million as at July 2023. DoC has indicated it intends to buy out the other shareholders and wind up the company.



# CHAPTER ONE

## **Project Stella Orion - an overview**

- [33] A function of the Commission is to report on ways to prevent and combat serious misconduct.<sup>5</sup>
- [34] A misconduct risk occurs when circumstances create the potential for corrupt behaviour. A misconduct risk is a potential threat to the State, its reputation, and its revenue.
- [35] Project Stella Orion is a high-density transit-oriented development located approximately 20 km south of Perth in the City of Cockburn. Two stages of a potential 11 stage, 10-year development were completed. HA was involved in Stage 2 through the Nation Building Program (NBP) undertaken by the Commonwealth. \$23 million was invested by the Commonwealth in a debt type structure to deliver 130 one and two bed units over the 2010 and 2011 financial years.
- [36] Stage 1 was a development of apartments and townhouses. It was completed without HA.
- [37] Stage 2 was completed with the assistance of HA. Stage 2 comprised four separate buildings containing a total of 130 apartments located at 30, 31, 34 and 35 Malata Crescent, Success, and a recreation centre.
- [38] After Stage 2 HA was approached by the landowners to consider an investment in the land ownership structure.
- [39] Stage 3 was completed with the assistance of HA. Stage 3 built three separate buildings containing a total of 197 apartments located at 17, 21 and 25 Malata Crescent, Success.
- [40] Proposed next stages of the Project have not commenced.
- [41] In March 2022, Goldmaster began the process of selling the remaining vacant lots of land it still owned, advertising lots 891 - 893 Malata Crescent in Success and seeking expressions of interest. The land remains unsold.

## **Project Stella Orion - Stage 2, the successful stage**

- [42] In September 2009, HA entered into a Forward Funding Agreement with developer Jewel Horizon Pty Ltd (Jewel) to provide \$25,574,600.00 in Commonwealth stimulus funding for Stage 2.<sup>6</sup> Jewel applied to an

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<sup>5</sup> CCM Act s 18(4)(e).

<sup>6</sup> Exhibit No 74136910.

expression of interest. Due diligence was undertaken by HA and payments made once building milestones were reached.

- [43] Stage 2 was to develop 130 apartments across four buildings on Malata Crescent, Success. Of the 130 apartments built in Stage 2, HA sold 52 apartments realising a return of \$18,777,589.28<sup>7</sup> and retained ownership of 26 apartments for affordable housing. Jewel sold the remaining 52 apartments on the open market.
- [44] Stage 2 was successful and achieved its aims. The Project utilised a modular construction method to build apartments which was widely praised. Its success was the harbinger of what was to come as it encouraged further development.

## **The people and the companies**

- [45] Mr Grahame Searle is the former Director General of HA. He was project owner for Stage 3 and ultimately accountable for the public value and benefit from Stage 3. He has always accepted responsibility for the Project. He does not agree the Project was unsuccessful.
- [46] Ms Tania Loosley-Smith is the former General Manager Strategy and Policy of HA. She accepts that she had an influential policy and communication role and was involved in internal trouble shooting at key times.
- [47] Mr Steve Parry is the former General Manager of Service Delivery of HA.<sup>8</sup> He was not heavily involved in the Project but acted in Mr Searle's role when Mr Searle was on leave.
- [48] Mr Stewart Kestel is the former Director of Complex Projects and at times was also the acting General Manager Commercial and Business Operations of HA.<sup>9</sup> He was also a director of Goldmaster for a time.
- [49] Mr Lorne O'Mara is the former Chief Financial Officer (CFO) of HA. He was inhibited in his role because he was not being provided with financial information for the Project.
- [50] Mr Paul Whyte was General Manager Commercial Business Operations of the HA.
- [51] All were public officers during the relevant time.

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<sup>7</sup> Exhibit No 6021287 page 10.

<sup>8</sup> S Parry transcript, private examination 14 June 2022, p 3.

<sup>9</sup> S Kestel transcript, private examination 14 June 2022, p 3 and 4.

- [52] Mr Ashley Kerfoot is a former contractor to the HA. He was a consultant who had extensive responsibilities as transaction Manager<sup>10</sup> for the Project. Mr Kerfoot was engaged by HA, initially through Mining Corporate Pty Ltd and later through CBRE Pty Ltd.
- [53] Mr Kerfoot played a significant role in HA's management of the Project including recommending and advising on complex financial arrangements, liaising with Goldmaster and contractors on behalf of HA, and preparing information for Ministers. Mr Kerfoot took direction from Mr Searle but also acted with considerable autonomy.
- [54] He was not a public officer during the relevant time, but used the support and resources of the public agency in a manner that gave him authority similar to a public officer. The Commission's jurisdiction to deal with allegations of misconduct encompasses public officers only, not consultants. The Commission does not suggest that Mr Kerfoot engaged in misconduct.
- [55] There was a complicated structure of companies with whom HA dealt in respect of the Project. The structures at stages during the development of Stage 3 are detailed in Appendix 1.
- [56] Acepark Pty Ltd (Acepark) was registered proprietor of the land on which the Project was built.
- [57] Goldmaster Enterprises Pty Ltd was the beneficial owner of the land.<sup>11</sup>
- [58] Jewel was the developer working alongside HA for the Project. Jewel purchased the land from Acepark but had difficulty paying the full amount owed to Acepark.
- [59] Goodland Properties Pty Ltd was 50% owned by Mr Brian Pilkington and 50% by Mr Eddy Wijono.<sup>12</sup>
- [60] Mr John Salter is the former managing director of Goodland Properties Pty Ltd.
- [61] Goldzen Holdings Pty Ltd (Goldzen) was the registered builder<sup>13</sup> engaged by Jewel.
- [62] Goodland DM1 Pty Ltd was the development manager.<sup>14</sup>

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<sup>10</sup> A Kerfoot transcript, private examination, 17 June 2022, p 49.

<sup>11</sup> J Salter transcript, private examination, 13 June 2022, p 14.

<sup>12</sup> Exhibit No 5930937 page 10.

<sup>13</sup> Exhibit No 5930937 page 10.

<sup>14</sup> J Salter transcript, private examination, 13 June 2022, p 14.

## Project Stella Orion - Stages 3 - 6

- [63] In August 2010, Mr Searle, prior to the completion of Stage 2<sup>15</sup> signed a Memorandum of Understanding (MOU) with Jewel for HA to invest \$18 million in Stage 3 of the Project. The MOU included a process to complete financial due diligence, but this did not occur.
- [64] The Minister responsible for Housing appears not to have been advised, and to have been unaware of the parlous financial situation of Goldmaster.
- [65] The investment by HA in Stage 3 - 6 of the Project by purchasing shares in a proprietary limited company was a substantial deviation from normal capital spending undertaken by public sector agencies. The usual course for such building projects is by a joint venture between HA and private companies.
- [66] The benefits of a joint venture arrangement for a government department include the ability to pool resources with non-government bodies (often businesses) for the purpose of a particular project or outcome, and to clearly define the respective rights and interests of the co-venturers, thereby limiting financial exposure.
- [67] Mr Searle, Ms Loosley-Smith and Mr Kerfoot were involved in the investment and subsequent management of the financial relationship between HA and Goldmaster.
- [68] On 11 April 2011, Mr Kerfoot<sup>16</sup> presented to Minister Buswell regarding the Project. Mr Searle and Mr Whyte also attended this meeting.<sup>17</sup> A subsequent one-page briefing note dated 27 April 2011 was provided to the Minister. This briefing note set out that HA was seeking approval for the equity subscription transaction for the Stella Orion development (stages 3 through 6) as presented on 11 April. This was approved by Minister Buswell on 8 May 2011. The proposal approved was:

*Invest sale proceeds of up to \$19 million in Stages 3 through 6 (sustained stimulus)*

*Ongoing supply of 1 and 2 bed product in transit oriented development*

*Purchase equity (income rights) in land owning entity*

*Enable unencumbered security environment - save \$11 million in finance costs*

*Receive anticipated \$50.75 million of development profits over 10 year development term*

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<sup>15</sup> Exhibit No 00745-2022-0086.

<sup>16</sup> Exhibit no 5874193 (Agenda for meeting on 11 April 2011) and 5074625 (PowerPoint Presentation entitled 'Stella Orion\_S3/6 - Equity Subscription').

<sup>17</sup> A Kerfoot transcript, private examination, 17 June 2022, p 64.

*15% on return equity*

*Utilise unit trust with corporate trustee for Department's investment*

*Legal framework captures development management environment as envisaged for Pier and Campbell Street transactions. Funding and construction risk resides with developer*

*Policy flexibility - realise profit and/or accommodation outcomes over 10 year term*

*Access private capital - \$45 million equity and \$213 million debt*

- [69] On 12 April 2011, Mr Searle authorised the use of a Controlled Money Account through a firm of solicitors, Lavan Legal, to deposit settlement monies from the sale of apartments from Stage 2 of the Project. The requirements of the *Financial Management Act 2006* were not followed. Opening the Controlled Money Account without permission was improper.
- [70] Mr Kerfoot made payments from the Controlled Money Account on behalf of HA.<sup>18</sup> The Commission has not located evidence of formal authorisation for Mr Kerfoot. He was not a public officer. Nevertheless, it appears he had Mr Searles' approval to do so.
- [71] Acepark was the registered proprietor of the land which became the site of the Project. Acepark sold the land to Jewel on 26 November 2007.<sup>19</sup> Jewel initially purchased the land under a vendor finance arrangement but was unable to pay Acepark the full amount in accordance with their contract. On 24 September 2009, Jewel agreed to pay any ATO liability resulting from the sale of the land. This resulted in Acepark owing the ATO approximately \$2.696 million by May 2011.<sup>20</sup>
- [72] On 20 May 2011, Mr Searle executed a Deed of Loan whereby HA loaned Jewel \$1.3 million.<sup>21</sup> The Deed provided that Jewel would instruct HA to pay the ATO \$1.3 million to cover some of Acepark's ATO debt. DoC is unable to locate any notification to the Minister, or Ministerial approval for this Deed of Loan.
- [73] On 23 May 2011, Mr Kerfoot authorised the payment of \$1.3 million from the Controlled Money Account to the ATO.<sup>22</sup> The Deed of Loan converted Jewel's liability to repay \$1.3 million to HA to a \$1.3 million equity investment by HA in Goldmaster.<sup>23</sup>

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<sup>18</sup> Exhibit No 00745-2022-0008.

<sup>19</sup> Exhibit No 78577734.

<sup>20</sup> Exhibit No 78634383, 00745-2022-0004, 00745-2022-0008 and 00745-2022-0009.

<sup>21</sup> Exhibit No 00745-2022-0005.

<sup>22</sup> Exhibit No 00745-2022-0004 and 00745-2022-0008.

<sup>23</sup> Exhibit No 78495483.



- [74] On 30 June 2011, Mr Parry, as A/Director General HA executed a Shareholder and Subscription Agreement to invest \$18 million in Goldmaster. This authorised HA to be a 50% shareholder with income and voting rights in Stage 3-6 of the Project. The \$18 million was never transferred to Goldmaster. Instead, bills were paid by HA on behalf of Goldmaster and then recognised as equity. The share certificate stating that HA held \$18 million in shares was issued on 26 September 2011.<sup>24</sup> By this time \$14,643,737.77 had been paid by HA for Goldmaster's bills.<sup>25</sup>
- [75] Between 4 July 2011 and 26 July 2012, Mr Kerfoot authorised payments from the Controlled Money Account, totalling \$17,774,792.63. Of this, approximately \$12.78 million<sup>26</sup> of HA's investment was used to pay invoices and accounts relating to Stage 2, including the second Acepark ATO debt paid in July for \$1.396 million<sup>27</sup> (the first ATO debt was paid in May for an amount of \$1.3 million). \$825,000 was paid by HA to Goldmaster for the purpose of paying bills of Goodland during this time.
- [76] On 26 September 2011, Mr Searle executed the first Deed of Acknowledgement of Debt (DAOD) between HA and Goldmaster for the sum of \$1,225,782.14.<sup>28</sup> Records indicate Goldmaster owed HA these funds for services relating to Stage 2.
- [77] In July 2012, Mr Searle was made aware Goodland (the development manager for the build which was also responsible for financing the build) was in financial difficulty and unable to obtain a construction loan.<sup>29</sup> Mr Searle was subsequently advised by St George Bank that Goldmaster required a \$13 million investment before a construction loan would be considered.<sup>30</sup>
- [78] On the same day, a second DAOD was entered into between HA and Goldmaster for the sum of \$1,924,317.33.<sup>31</sup> The Commission has been unable to identify any Ministerial approval for this DAOD. However, records indicate public funds of \$944,317.33<sup>32</sup> had already been paid to Goldmaster prior to the second DAOD being prepared.

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<sup>24</sup> Exhibit No 74292976.

<sup>25</sup> Exhibit No 00745-2022-0007.

<sup>26</sup> Exhibit No 00745-2022-0004, 00745-2022-0008, 00745-2022-0009, 00745-2022-0010, 00745-2022-0015, 00745-2022-0018, 00745-2022-0019, 00745-2022-0020, 00745-2022-0021, 00745-2022-0023, 00745-2022-0027 and 00745-2022-0029.

<sup>27</sup> Exhibit No 00745-2022-0078.

<sup>28</sup> Exhibit No 78338339.

<sup>29</sup> Exhibit No 78620772.

<sup>30</sup> Exhibit No 74364144.

<sup>31</sup> Exhibit No 00745-2022-0069.

<sup>32</sup> 00745-2022-0069.

- [79] In September 2012, a third DAOD was entered into between HA and Goldmaster for the sum of \$1.156 million.<sup>33</sup> The Commission has been unable to identify any Ministerial approval for this DAOD. Records indicate the third DAOD was created to continue making payments for Stage 3, while construction finance and further equity was being sourced.<sup>34</sup>
- [80] On 13 September 2012, Pitcher Partners (independent auditor for Goldmaster) raised concerns with the Goldmaster Board about the financial position of Goldmaster. The first item in the auditor's report under the heading 'Going Concern' stated that 'based on the current cash position and given funds from the presales of units of Stage 3 will not be available for usage, we consider that Goldmaster has a going concern issue and will not have sufficient funds to continue its operations for the next twelve months without support.'<sup>35</sup>
- [81] On 17 October 2012, Mr Kerfoot advised directors of Goldmaster its current value. The information provided shows a residual value (after the \$18,000,000.00 injection from DoH in June 2011) of at best \$319,683.00 or at worst \$0.00. This constitutes an investment loss of \$17,680,317.00 for the HA.<sup>36</sup>
- [82] In November 2012, Mr Searle briefed Minister Redman about investing a further \$19.35 million into Goldmaster and the creation of a debt facility of \$42.3 million to enable Stage 3 to be completed. Minister Redman approved both amounts. The Minister was not properly informed as to Goldmaster's financial status.
- [83] On 15 March 2013, Mr Searle sent a letter to Pitcher Partners, advising that HA will underwrite \$19.35 million for Goldmaster and put in place a \$26.7 million debt facility for Goldmaster to draw down for the construction of Stage 3.<sup>37</sup>
- [84] On 20 March 2013, Pitcher Partners provided the Directors of Goldmaster with the audit for the year ended 30 June 2012.<sup>38</sup> This report indicated that:
- a. For 2010/2011 Goldmaster had made a \$11,334,251.00 loss despite accruing \$39,547,714 in sales revenue.

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<sup>33</sup> Exhibit No 00745-2022-0071.

<sup>34</sup> Exhibit No 78654729.

<sup>35</sup> Exhibit No 5064023.

<sup>36</sup> Exhibit No 74332165.

<sup>37</sup> Exhibit No 78570192.

<sup>38</sup> Exhibit No 78495483.

- b. \$16.7 million is recorded as 'property sales'. These sales are likely revenue linked to the sale of the 52 Stella Orion Stage 2 apartments retained by Jewel in accordance with the original 2009 contract.
  - c. For 2011/2012 Goldmaster had made a \$7,143,990.00 loss.
  - d. Goldmaster had made a \$20,439,595.00 retained earnings loss by 2011/2012.
- [85] Between December 2012 and May 2013 HA (with the approval of the directors of Goldmaster) underwrote a compulsory convertible notes issue in Goldmaster. This resulted in HA taking up convertible notes to a total value of \$19.35 million.
- [86] Even after HA invested \$18 million, at the end of the financial year 2011/2012 Goldmaster had current liabilities of \$10,836,692.00, including loans with St George Bank and HA and held \$210,703.00 in cash or cash equivalent. Without additional funding, within the first 6 months of the 2012/2013 financial year, Goldmaster would make a loss of \$1,302,158.00 and a loss totalling \$10,302,158.00 by the end of 12 months. This does not take into account further development costs to complete Stage 3.<sup>39</sup>
- [87] DoC currently holds 87.12% equity in Goldmaster through ordinary shares (due to the investment of \$37.35 million throughout the life of the Project) with Goldmaster having net assets of \$4,686,305 as at May 2023. DoC intends to acquire the remaining shares and then commence winding up proceedings.
- [88] In 2014 HA received approximately \$8.3 million in payments from Goldmaster flowing from the compulsory convertible notes.
- [89] Goldmaster's current retained earning loss is approximately \$38,648,839 as at 1 July 2023.
- [90] The value of the land was reduced from \$10.82 million to \$8.85 million in July 2022.<sup>40</sup>
- [91] If the devaluation of the land is considered this loss would increase further.
- [92] The decision to invest in Goldmaster exposed HA to significant risk. The way the Project was then managed by key executives in HA reduced the normal checks and balances and exacerbated the risk.

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<sup>39</sup> Exhibit No 78495483.

<sup>40</sup> Exhibit No A1649078.

## CHAPTER TWO

### Decreased reliance on public officers in favour of the contractor engaged by HA

- [93] Mr Kerfoot was engaged by HA for approximately four and a half years (from September 2009 to April 2013) and later contracted directly by Goldmaster. Mr Kerfoot had significant responsibilities in relation to the Project. He was not a public officer.
- [94] The tasks undertaken by Mr Kerfoot as a contractor to HA included the following:
- a. day-to-day decision-making responsibilities;
  - b. acting as 'go-between' for HA and Goldmaster;
  - c. engaging with all relevant parties to the Project;
  - d. authorising millions of dollars in payments from the Controlled Money Account;
  - e. attending Project control group meetings on behalf of HA;<sup>41</sup>
  - f. attending and speaking at Goldmaster board meetings as a representative of HA;<sup>42</sup>
  - g. leading discussions regarding the Pitcher Partners audit report at a Goldmaster directors' meeting;<sup>43</sup> and
  - h. making recommendations to Mr Searle including about complex financial arrangements tied to the investment in the Goldmaster company.
- [95] Mr Searle agreed that Mr Kerfoot was 'crucial' to the Project<sup>44</sup> and that Mr Kerfoot's role as the transaction manager led to him being the main person engaging on behalf of HA on a day-to-day basis with other parties.<sup>45</sup>
- [96] Mr Kerfoot accepted that, despite having a corporate executive with four general managers, he was the main person managing the Project on a day-to-day basis.<sup>46</sup>

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<sup>41</sup> A Kerfoot transcript, private examination 17 June 2022, p 50.

<sup>42</sup> A Kerfoot transcript, private examination 17 June 2022, p 50.

<sup>43</sup> A Kerfoot transcript, private examination 20 June 2022, p 68.

<sup>44</sup> G Searle transcript, private examination, 23 June 2022, p 4.

<sup>45</sup> G Searle transcript, private examination, 23 June 2022, p 6.

<sup>46</sup> A Kerfoot transcript, private examination 17 June 2022, p 50.

- [97] Mr Searle stated he was the decision maker for HA<sup>47</sup> and not Mr Kerfoot. However, Mr Searle did have concerns about Mr Kerfoot being seen as a shadow director for Goldmaster.<sup>48</sup>
- [98] The engagement of a consultant to undertake a crucial role on a complex, large and unusually structured project is a misconduct risk especially when their duties go well beyond advice. Mr Kerfoot exercised considerable authority over managerial decisions. Mr Searle honourably and properly has accepted overall responsibility for the project and has never tried to hide behind the actions of the contractor. Nevertheless the risk remains.
- [99] It is concerning that a person not engaged as a public officer had such a significant and involved role in this Project for such a long period. In addition to governance and accountability issues, only public officers are subject to oversight under the *Corruption, Crime and Misconduct Act 2003* and public service disciplinary processes under the *Public Sector Management Act 1994*.

#### **Centralisation of power in a few people within HA**

- [100] Key HA public officers in relation to the Project were Mr Searle and Ms Loosley-Smith. They worked with Mr Kerfoot who had the day-to-day management of the Project.
- [101] In response to a draft of this report Ms Loosley-Smith described her role as follows:

*As the General Manager Strategy and Policy, Ms Loosley-Smith's principal role in the Project involved her providing policy input and oversight of the Project, particularly in relation to -*

- (1) its strategic alignment with the Government's broader objectives around housing supply and affordability, the provision of social and affordable rentals and shared equity home ownership, transport aligned infill development, as well as the use of potentially ground breaking new construction technologies;*
- (2) the Ministerial desire for more innovative public-private partnerships, as reflected in the Cabinet-endorsed State Affordable Housing Strategy 2010-2020; and*
- (3) the importance of the Project to the Government's State Planning Framework and the State Affordable Housing Strategy, given its scale and planned contribution to infill, affordability and housing diversity aspirations and targets.*

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<sup>47</sup> G Searle transcript, private examination, 23 June 2022, p 61.

<sup>48</sup> G Searle transcript, private examination, 23 June 2022, p 62.



*Ms Loosley-Smith's role in relation to the Project did not involve key matters such as financial or investment analysis, legal structuring arrangements or capital works expenditure.*

*It is particularly significant that Ms Loosley-Smith did not have any relevant decision making role in relation to the Project that would be consistent with a description of her 'controlling' the Project or giving 'regular direction in the conduct of the Project'.*

[102] Mr Searle described her role:

*Well, my expectation was that she had the day-to-day oversight of Ashley [Kerfoot], and therefore the day-to-day oversight of what we were actually doing in this project, and to keep me informed if there was anything she was worried about that was different or new, as distinct from, at the end of the day, being responsible for the project.*

[103] Although, Mr Kestel (an officer of HA) became a director of Goldmaster<sup>49</sup> his appointment to this role is odd. Mr Kestel was Executive Director Complex Projects. He reported to Mr Whyte. His evidence was that no-one from HA advised him how the Project was going, why he was being appointed, or the key risks and issues for consideration whilst he was on the board.<sup>50</sup>

[104] Rather, Mr Kestel considered that other people were controlling this project: Mr Kerfoot, Mr Searle, Ms Loosley-Smith and Mr Whyte and that he should not have been director of Goldmaster.<sup>51</sup> There is no evidence that Mr Whyte played any meaningful role in the Project.

[105] Mr Kestel stated during his examination hearing that 'I feel as though I'm a puppet director for the Department of Housing here with others running the whole project'.<sup>52</sup>

[106] Having regard to his background as Managing Director of a property group and acquisitions manager for a property developer, Mr Kestel's professed ignorance is surprising.

[107] Mr Searle agreed the hierarchy was Mr Searle, Ms Loosley-Smith and then Mr Kerfoot.<sup>53</sup>

[108] The HA legal team and CFO were excluded by Mr Searle and Ms Loosley-Smith. Mr Searle and Ms Loosley-Smith decided not to seek the services of the HA legal team in considering and advancing the Project and did not inform them of key decisions and transactions that had taken place.

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<sup>49</sup> S Kestel transcript, private examination, 14 June 2022, p 11.

<sup>50</sup> S Kestel transcript, private examination, 14 June 2022, p 14.

<sup>51</sup> S Kestel transcript, private examination, 14 June 2022, p 20.

<sup>52</sup> S Kestel transcript, private examination, 14 June 2022, p 43.

<sup>53</sup> G Searle transcript, private examination, 23 June 2022, p 74.

This reduced internal legal and financial oversight. Ms Loosley-Smith disputes this statement. However, the preponderance of evidence is to the contrary.

[109] For example, the CFO Mr O'Mara only became aware of the Project around May 2011 when the source of approximately \$1.3 to \$1.4 million in income couldn't be located.<sup>54</sup> Mr O'Mara made enquiries and was told by Mr Whyte that Ms Loosley-Smith and Mr Searle organised the Project with Mr Kerfoot.<sup>55</sup>

[110] Mr O'Mara explained that HA projects were usually managed by project managers. However, this Project was different because it was being controlled by Mr Searle, Ms Loosley-Smith and Mr Kerfoot.<sup>56</sup>

[111] On 7 July 2012,<sup>57</sup> Ms Loosley-Smith provided a response to concerns raised by Mr O'Mara.

[112] Ms Loosley-Smith's communication stated:

*With regard to Lorne's email of concern as CFO, and the email strings below, please understand:*

- 1. Goldmaster is NOT insolvent, just potentially one of the companies it does business with.*
- 2. The legal advice has been to understand Goldmaster's position in relation to it.*
- 3. The advice is that the corporate governance arrangements protect Goldmaster, as was intended.*
- 4. These things are complex and happened fast, therefore it was appropriate and necessary to get external specialist legal advice.*
- 5. The Director-General, Stewart and I are getting daily updated on this.*
- 6. We will advise other parts of the organization if/when there is a need to do so.*
- 7. In the meantime, these matters should be considered commercial in confidence.*

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<sup>54</sup> L O'Mara transcript, private examination, 14 June 2022, p 5.

<sup>55</sup> L O'Mara transcript, private examination, 14 June 2022, p 5.

<sup>56</sup> L O'Mara transcript, private examination, 14 June 2022, p 34.

<sup>57</sup> Exhibit No 5972783.

- [113] Upon receiving a copy of this email, Mr Searle replied on 7 July 2012 to Ms Loosley-Smith:

*Well done. The email I drafted was almost abusive as it reflected my frustration and the lack of sleep from "stewing" over the gall of the email.<sup>58</sup>*

- [114] Ms Loosley-Smith responded on 7 July 2012:

*Rare turn up for the books if I was more polite than you! Ash was a tad concerned. It's like chihuahua's constantly nipping at our heels.<sup>59</sup>*

- [115] Ms Loosley-Smith notes that part of her role was to provide an occasional sounding board and trouble shooter for Mr Searle, one of these occasions being the response to concerns raised by Mr O'Mara.

- [116] The Commission concludes that the legal team or the CFO exclusion from involvement in the Project was deliberate. In her response to a draft of this report, Ms Loosley-Smith notes:

*I had no decision-making authority in respect of any of the matters that are the subject of critical comments in the Draft report, being -*

*(1) the exclusion of the HA legal team and CFO from the Project;*

*(2) not seeking their services in considering advancing the Project; and*

*(3) not informing them of key decisions and transactions that had taken place.*

- [117] Mr Searle does not appear to have questioned the accuracy of any of the seven points in Ms Loosley-Smith's email at the time. In evidence ten years later, Mr Searle accepted that several matters stated by Ms Loosley-Smith in her email were wrong.<sup>60</sup> As one example, he noted there were serious concerns about the solvency of Goldmaster and, consequently, HA's shareholding in it.

- [118] The response of the corporate executive to legitimate concerns raised by Mr O'Mara is telling. Rather than welcoming the contribution from the Department's CFO, senior members of the executive disregarded and resented it.

### **Record keeping weaknesses.**

- [119] HA had digital record keeping systems such as TRIM, Property Asset Management System (PAMS) and PROMIS. Staff could also request access to hardcopy material from a central registry.

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<sup>58</sup> Exhibit No 85937862.

<sup>59</sup> Exhibit No 50755102.

<sup>60</sup> G Searle transcript, private examination, 23 June 2022, p 83.

- [120] Despite the significance of the Project in terms of size, complexity and monetary value, the usual record keeping systems were not used. Digital records do not appear to have been available, and hardcopy records were not available in the central registry. Rather they were kept in a space near Ms Loosley-Smith's office. Ms Loosley-Smith in her response asserts that she kept the documents in her executive assistant's office with instructions to keep them current and accurate.
- [121] For whatever reason, it meant that there was difficulty for those outside the Project management gaining access to relevant records.
- [122] Several key records expected to be available for such a project have not been located. Despite formal notices to produce records to the Commission, DoC has been unable to find them. Ms Loosley-Smith asserts that there were TRIM files and at least three full hard copy volumes. They have not been produced to the Commission. The Commission is unable to determine whether significant records were created and now are lost or destroyed, or whether they were never created at all.
- [123] Mr O'Mara was CFO of HA from 2011 to 2016<sup>61</sup> with experience in accounting and finance in Government since 1987.<sup>62</sup> Mr O'Mara's principal duty as CFO was to ensure the annual audit was conducted correctly and to sign the financial statements for the annual report.<sup>63</sup>
- [124] Mr O'Mara accessed hardcopy records for the Project from a room adjacent to Ms Loosley-Smith's office in the executive wing.<sup>64</sup> Mr O'Mara said that the Project didn't appear to be recorded in PAMS.<sup>65</sup> PAMS was a system for 'bricks and mortar' projects. If a house was being built it would have a budget, a unique number and all the documentation and payments for that project would be in the PAMS system<sup>66</sup>.
- [125] It would also have a records file attached to it.<sup>67</sup> The records file would contain payment vouchers, initial building contracts and any variations.<sup>68</sup> A business case (and if conducted, an investment analysis) would also be on the file.<sup>69</sup> This system would demonstrate the life of a project as well as any variations and maintenance periods and was in use in 2011.<sup>70</sup>

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<sup>61</sup> L O'Mara transcript, private examination, 14 June 2022, p 3.

<sup>62</sup> L O'Mara transcript, private examination, 14 June 2022, p 3.

<sup>63</sup> L O'Mara transcript, private examination, 14 June 2022, p 3.

<sup>64</sup> L O'Mara transcript, private examination, 14 June 2022, p 12.

<sup>65</sup> L O'Mara transcript, private examination, 15 June 2022, p 28.

<sup>66</sup> L O'Mara transcript, private examination, 15 June 2022, p 28.

<sup>67</sup> L O'Mara transcript, private examination, 15 June 2022, p 28.

<sup>68</sup> L O'Mara transcript, private examination, 15 June 2022, p 29.

<sup>69</sup> L O'Mara transcript, private examination, 15 June 2022, p 29.

<sup>70</sup> L O'Mara transcript, private examination, 15 June 2022, p 29.

- [126] Mr Searle stated that he expected the documents for this Project to end up in TRIM.
- [127] Mr Searle considered the project was problematic and not typical. At times, the Project involved trying to put pressure on certain people and keeping documents in a filing system that everyone in HA could access would potentially give away what HA was trying to achieve.<sup>71</sup>
- [128] Mr Searle did expect that the first business case and ministerial approvals would be kept in HA's normal systems but noted it is up to the individual as to when they upload documents.<sup>72</sup>
- [129] The Commission has found no evidence that a business case was ever prepared.
- [130] The approach to record management for the Project creates obvious issues for HA in that its officers are not able to complete work and comply with legislative requirements in undertaking their duties. These duties include state record keeping requirements, financial tracking and reporting obligations and the provision of legal advice at appropriate times.
- [131] Record keeping for the project raises concerns about the desire to limit transparency in decision making by HA in undertaking the Project. Lack of transparency in decision making is a corruption risk.
- [132] If significant documents exist, they have not been found. The CFO was not provided with key financial information at appropriate times throughout the life of the Project. This included:
- a. \$1.3 to \$1.4 million in income received by HA. The CFO became aware in May 2011;<sup>73</sup>
  - b. \$19 million held by HA. The CFO first became aware in September 2011;<sup>74</sup>
  - c. Existence of the Controlled Money Account managed by Lavan Legal<sup>75</sup> and its use for the settlement of properties from the Project;<sup>76</sup>
  - d. \$1.3 million in income and \$18 million worth of shares that had been purchased in Goldmaster;<sup>77</sup>

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<sup>71</sup> G Searle transcript, private examination, 23 June 2022, p 73.

<sup>72</sup> G Searle transcript, private examination, 23 June 2022, p 73.

<sup>73</sup> L O'Mara transcript, private examination, 14 June 2022, p 5.

<sup>74</sup> L O'Mara transcript, private examination, 14 June 2022, p 7.

<sup>75</sup> L O'Mara transcript, private examination, 14 June 2022, p 6.

<sup>76</sup> L O'Mara transcript, private examination, 14 June 2022, p 6.

<sup>77</sup> L O'Mara transcript, private examination, 14 June 2022, p 14.



- e. Advice about Goldmaster's potential insolvency<sup>78</sup> and acknowledgment of debt documents;<sup>79</sup>
  - f. Original Ministerial approvals for the participation in the property development for the first 76 properties;<sup>80</sup>
  - g. Any Ministerial approval relating to the Controlled Money Account.<sup>81</sup>
  - h. Mr O'Mara was not part of the executive of HA<sup>82</sup> and the Corporate Executive did not discuss the Project with the CFO at any corporate executive meetings.<sup>83</sup>
- [133] Mr O'Mara considered that he should have been informed about the Project as the CFO should know exactly what is happening financially in the HA.<sup>84</sup> Mr O'Mara is correct and the failure to involve him and ensure he was kept informed is a significant misconduct risk.
- [134] Once Mr O'Mara did receive information about the Project, he undertook a number of actions aimed at ensuring compliance by HA with its legislative obligations.
- [135] Mr O'Mara drafted a memorandum to Mr Whyte dated 4 May 2012 following his discovery of the \$1.3 million in income and \$18 million worth of shares that had been purchased in Goldmaster.<sup>85</sup>
- [136] This memo raised issues in relation to the Project and whether the sale of the properties complied with the Housing Act; whether ministerial approvals obtained were sufficient for the Project given the approval didn't reference HA owning a company; the trust account created; and the purchase of \$18 million worth of shares.<sup>86</sup>
- [137] On 16 May 2012 Mr O'Mara engaged PricewaterhouseCoopers to review the shareholder's agreement regarding Goldmaster to advise on the rights and obligations of the agreement and any anomalies and concerns in regard to the structure of this investment from a risk perspective.<sup>87</sup>

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<sup>78</sup> L O'Mara transcript, private examination, 14 June 2022, pp 30 and 31.

<sup>79</sup> L O'Mara transcript, private examination, 14 June 2022, p 34.

<sup>80</sup> L O'Mara transcript, private examination, 14 June 2022, p 15.

<sup>81</sup> L O'Mara transcript, private examination, 14 June 2022, p 16.

<sup>82</sup> L O'Mara transcript, private examination, 14 June 2022, p 27.

<sup>83</sup> L O'Mara transcript, private examination, 15 June 2022, p 24.

<sup>84</sup> L O'Mara transcript, private examination, 14 June 2022, p 6.

<sup>85</sup> L O'Mara transcript, private examination, 14 June 2022, p 14.

<sup>86</sup> L O'Mara transcript, private examination, 14 June 2022, p 15.

<sup>87</sup> L O'Mara transcript, private examination, 14 June 2022, p 16.

- [138] Mr O'Mara also engaged PricewaterhouseCoopers to assist with the accounting for Goldmaster as this was the first time HA had to account for such an investment.<sup>88</sup>
- [139] Mr Searle said that his expectation was that HA nominated director of Goldmaster would be providing all the information required to the CFO<sup>89</sup> as they went.<sup>90</sup>
- [140] Mr Searle stated that there was never any intent on his part not to have the Project reflected in HA's records. The Project wasn't secret. HA had taken the Project to the Minister for ministerial approval. HA had promoted the construction techniques used and was obtaining legal advice from Lavan Legal and assistance from CBRE.<sup>91</sup> However, as outlined in this report the information provided to the Ministers appears to have been incomplete and as a result misleading.
- [141] The inclusion of the Finance Team in undertaking projects is essential for the proper governance and financial record keeping of HA for several reasons. These include:
- a. Compliance with the *Financial Management Act 2006*;
  - b. Compliance with the Housing Act;
  - c. Accurate asset registers;
  - d. Accurate accounting projects;
  - e. Consideration as to what Ministerial approvals are required for projects;
  - f. Consideration as to what Ministerial approvals are required for bank accounts; and
  - g. Appropriate consideration, accounting and monitoring of HA's acquisition of shares in Goldmaster and its ongoing financial exposure as a result.
- [142] The financially risky and unusual arrangements should have seen HA embracing oversight and assistance of the CFO before, during and after commencement of the Project.
- [143] Failure of the Executive to appropriately engage with and ensure that key information and supporting documentation was provided to the Finance

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<sup>88</sup> L O'Mara transcript, private examination, 14 June 2022, p 16.

<sup>89</sup> G Searle transcript, private examination, 23 June 2022, p 81.

<sup>90</sup> G Searle transcript, private examination, 23 June 2022, p 82.

<sup>91</sup> G Searle transcript, private examination, 23 June 2022, p 87.

Team at appropriate times is disturbing. It represents a serious misconduct risk.

**Mr Searle improperly opened a bank account for HA outside of the requirements of the *Financial Management Act 2006***

- [144] On 12 April 2011, Mr Searle authorised the opening of a Controlled Money Account<sup>92</sup> through Lavan Legal to deposit settlement monies from the sale of apartments from Stage 2. The Commission has been unable to identify any Ministerial or Department of Treasury and Finance approval to open this account.
- [145] Mr Kerfoot agreed he authorised payments from this account for many millions of dollars.<sup>93</sup>
- [146] Mr Kerfoot said he would authorise Lavan Legal to release funds from the Controlled Money Account and Lavan Legal would track the payments. Approval for the amounts that Mr Kerfoot could authorise came from project control group meetings or board meetings at which various budget parameters were set.<sup>94</sup> Mr Kerfoot would need to seek approval for amounts that were outside the original budget or if it was an additional item.<sup>95</sup>
- [147] Mr Searle said he was not aware that Mr Kerfoot was authorising payments from the Controlled Money Account.<sup>96</sup>
- [148] A bank account containing public money, statutory authority money or 'other money' is not to be opened or maintained other than in accordance with the requirements concerning agency special purpose accounts.<sup>97</sup>
- [149] Further, Treasurer's Instruction 206 provides that all money must be banked into a bank account that either forms part of the Public Bank Account or is outside the Public Bank Account as authorised by the Treasurer. No evidence has been located that provides the necessary authorisation.
- [150] The CFO was not initially advised of the creation of the account nor given oversight or control. This led to inaccuracies in financial reporting in HA's Annual Report for the 2010/2011 financial year.

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<sup>92</sup> Exhibit No 00745-2022-0002.

<sup>93</sup> A Kerfoot transcript, private examination, 20 June 2022, p 48.

<sup>94</sup> A Kerfoot transcript, private examination, 20 June 2022, p 51.

<sup>95</sup> A Kerfoot transcript, private examination, 20 June 2022, p 52.

<sup>96</sup> G Searle transcript, private examination, 23 June 2022, p 68 and 69.

<sup>97</sup> *Financial Management Act 2006*, s 15(1).

- [151] These failures to comply with legislative requirements resulted in lack of visibility of the account and transactions made using the account. This greatly reduced HA's ability to ensure financial reporting was accurate and apply internal financial control measures to manage risk.

**Mr Searle and Mr Kerfoot provided incomplete information to the Ministers for Housing.**

- [152] HA twice sought Ministerial approval for funds for the Project.
- [153] Mr Searle (and other HA officers) and Mr Kerfoot met with the relevant Minister for Housing and provided details of the project, financial information and reasons for the request.
- [154] However, the information provided on each occasion was incomplete and as a result misleading.
- [155] Key information (particularly financial information about Goldmaster) was not included, and it is questionable if approvals would have been granted had the relevant Ministers been fully informed.
- [156] In his response to a draft of this report Mr Kerfoot stated:

*It is important to note that written materials provided for Ministerial Briefings are necessary brief and concise. There were clear instructions from the Minister's Office that more lengthy and expansive documentation would not be accepted given the demands on Minister's time.*

*This does not mean that discussion before, during and after the Ministerial Briefing session is limited to the matters expressly included in the written material. The Commission's criticisms assume, without justification, that nothing beyond the basic information contained in the presentation material was discussed in more detail between the Minister, Mr Searle and Mr Kerfoot either on 11 April 2011 or at any other time. Mr Kerfoot is aware that prior to each Ministerial briefing session, preliminary meeting and discussions held with the Minister or his Chief of Staff to explain the issues to be addressed at briefing. In addition, although it is over 10 years ago, Mr Kerfoot recalls that there was a wide-ranging discussion with the Minister about the Project and the investment proposal in particular, and that the Minister was engaged and asking relevant questions throughout.*

- [157] Ms Loosley-Smith makes a similar point. The Commission has not located any minutes, records, or evidence of any meetings other than the two meetings referred to.

### ***First Ministerial Approval***

- [158] Mr Kerfoot presented a PowerPoint presentation<sup>98</sup> to Minister Buswell on 11 April 2011 regarding the Project. Mr Searle and Mr Whyte also attended this meeting.<sup>99</sup>
- [159] Mr Kerfoot in his response accepted that Goldmaster is not named but asserts it was clear that the investment involved a shareholding acquisition. He acknowledges that the financial positions of Goldmaster and Jewel were not referenced in the presentation material. His explanation that this was because there was no significant concern about these matters at the time of briefing is not accepted.
- [160] A subsequent one-page briefing note dated 27 April 2011 to the Minister for Housing titled 'Stella Orion Stage 3-6, Success: Equity Subscription Approval' signed by Mr Searle was approved by Minister Buswell on 8 May 2011.
- [161] This briefing note set out that HA was seeking approval for an equity subscription transaction for the Stella Orion development (stages 3 through 6) as presented on 11 April.
- [162] The proposal included that there would be an investment of sale proceeds of up to \$19 million in Stages 3 to 6, purchase in equity (income rights) in land owning entity, receipt of anticipated \$50.75 million in development profits over a 10-year development term, 15% return on equity and access to private capital - \$45 million equity and \$213 million debt.<sup>100</sup>
- [163] Mr Searle signed the briefing note on behalf of HA and the advising officer was Mr Kerfoot.<sup>101</sup>
- [164] Mr Kerfoot stated that he would have provided input as to the information for the briefing note<sup>102</sup> and more than likely would have drafted some of the points in the briefing note<sup>103</sup> which would then have been given to Mr Searle.<sup>104</sup>
- [165] Mr Kerfoot said that he would have prepared the PowerPoint presentation for the meeting<sup>105</sup> and a copy was provided to Mr Searle for consideration

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<sup>98</sup> Exhibit No 5874193 (Agenda for meeting on 11 April 2011) and 5074625 (PowerPoint Presentation entitled 'Stella Orion\_S3/6 - Equity Subscription').

<sup>99</sup> A Kerfoot transcript, private examination, 17 June 2022, p 64.

<sup>100</sup> Exhibit No 74267734.

<sup>101</sup> G Searle transcript, private examination, 23 June 2022, p 15.

<sup>102</sup> A Kerfoot transcript, private examination, 20 June 2022, p 3.

<sup>103</sup> A Kerfoot transcript, private examination, 20 June 2022, p 3.

<sup>104</sup> A Kerfoot transcript, private examination, 20 June 2022, p 3.

<sup>105</sup> A Kerfoot transcript, private examination, 20 June 2022, p 3.



before the meeting.<sup>106</sup> Mr Kerfoot stated that the presentation to the Minister was made by Mr Searle and Mr Kerfoot.<sup>107</sup>

[166] Neither the briefing note nor the PowerPoint presentation include any reference to:

- a. the fact that HA was taking equity in a proprietary limited company called Goldmaster;
- b. any details as to the financial position of Goldmaster or any concerns about the financial position of Goldmaster;<sup>108</sup>
- c. the financial position of Jewel;<sup>109</sup>
- d. that any of the \$19 million was intended to be spent on Stage 2;<sup>110</sup> or
- e. information contained in an Information Memorandum prepared by Goodland that \$18 million was needed to pay the Bankwest debt for Stage 2 and that a further \$8.7 million would be needed to pay the original investors.<sup>111</sup>

### ***Second Ministerial Approval***

[167] Mr Kerfoot stated they had two meetings with the Minister.<sup>112</sup> Mr Kerfoot recalled Mr Searle, Ms Loosley-Smith and Mr Whyte attending the second meeting at Dumas House.<sup>113</sup>

[168] A two-page briefing note dated 16 November 2012 to the Minister for Housing titled 'Stella Orion Stage 3, Success: Capitalisation' signed by Mr Searle was approved by Minister Redman.

[169] This briefing note set out that the HA was proposing to participate in the capitalisation of Stage 3 through subscribing to and underwriting equity with existing shareholders up to a limit of \$19.35 million with a duration of 14 months. In addition to, facilitating and/or securing construction debt facilities on commercial terms at a peak limit of \$42.3 million with a duration of nine months.<sup>114</sup>

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<sup>106</sup> A Kerfoot transcript, private examination, 20 June 2022, p 3.

<sup>107</sup> A Kerfoot transcript, private examination, 20 June 2022, p 4.

<sup>108</sup> G Searle transcript, private examination, 23 June 2022, p 15.

<sup>109</sup> A Kerfoot transcript, private examination, 17 June 2022, p 73.

<sup>110</sup> A Kerfoot transcript, private examination, 17 June 2022, p 74.

<sup>111</sup> G Searle transcript, private examination, 23 June 2022, p 46.

<sup>112</sup> A Kerfoot transcript, private examination, 17 June 2022, p 118; and 20 June 2022, p 10.

<sup>113</sup> A Kerfoot transcript, private examination, 20 June 2022, p 11.

<sup>114</sup> Exhibit No 74247457.

[170] This briefing note does not include any reference to:

- a. the subscription in shares being in a proprietary limited company called Goldmaster;<sup>115</sup>
- b. the different classes of shareholders and what class of share HA would hold in Goldmaster;<sup>116</sup>
- c. the complexities between the different classes of shareholders in Goldmaster;<sup>117</sup>
- d. the issues with various shareholders in Goldmaster;<sup>118</sup>
- e. Goldmaster's financial position;
- f. the auditor's report received by HA two months earlier setting out the concerns for Goldmaster as a going concern;<sup>119</sup>
- g. HA previously loaning money to Jewel to enable Acepark's ATO debt to be paid;<sup>120</sup>
- h. the three previous Deeds of Acknowledgment of Debt entered into by HA in relation to the Project;<sup>121</sup> and
- i. how urgent the need for funds was.<sup>122</sup>

[171] The briefing note also includes:

- a. a vague description of an approach being made to the landowners to consider an investment in the land ownership structure;<sup>123</sup>
- b. very little clarity around the investment of up to \$19 million approved by Minister Buswell and secured by an interest in the land;<sup>124</sup> and
- c. no mention that what had been proposed to Minister Buswell was not about buying shares in a Pty Ltd company called Goldmaster.<sup>125</sup>

[172] Mr Searle was asked during his examination why he recommended to the Minister that \$19.35 million be taken in equity in Goldmaster given the

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<sup>115</sup> G Searle transcript, private examination, 23 June 2022, p 48.

<sup>116</sup> G Searle transcript, private examination, 23 June 2022, p 45.

<sup>117</sup> G Searle transcript, private examination, 23 June 2022, p 45.

<sup>118</sup> G Searle transcript, private examination, 23 June 2022, p 44.

<sup>119</sup> G Searle transcript, private examination, 23 June 2022, p 44.

<sup>120</sup> G Searle transcript, private examination, 23 June 2022, p 45.

<sup>121</sup> G Searle transcript, private examination, 23 June 2022, p 45.

<sup>122</sup> G Searle transcript, private examination, 23 June 2022, p 45.

<sup>123</sup> G Searle transcript, private examination, 23 June 2022, p 45.

<sup>124</sup> G Searle transcript, private examination, 23 June 2022, p 46.

<sup>125</sup> G Searle transcript, private examination, 23 June 2022, p 46.

solvency concerns for Goldmaster, Goldzen and Goodland. Mr Searle said that presales for the Project were going well so 'there was a realistic expectation that if the development went ahead, we would eventually get close to out or much closer to out than we were at that point of time'.<sup>126</sup>

- [173] Mr Searle acknowledged that the briefing note to the Minister could have been better<sup>127</sup> and should have specifically referred to Goldmaster.
- [174] Mr Searle couldn't recollect when Ministerial approval was required in relation to agreements or the opening of bank accounts but agreed it was important to obtain Ministerial approval whenever required.<sup>128</sup>
- [175] Mr Kerfoot acknowledged that the reference in the Ministerial briefing note to HA being approached by the landowners to consider an investment in the land ownership structure was quite broad and vague.<sup>129</sup>
- [176] Mr Kerfoot confirmed that during discussions the Minister was never advised that:
- a. HA had paid \$2.6 million to the ATO on behalf of Jewel regarding AcePark's debt to the ATO;<sup>130</sup> and
  - b. much of the initial \$18 million investment had actually been used to pay invoices of debts related to Stage 2 not Stage 3 which is contrary to what had been presented to Minister Buswell in the first briefing note of 27 April 2011.<sup>131</sup>
- [177] In his response Mr Kerfoot asserts that Minister Redman was known for being extremely thorough and received certain further material including a full information memorandum.
- [178] The Commission has not located any record confirming this material was given to the Minister.
- [179] Providing incomplete information to a Minister to the extent that the true position is obscured is another example of HA failing to be transparent in its dealings with the Project.
- [180] Ministers are necessarily reliant on information provided to them. Their ability to make important decisions on behalf of the community is significantly reduced if they are given inaccurate or incomplete information.

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<sup>126</sup> G Searle transcript, private examination, 23 June 2022, p 44.

<sup>127</sup> G Searle transcript, private examination, 23 June 2022, p 86.

<sup>128</sup> G Searle transcript, private examination, 23 June 2022, p 11.

<sup>129</sup> A Kerfoot transcript, private examination, 20 June 2022, p 6.

<sup>130</sup> A Kerfoot transcript, private examination, 17 June 2022, p 118.

<sup>131</sup> A Kerfoot transcript, private examination, 17 June 2022, p 119.

[181] Mr Kerfoot and Ms Loosley-Smith both made the point that briefing notes for Ministers were expected to be brief and concise. However, that is no excuse for omitting key information about Goldmaster and its financial position.

[182] It is of utmost importance that Ministers are truthfully and accurately briefed on matters within their portfolio. Failure to do so is a serious misconduct risk.

***No business case***

[183] Despite the significance of a business case to a project of this kind, and notices to produce records to the Commission, an original business case for the Project has not been located.

[184] Without the business case, it is not possible to say whether HA failed to conduct appropriate due diligence and probity checks in relation to Stages 3 - 6.

[185] What does seem clear is that HA failed to conduct appropriate due diligence or probity checks into Goldmaster prior to making a significant investment in the company. This is difficult to understand given that HA had not previously invested in a proprietary limited company and doing so exposed HA to various financial risks.

[186] HA became involved in Stage 3 via the MOU with Jewel in August 2010.

[187] It was usual for an investment analysis and business case to be prepared for a significant project. The business case would be drafted by the project managers.<sup>132</sup> The investment analysis would be drafted either by the project manager or someone external to HA engaged for this purpose.<sup>133</sup> The investment analysis would include the profit expected to be derived.<sup>134</sup>

[188] Mr O'Mara advised these documents would be created prior to the commencement of the project and saved on TRIM.<sup>135</sup> There was always an initial business case, and it would be revised later depending on what HA decided to do with the properties. For example, properties were sold or rented.<sup>136</sup> The Director of the project area would sign off on the project and it may also go to the investment committee for approval. The business case should have been on the records file and held in the records area.<sup>137</sup>

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<sup>132</sup> L O'Mara transcript, private examination, 14 June 2022, p 35.

<sup>133</sup> L O'Mara transcript, private examination, 14 June 2022, p 35.

<sup>134</sup> L O'Mara transcript, private examination, 14 June 2022, p 35.

<sup>135</sup> L O'Mara transcript, private examination, 14 June 2022, p 35.

<sup>136</sup> L O'Mara transcript, private examination, 14 June 2022, p 36.

<sup>137</sup> L O'Mara transcript, private examination, 14 June 2022, p 40.

- [189] Mr Searle confirmed there would be documents outlining the social and affordable housing outcomes<sup>138</sup> and these would probably be called a business case and filed somewhere with Corporate Executive papers.<sup>139</sup> The business case would be created before a project begins.<sup>140</sup>
- [190] Having conducted examination hearings of key HA officers, all of whom do not recall seeing a copy of the investment analysis or business case for the Project, the Commission concludes that neither a business case nor an investment analysis was created by HA for the Project.
- [191] In his response Mr Kerfoot draws attention to two information memoranda for the Investment Committee.
- [192] The Commission does not regard either memorandum as a business case. The second memorandum was prepared for a further injection of capital after the first amount had been exhausted.

***Subscription and Shareholders Agreement - 30 June 2011***

- [193] Mr Searle said that HA in almost all its development activities had a partner, whether it be land development or major construction. It was the normal way for HA to do business. Partners ranged from major land developers in Perth through to Commonwealth future funds. Joint ventures were often established where HA provided the land, and the co-venturer would provide finance and building.<sup>141</sup>
- [194] Mr Searle agreed the Subscription and Shareholders Agreement<sup>142</sup> authorised by Mr Parry on behalf of HA on 30 June 2011 (although the document is not dated) between Goldmaster, HA and others meant that HA was investing \$18 million for \$18 million of shares in Goldmaster. HA was not providing this amount as a loan to be repaid with interest. The shares HA was to be issued were described as 'C class' shares. HA had the possibility of receiving dividends for its 'C class' shares.
- [195] Mr Searle understood that the only asset Goldmaster had was the land and if the land was fully developed and fully sold off then 'the dividends would be what was left'.<sup>143</sup>
- [196] Mr Searle explained that it was difficult to access land with development approval already in place in that kind of location and this was the reason for investing in Goldmaster. Having started the process it was then

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<sup>138</sup> G Searle transcript, private examination, 23 June 2022, p 62 and 63.

<sup>139</sup> G Searle transcript, private examination, 23 June 2022, p 63.

<sup>140</sup> G Searle transcript, private examination, 23 June 2022, p 64.

<sup>141</sup> G Searle transcript, private examination, 23 June 2022, pp 5 and 6.

<sup>142</sup> Exhibit No 00745-2022-0007.

<sup>143</sup> G Searle transcript, private examination, 23 June 2022, p 20.

important that Goldmaster remained solvent so that HA could continue with the development.<sup>144</sup>

- [197] Mr Searle could not recall why a joint venture or investment via debt wasn't preferred by HA for the Project.<sup>145</sup> HA was not obliged to proceed with the Project nor obliged to proceed by buying shares in Goldmaster.<sup>146</sup> Mr Searle recalls HA tried to buy the land, but Jewel was not willing to sell.<sup>147</sup>
- [198] Mr Searle agreed that investing in Goldmaster had ramifications for HA's financial accounting<sup>148</sup> and auditing.<sup>149</sup> He also agreed that these issues probably would not have existed if HA had utilised a joint venture instead.<sup>150</sup>
- [199] Mr Searle assumed HA changed its approach to investment via debt with security (for Stage 2) to investing millions of dollars in shares in a proprietary limited company (for Stage 3) on the advice of Mr Kerfoot.<sup>151</sup>
- [200] Mr Searle agreed that Goldmaster was not created for this Project,<sup>152</sup> and indicated that investing in Goldmaster added a number of complications but did not necessarily add risk.<sup>153</sup>
- [201] However, Mr Searle also agreed that the value of HA's equity was tied to the fortunes of Goldmaster,<sup>154</sup> and that Goldmaster had existed as a company for some years before HA's investment, had creditors<sup>155</sup> and significant losses at the time of the acquisition of shares in.<sup>156</sup> Mr Searle stated that it would have been much simpler to buy the other parties out if HA could.<sup>157</sup>
- [202] Mr Searle did not personally undertake due diligence before HA invested in Goldmaster. Instead, he understood Mr Kerfoot would have attended to the due diligence.<sup>158</sup> Mr Kerfoot says this was not his responsibility. Mr Searle did not recall anyone ever talking to him about due diligence in

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<sup>144</sup> G Searle transcript, private examination, 23 June 2022, p 20.

<sup>145</sup> G Searle transcript, private examination, 23 June 2022, pp 20 and 21.

<sup>146</sup> G Searle transcript, private examination, 23 June 2022, p 22.

<sup>147</sup> G Searle transcript, private examination, 23 June 2022, p 22.

<sup>148</sup> G Searle transcript, private examination, 23 June 2022, p 27.

<sup>149</sup> G Searle transcript, private examination, 23 June 2022, p 28.

<sup>150</sup> G Searle transcript, private examination, 23 June 2022, p 28.

<sup>151</sup> G Searle transcript, private examination, 23 June 2022, p 28.

<sup>152</sup> G Searle transcript, private examination, 23 June 2022, p 25.

<sup>153</sup> G Searle transcript, private examination, 23 June 2022, p 26 and p 27.

<sup>154</sup> G Searle transcript, private examination, 23 June 2022, p 26.

<sup>155</sup> G Searle transcript, private examination, 23 June 2022, p 26.

<sup>156</sup> G Searle transcript, private examination, 23 June 2022, p 26.

<sup>157</sup> G Searle transcript, private examination, 23 June 2022, p 27.

<sup>158</sup> G Searle transcript, private examination, 23 June 2022, p 27.

relation to Goldmaster<sup>159</sup> but did recall that Goldmaster (and other companies) were marginal at the time.<sup>160</sup>

[203] Mr O'Mara had difficulty as CFO understanding why HA would buy the company and develop the properties themselves rather than just buy the properties from Goldmaster.<sup>161</sup>

[204] Despite the detailed examination hearings and a comprehensive analysis of all known facts it is still not apparent why HA chose to invest in a company rather than pursue a joint venture for this Project as was the usual course for HA.

***Goldmaster Insolvency - Financial Report 30 June 2012***

[205] The Goldmaster financial report for the year ended 30 June 2012 was signed by Mr Kestel on 20 March 2013.

[206] For 2012 the accounts showed:

- a. current assets of \$1,094,907 and current liabilities being significantly higher at \$11,222,910. This is an indicator of insolvency.
- b. total assets of \$14,802,951 and total liabilities of \$11,242,452 with the net assets/total equity being \$3,560,499.<sup>162</sup>
- c. a net loss of \$7,143,990.

[207] The report also specifically stated that:

*The company's ability to continue as a going concern and pay its debts as and when they fall due is dependent upon the financial support of the Department of Housing Authority through the compulsory convertible debenture program and the provision of \$26,700,000 through a senior debt facility currently being finalized for development funding of buildings 21 and 25 Malata Crescent.*<sup>163</sup>

[208] The purpose of entering the compulsory convertible debenture was to obtain funds (by debt) to ensure Goldmaster was not trading whilst insolvent.

[209] Mr Kestel confirmed that he had signed the document in two places as a director.<sup>164</sup> Mr Kestel stated that he understood Mr Kerfoot was across this detail and was running the project, didn't believe anyone briefed him

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<sup>159</sup> G Searle transcript, private examination, 23 June 2022, p 27.

<sup>160</sup> G Searle transcript, private examination, 23 June 2022, p 27.

<sup>161</sup> L O'Mara transcript, private examination, 15 June 2022, p 10.

<sup>162</sup> Exhibit No 78495483 at page 12, A Kerfoot transcript, private examination, 20 June 2022, p 27.

<sup>163</sup> Exhibit No 78495483; G Searle transcript, private examination, 23 June 2022, p 60.

<sup>164</sup> S Kestel transcript, private examination, 14 June 2022, p 17.

about it and didn't know whether he saw the whole document or just signed the relevant pages.<sup>165</sup>

- [210] Mr Kestel stated that he was told 'essentially zero' about Goldmaster.<sup>166</sup>
- [211] Mr Kestel also stated that if he was aware of the matters disclosed in the report that he would have been asking questions.<sup>167</sup> He was aware at the time that one indicator of a company being insolvent was where its total current assets were less than its total current liabilities.<sup>168</sup>
- [212] Mr Kestel was also of the view that if he had been aware of the detail in the report he would have been concerned as the viability of the whole development was in question. HA would need to consider whether to continue funding it and if policy outcomes could be achieved. Mr Kestel stated that 'if it was my money, you would press stop pretty quickly' and that he felt 'used'.<sup>169</sup>
- [213] Mr Kerfoot agreed that Goldmaster was in a difficult financial position as at 30 June 2012 and that HA kept putting money in and taking more and more equity in Goldmaster.<sup>170</sup>
- [214] Mr Kerfoot considered that HA didn't just jump in, they were informed about what they were doing, and they made that decision.<sup>171</sup> Mr Kerfoot sought to make clear that he was not the decision maker, but agreed he was an advisor on many aspects and one option discussed was to let Goldmaster fold.<sup>172</sup>
- [215] Mr Searle agreed that there were significant concerns about Goldmaster's viability, and that HA was putting in more money and entering more complicated financial structures.<sup>173</sup>
- [216] One avenue to inject money was through compulsory convertible debentures, which had the effect of increasing still further HA's equity in Goldmaster at a time when Goldmaster's financial position was already precarious.
- [217] Mr Searle considered that although there were concerns about the Project from an early stage, he still believed it would deliver outcomes in terms of Government policy, density, housing in appropriate locations, affordable

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<sup>165</sup> S Kestel transcript, private examination, 14 June 2022, p 17.

<sup>166</sup> S Kestel transcript, private examination, 14 June 2022, p 13.

<sup>167</sup> S Kestel transcript, private examination, 14 June 2022, p 17.

<sup>168</sup> S Kestel transcript, private examination, 14 June 2022, p 17.

<sup>169</sup> S Kestel transcript, private examination, 14 June 2022, p 19.

<sup>170</sup> A Kerfoot transcript, private examination, 20 June 2022, p 28.

<sup>171</sup> A Kerfoot transcript, private examination, 20 June 2022, p 28.

<sup>172</sup> A Kerfoot transcript, private examination, 20 June 2022, p 28.

<sup>173</sup> G Searle transcript, private examination, 23 June 2022, p 61.



housing and social housing. However, he also acknowledged the partners were increasingly difficult to deal with and their expectations of what Government would do for them was increasingly difficult to deal with.<sup>174</sup>

- [218] HA was obtaining legal advice from Lavan Legal and assistance from property consultants CBRE through Mr Kerfoot about what HA could do and a way out of the complex structures.
- [219] Regardless of the concerns held about Goldmaster's financial viability, the key people advising and making decisions in relation to the Project (Mr Kerfoot and Mr Searle) allowed HA to continue to invest millions of dollars of HA's funds.
- [220] Given the position of Goldmaster, this is very hard to understand.
- [221] Accepting financial risk with limited transparency and oversight is a dangerous combination and a serious misconduct indicator.

***Legal Advice Insolvency Issues - 5 July 2012***

- [222] On 5 July 2012, Mr Searle and Mr Kerfoot received written legal advice from Lavan Legal advising about the impact that the (potential) insolvency of Goodland or Goldzen may have on Goldmaster and HA.
- [223] The advice also addressed HA's rights in relation to various agreements including with Goldmaster and the potential restructure of Goldmaster.
- [224] This advice specifically stated that 'If Goldmaster is a subsidiary of HA or HA is a shadow director of Goldmaster, then HA is likely to be liable for any debts incurred by Goldmaster if it trades while insolvent'.<sup>175</sup>
- [225] Mr Kerfoot agreed that the advice was sought as there were concerns about the potential insolvency of Goodland (the development manager) and Goldzen (the builder) and the potential impact that might have on Goldmaster and HA.<sup>176</sup>
- [226] The Lavan Legal advice also provided that, 'While the Subscriptions and Shareholders Agreement set out a regime for the payment of dividends to the shareholders of Goldmaster, before the directors of Goldmaster can declare any dividend it is necessary for the directors to have paid all of its creditors'.
- [227] Further, there were other conditions that must be met before a dividend could be paid to HA, including that assets must exceed Goldmaster's

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<sup>174</sup> G Searle transcript, private examination, 23 June 2022, p 61.

<sup>175</sup> Exhibit No 78620772; G Searle transcript, private examination, 23 June 2022, p 58.

<sup>176</sup> A Kerfoot transcript, private examination, 20 June 202, p 24.

liabilities before a dividend is declared; the payment of a dividend must be fair and reasonable to Goldmaster's members as a whole; and the payment must not materially prejudice Goldmaster's ability to pay its creditors.<sup>177</sup>

- [228] This advice clearly brought to the attention of Mr Searle and Mr Kerfoot the difficult broader financial environment that HA and Goldmaster were operating in as well as the limitations on HA's ability to be paid dividends by Goldmaster around this time and into the future.
- [229] On 10 July 2012, Mr Searle provided a letter to the shareholders of Goldmaster advising that St George had confirmed with Goldmaster and Goodland that they required an additional injection of approximately \$13 to \$15 million before St George would consider providing the construction funding required to complete Stage 3.
- [230] Mr Searle indicated that HA was not able to contribute these additional funds and even if it was, HA would require Ministerial approval. Mr Searle suggested that if St George would not fund Stage 3 that the shareholders raise the additional funding.<sup>178</sup>
- [231] Mr Kerfoot provided an update to Mr Searle via email on 23 July 2012 which included advising that St George Bank had agreed to a standstill agreement that would preclude St George from taking any action for 3 months.<sup>179</sup>
- [232] The other shareholders of Goldmaster (Mr Pilkington, Mr Wijono<sup>180</sup> and Acepark) did not provide additional funding.
- [233] In addition, Mr Searle was aware that Pitcher Partners (the auditors for Goldmaster) had raised concerns via their memorandum dated 13 September 2012<sup>181</sup> about Goldmaster being a going concern.<sup>182</sup>
- [234] It is apparent that by September 2012 Mr Searle understood there were serious problems funding the Project.<sup>183</sup> Regardless, HA continued to pursue it.

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<sup>177</sup> Exhibit No 78620772; G Searle transcript, private examination, 23 June 2022, p 58.

<sup>178</sup> Exhibit No 74364144.

<sup>179</sup> Exhibit No 74227474.

<sup>180</sup> Exhibit No 50748115.

<sup>181</sup> Exhibit No 5064023.

<sup>182</sup> G Searle transcript, private examination, 23 June 2022, p 37 and 38.

<sup>183</sup> G Searle transcript, private examination, 23 June 2022, p 34.

***Compulsory Convertible Notes - December 2012 to May 2013<sup>184</sup>***

- [235] Lavan Legal provided advice to HA dated 19 November 2012 that the HA may subscribe for further shares in Goldmaster subject to the HA having obtained approval from the Minister for Housing.<sup>185</sup>
- [236] A letter from Mr Kestel on behalf of Goldmaster dated 21 December 2012<sup>186</sup> was provided to Acepark enquiring as to their interest in subscribing for Convertible Notes to raise funds for Goldmaster.
- [237] The letter sets out that each of the shareholders in Goldmaster were previously made aware of Goldmaster's urgent need for funds to meet its liabilities and commitments, and that convertible notes had been proposed to raise \$19,350,000. The letter of 21 December 2012 records that the other shareholders (Mr Pilkington and Mr Wijono) declined to apply.<sup>187</sup>
- [238] The letter referenced a coupon rate of 20%. This was a very high rate of interest and indicated there was a high risk that Goldmaster would not be able to pay.<sup>188</sup>
- [239] The arrangement proposed concerned 'Compulsory Convertible Notes' which were debentures (debt instruments) that were required to be converted into shares at the specified date.
- [240] None of the other shareholders subscribed for any Convertible Notes in Goldmaster.
- [241] As a result, by March 2013 HA with the approval of the directors of Goldmaster, agreed to underwrite the debenture issue and take up the full number of Convertible Notes available being 19,350 at \$1,000 per note.<sup>189</sup>
- [242] This resulted in a further \$19.35 million investment by HA in Goldmaster despite the financial position of Goldmaster and the risks.<sup>190</sup>
- [243] As a result of HA entering this arrangement, the notes were to be converted, leading to HA owning greater equity in Goldmaster.<sup>191</sup> This took place on 22 August 2014.<sup>192</sup>

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<sup>184</sup> Exhibit No 00745-2022-0090 to 00745-2022-0093.

<sup>185</sup> Exhibit No 4735238; G Searle transcript, private examination, 23 June 2022, p 52.

<sup>186</sup> Exhibit No 78386551.

<sup>187</sup> Exhibit No 78386551; G Searle transcript, private examination, 23 June 2022, p 56.

<sup>188</sup> G Searle transcript, private examination, 23 June 2022, p 57.

<sup>189</sup> Exhibit No 78570192.

<sup>190</sup> Exhibit no 00745-2022-0074.

<sup>191</sup> G Searle transcript, private examination, 23 June 2022, p 57.

<sup>192</sup> Exhibit No 00745-2022-0074.

- [244] In 2014, HA received approximately \$8.3 million in payments from Goldmaster in relation to the accrued coupon interest flowing from the compulsory convertible notes. However, it was anticipated it would receive \$10.43 million.<sup>193</sup>
- [245] It is obvious that HA was well aware of the financial difficulties in participating in Stage 3 of the Project prior to investing \$19.35 million via the convertible notes.
- [246] There was no requirement to participate in Stage 3. Regardless, HA continued to invest State funds and enter further complex financial arrangements.
- [247] HA employed a number of complex financial instruments and arrangements to complete the Project.
- [248] This included HA:
- a. purchasing shares in Goldmaster by way of a 'Subscription and Shareholders Agreement'; and
  - b. underwriting a 'compulsory convertible note' proposal with Goldmaster to the value of \$19.35 million.
- [249] The use of these instruments and arrangements appears high risk and inappropriate for a State Government Agency. They represent a serious misconduct risk.
- [250] The arrangements were also difficult to understand, and their application was often complex. Mr Searle accepted that he did not entirely understand them and relied upon Mr Kerfoot.
- [251] In these circumstances, the need for transparency and internal (and external) oversight was obvious but did not occur. Instead, Ministers were not adequately informed and key personnel within the Department were uninformed.

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<sup>193</sup> Exhibit No 00745-2022-0074.

## CHAPTER THREE

### Responses to draft report

- [252] Before finalising this Report, the Commission provided a draft to persons who may be adversely affected. Responses were received from Mr Kerfoot, Ms Loosley-Smith and DoC. Their responses have been considered and where appropriate, the report has been amended.

### DoC changes

- [253] The Director General of DoC, Mr Michael Rowe has outlined many changes made since the misconduct of Mr Whyte was uncovered.
- [254] He notes: Communities has undergone a comprehensive change and reform agenda commenced by my predecessor, former Director General Michelle Andrews which has continued and been built on since my commencement as Director General in 2021.
- [255] This includes establishing a more responsive and accountable organisational structure with enhanced governance and accountability arrangements since the time period examined represented in this report.
- [256] The following is a (non-exhaustive) list of key changes within Communities which relate to the focus of this report:

- *Changes to the organisational structure, with each division being headed by a Deputy Director General / Assistant Director General / Chief, all of whom make up the Communities Leadership Team (Corporate Executive). This includes the Chief Finance Officer (CFO). This structure ensures that the CFO is across all matters, projects and investment initiatives.*

- *Establishment of the Governance Integrity and Reform (GIR) division led by a Deputy Director General to provide independent oversight and assurance functions. GIR division is responsible for the department's audit and risk functions, providing a level of independence. GIR also provides support to the Audit and Risk Committee, which is chaired by an independent Chairperson.*

- *In 2020 two independent reviews were commissioned into Communities' business practices, collectively producing 120 recommendations: o Communities commissioned Deloitte to undertake a forensic review of how the corruption occurred. This report resulted in 64 recommendations and is confidential.*

- o The Public Sector Commission (PSC) engaged EY to review the Housing Authority. This report resulted in a further 56 recommendations relating primarily to Procurement and Contract Management.*

- o All 120 recommendations have now been completed, with Communities commissioning Avant Edge in November 2021 to provide independent assurance of the closure of recommendations at that time. As indicated to your executive on 19 April 2023, many of these*

*recommendations, and the resulting changes, have vastly improved Communities' governance and accountability.*

- *Communities have reviewed all CCC reports to identify themes and actions and developed a report card to enable Communities to track our commitment to learning and closing the gaps identified in these reports.*

- *Communities staff are required to complete mandatory Recordkeeping Awareness Training (CR.007515). This provides information about employees recordkeeping requirements and responsibilities under the State Records Act 2000. A key change since the time of Stella Orion was the department moving to one record keeping system, being Objective.*

- *Significant reforms in Communities' approach to financial management, including:*
  - o *Implemented Proactive Integrity Checks of businesses to ensure they are legitimate and do not present significant risk to Communities.*

- o *Amendments to contracts (waivers/guarantees) are required to be co-signed.*
- o *Auditing the department's compliance with Treasurer's Instruction 304, particularly the separation of powers for invoicing and purchasing. The system now separates ordering, receipting, incurring and certification processes.*
- o *Creation of a new Financial Management Manual (FMM) in accordance with the Treasurer's Instruction, and increased awareness of requirements under the FMM.*
- o *Development of data analytics to ensure financial activity is monitored, and any fraud is detected.*
- o *Delegations have been reviewed and are readily available for all staff. This ensures staff can easily be aware of what they are authorised to do, their financial expenditure limits, and who is authorised to approve activity.*
- o *Improving the way contracts are managed, including procurement and contract management training.*
- o *Annual completion of the Public Sector Commission's Integrity in Financial Management Self- Assessment, with a commitment to ensure the department is operating in line with this.*

- *Embedding a culture of suspected misconduct reporting. Staff are regularly reminded of their responsibilities and obligations to report suspected misconduct, and how to do so.*

## CONCLUSION

- [257] The reasons why HA undertook this Project included the focus on greater housing density near train stations and shopping centres, providing social housing and affordable housing and using new building techniques.<sup>194</sup>
- [258] However, the ends do not justify the means. HA took part ownership in a proprietary limited company, entered into increasingly complex financial arrangements, devolved power to a consultant, and did not adequately inform successive Ministers.
- [259] As Goldmaster's position deteriorated, key members of the HA executive sought to minimise and shut down questions and oversight.
- [260] Mr Searle stated that this project achieved a whole range of the Government's objectives. In Mr Searles' view, you wouldn't enter the Project looking at it as a purely commercial deal, as it was very marginal from the start.<sup>195</sup>
- [261] There is a noticeable lack of documentation setting out the benefits of HA's participation.
- [262] It is acknowledged that positive financial outcomes are not the only factor relevant for HA in undertaking housing initiatives. However, the Minister was advised of significant positive financial benefits to HA. These have not transpired.
- [263] The investment in Goldmaster involved numerous risks and led to financial loss.
- [264] The conduct of key members of the Executive of HA does not lead to an opinion of serious misconduct.
- [265] Rather, this report demonstrates the need for vigilance by public officers to ensure decisions made in relation to the expenditure of State funds are properly considered, understood, transparent, documented and monitored – and that key stakeholders, including Ministers, are properly informed.
- [266] These checks and balances are essential to good governance and play an important role in preventing corruption. HA involvement in Project Stella Orion Stage 3 - 6 is the antithesis of good governance.

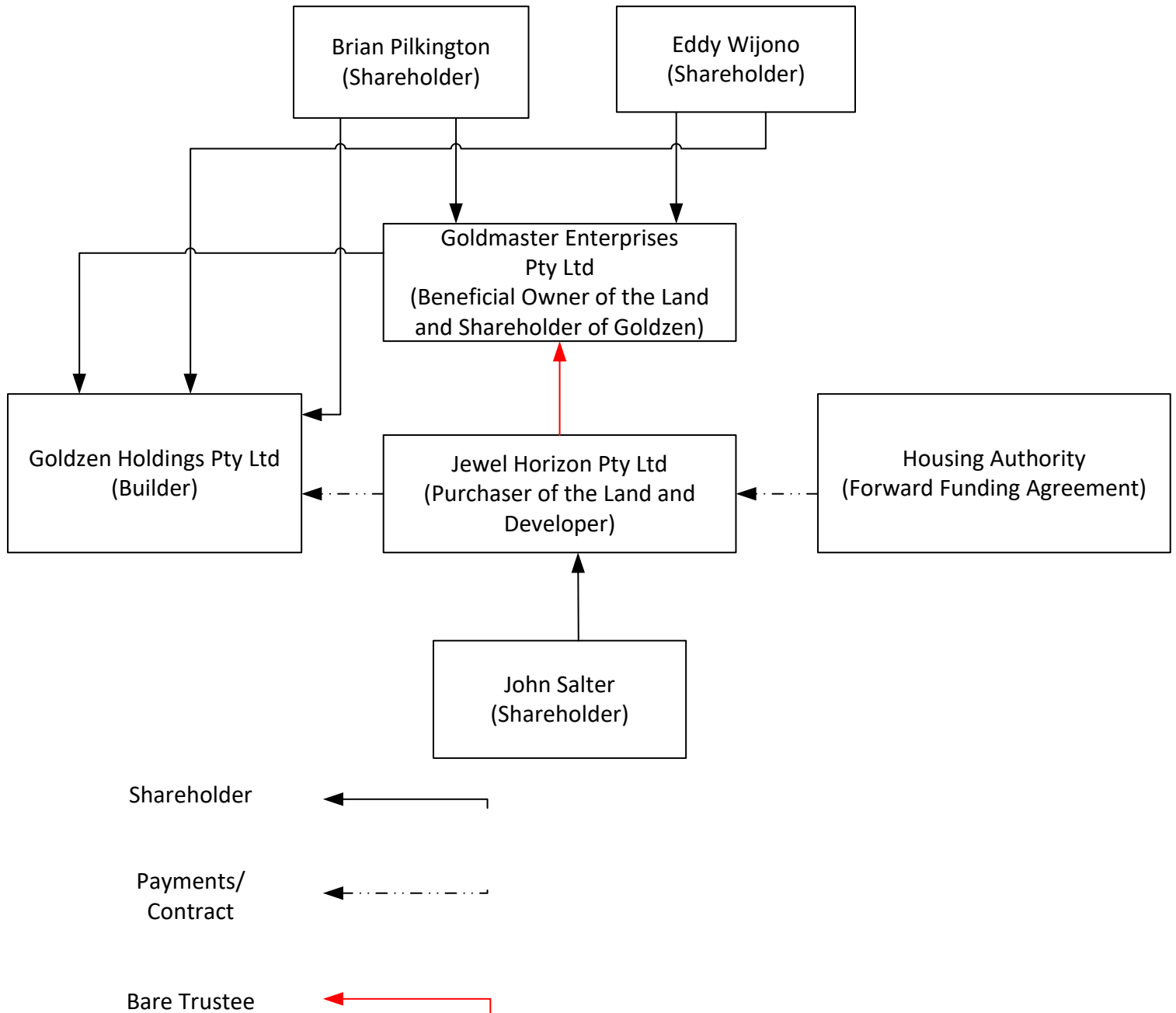
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<sup>194</sup> G Searle transcript, private examination, 23 June 2022, p 3.

<sup>195</sup> G Searle transcript, private examination, 23 June 2022, p 3.

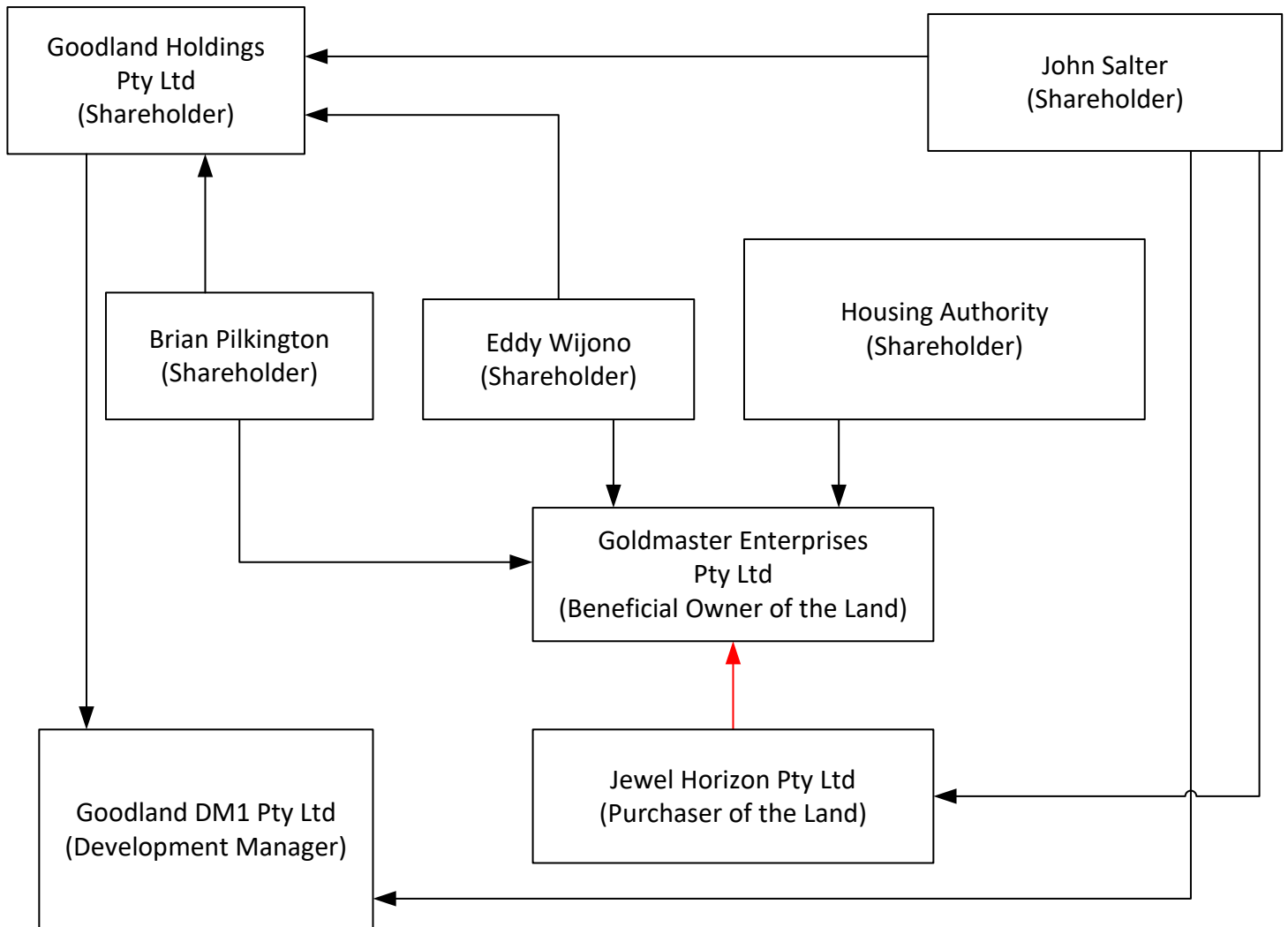
# APPENDIX 1

Stella Orion Project – Stage 2  
2009 to 2011





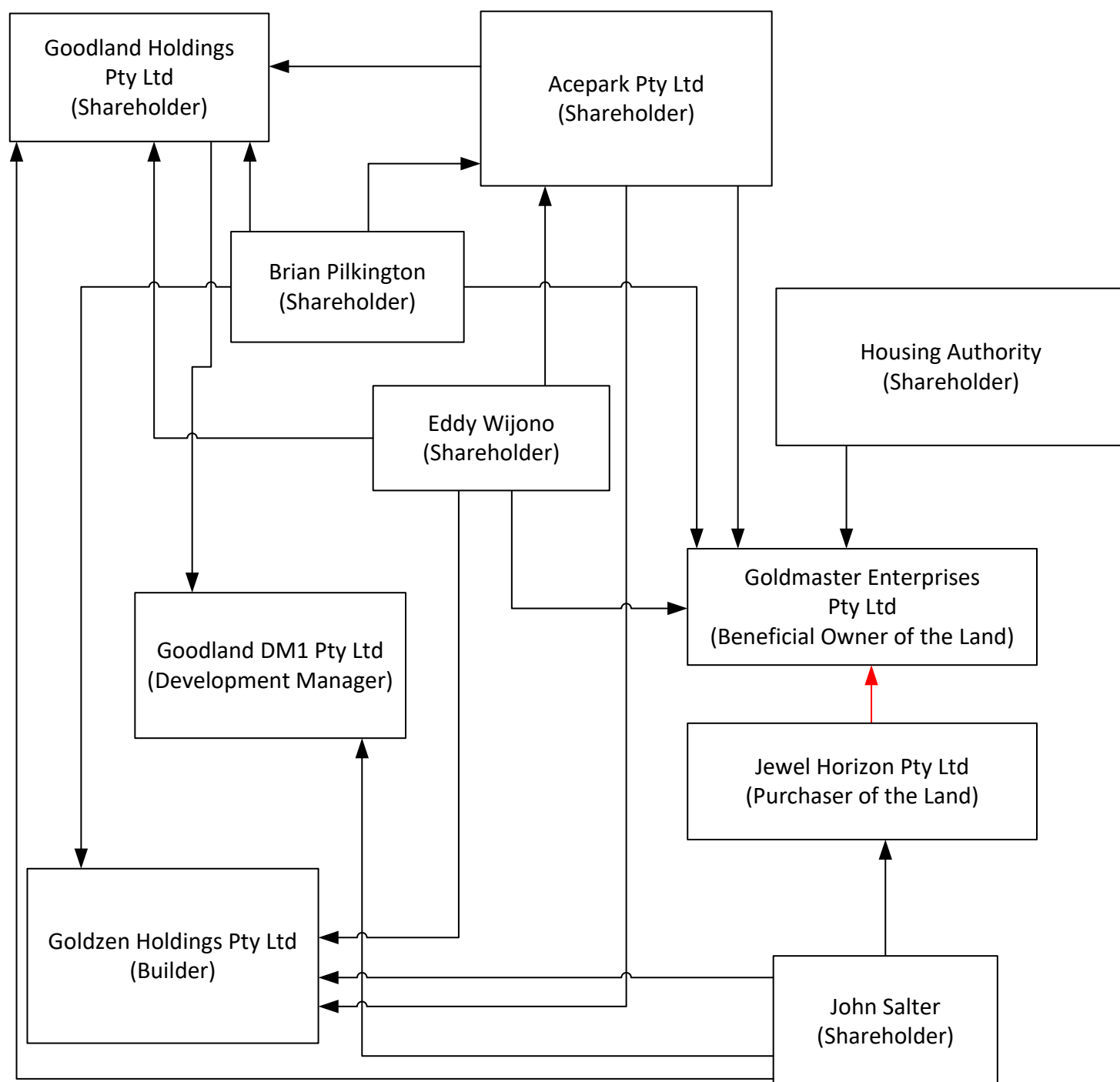
Stella Orion Project – Stage 3  
(Circa June to September 2011)



Shareholder ←

Bare Trustee ←

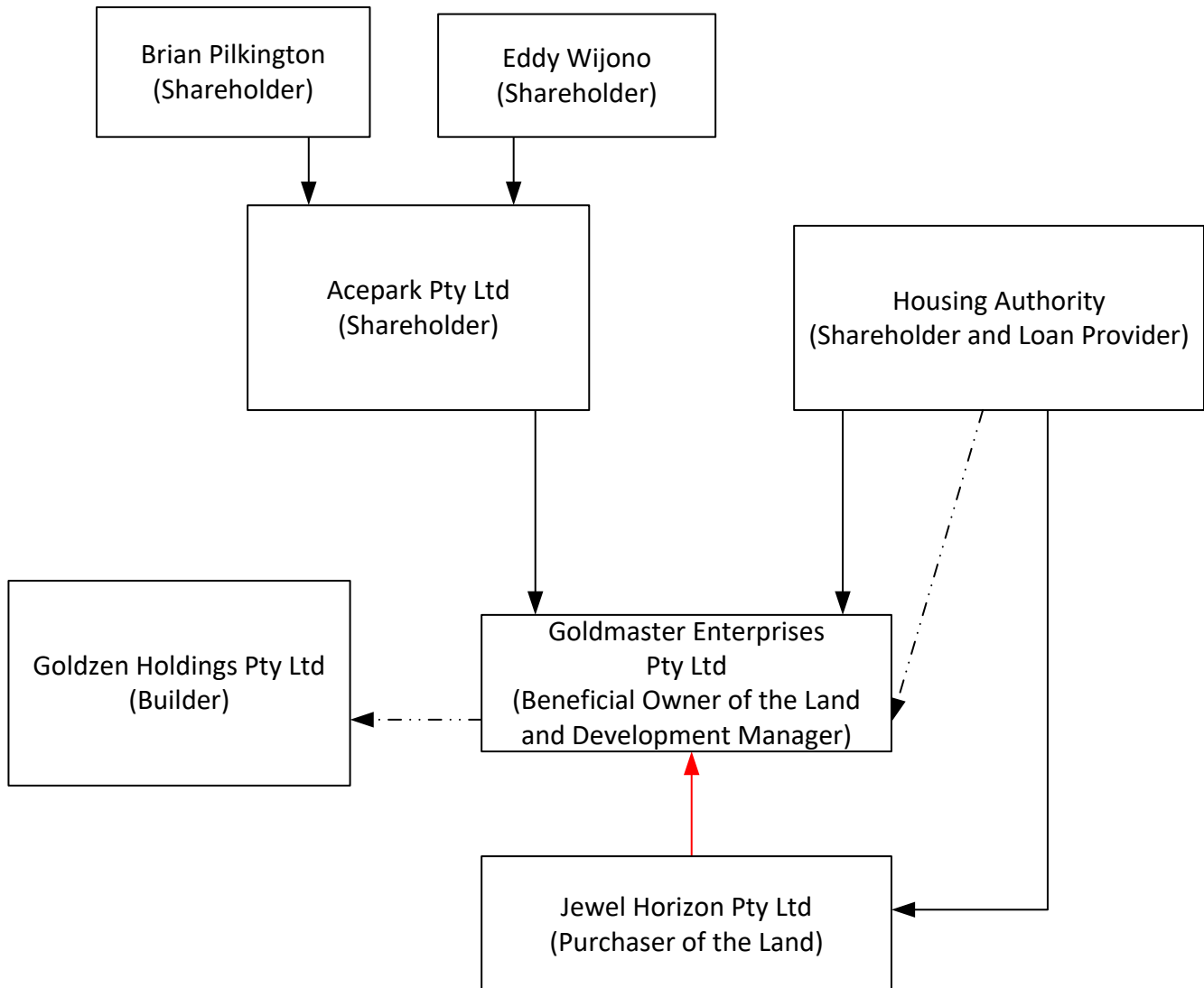
Stella Orion Project – Stage 3  
(Circa February 2012)



Shareholder ←

Bare Trustee 

Stella Orion Project – Stage 3  
Circa May 2013



Shareholder      ←

Payments/  
Contract      - - - - - ←

Bare Trustee      ←