

IN THE MATTER of an Application by the Australian Securities and Investments Commission to the Companies Auditors Disciplinary Board (**CADB**) pursuant to section 1292 of the Corporations Act 2001 (Cth) (**Corporations Act**)

MATTER NO: 01/VIC25

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)

Applicant

RYAN WILLIAM O'SHEA

Respondent

NOTICE OF DECISION AND REASONS

24 October 2025

Panel:

Howard K Insall SC (Panel Chairperson)

Matthew Green (Accounting Member)

Tony Marks (Business Member)

Hearing date: 22 July 2025.

Counsel and instructors:

Ms J Fumberger for the Applicant

Mr S Gunatunga for the Respondent

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NOTICE OF DECISION

Ryan William O'SHEA

Corporations Act 2001 (Cth)

SECTION 1296(1)

Following a hearing held pursuant to section 1294 of the *Corporations Act 2001* (Cth) (**Corporations Act**) on 22 July 2025, a Panel of the Companies Auditors Disciplinary Board (**the Board**) decided that it was satisfied, on an Application by the Australian Securities and Investments Commission, that **Ryan William O'SHEA**, a registered auditor, had failed to carry out and perform adequately and properly the duties of an auditor, and was otherwise not a fit and proper person to remain registered as an auditor, for the purposes of s 1292(1) of the Corporations Act and on 24 October 2025, decided to exercise its powers under section 1292 of the Corporations Act by making the following orders:

1. Pursuant to s 1292(1) of the Corporations Act, the registration of Mr **Ryan William O'SHEA (Mr O'Shea)**, with auditor registration number 332618, as an auditor be cancelled.
2. Pursuant to s 1297(1)(a) of the Corporations Act, the order for cancellation in paragraph 1 will come into effect at the end of the day on which the Board gives Mr O'Shea a notice of the decision in accordance with s 1296(1)(a) of the Corporations Act.

Dated: 25 October 2025

Judy Yoo

Acting Registrar

REASONS FOR DECISION

PART A. INTRODUCTION

Preliminary

1. These are the reasons for a decision of a Panel of the Companies Auditors Disciplinary Board (**the Board** or **CADB**) to exercise its powers under s 1292 of the Corporations Act 2001 (Cth) (**the Corporations Act**) following an application made to the Board by the Australian Securities and Investments Commission (**ASIC**) on 21 February 2025 (**Application**) that the Respondent, Mr Ryan William O'SHEA (**Mr O'Shea**) be dealt with under s 1292 of the Corporations Act.
2. By its Application¹, ASIC contended that Mr O'Shea
 - (a) Had failed to carry out or perform adequately and properly, the duties of an auditor (within the meaning of the Corporations Act, subparagraph 1292(1)(d)(i)); and
 - (b) Further and alternatively, was otherwise not a fit and proper person to remain registered as an auditor (as described in the Corporations Act, paragraph 1292(1)(d)).
3. ASIC sought the following orders:
 - (a) Pursuant to s 1292(1)(d) of the Corporations Act, an order that the Board cancel the registration of the Respondent as an auditor; and
 - (b) Costs.

Procedural history

4. The proceedings were commenced when an Application and Concise Outline were lodged with the Board by ASIC on 21 February 2025. On 4 April 2025 Mr O'Shea lodged his Notice of Appearance and Concise Response.
5. On 11 April 2025, a Pre-hearing conference took place and thereafter, the matter was fixed for hearing on 22 July 2025.
6. On 5 June 2025, the parties lodged a Statement of Agreed Facts and Admissions. On 4 July 2025, the parties lodged Joint Submissions.
7. A Panel was convened to hear the matter consisting of Mr Howard Insall SC, (Chairperson), Mr Matthew Green (Accounting Member) and Mr Tony Marks (Business Member). On 22 July 2025, the hearing took place at which Ms Jacqueline Fumberger appeared for ASIC and Mr Shehan Gunatunga of Colin Biggers and Paisley appeared for Mr O'Shea.

¹ Filed 21 February 2025, paragraph 2.

Nature of the Application

8. This Application related to Mr O'Shea's role as an auditor, in his individual capacity, of three companies involved in property development, namely:
 - (a) Global Capital Property Fund Limited (**GCPF**);
 - (b) UGC Global Alpha Fund Limited (**UGAFL**); and
 - (c) United Global Capital Pty Ltd (**UGC**).
9. Mr O'Shea conducted assurance assignments in respect of the financial reports of
 - (a) GCPF for each of the financial years ended 30 June 2021 (**FY21**) to 30 June 2023 (**FY23**) and half year 31 December 2021 (**HY21**);
 - (b) UGAFL for 30 June 2022 (**FY22**) and FY23; and
 - (c) UGC for FY21 and FY22.
10. For each of the financial years set out above, Mr O'Shea signed an audit report which contained no qualification. For the half-year review, Mr O'Shea signed a review conclusion that contained no qualification.
11. ASIC contended (and Mr O'Shea admits on this Application) that Mr O'Shea failed to carry out or perform adequately and properly the duties of an auditor, within the meaning of s 1292 of the Corporations Act because he was required to conduct the audits in accordance with the Australian Auditing Standards and he failed to do this in a number of respects, in relation to the above audits.
12. The Application relies upon numerous separate failings by Mr O'Shea. In most instances, it is contended that each failing involved a failure to comply with a number of different Auditing Standards. In many instances, it is contended that the failings occurred over successive audits. In the circumstances, these Reasons are detailed and lengthy. Ultimately, the facts demonstrate a comprehensive failure to comply with Auditing Standards in many aspects of multiple audits of the relevant entities.
13. At its core, ASIC's first contention, (the case in relation to the audit of Global Capital Property Fund Limited (**GCPF**)), was that there was simply a lack of sufficient appropriate audit evidence on the audit file about the accuracy, valuation, and disclosure of GCPF's investments. ASIC contended that the Respondent ought to have, and was required by the Auditing Standards to have, approached the audit of the investments, including the related party investments with care because they were of a higher risk, given that the directors were authorising one another's investment agreements, the security over most of the investments was subordinate to other lenders, the developments were underperforming and had impairment indicators that were not being reflected in the valuations, and further lending was being provided to impaired developments. ASIC submitted that the evidence on the audit file showed a clear lack of professional scepticism and diligence in that Mr O'Shea accepted the information provided to him by the directors in relation to related party investments without any challenge or further corroboration.

14. The second and third contentions related to UGC Global Alpha Fund Limited (**UGAFL**) and United Global Capital Pty Ltd (**UGC**) respectively. ASIC submitted that these contentions were more contained, but they had similar themes to the contentions relating to GCPF and demonstrated that Mr O'Shea's failures were not isolated instances.
15. For UGAFL, ASIC submitted that Mr O'Shea failed to obtain and adequately evaluate sufficient appropriate audit evidence for the value of the entity's investment in a unit trust.
16. For UGC, Mr O'Shea failed to obtain any evidence about the recoverability of a related party loan to the owners of the entity in circumstances where if those loans were not recovered, the entity may have been insolvent.
17. In addition to the contention concerning Mr O'Shea's failure to carry out or perform adequately and properly the duties of an auditor, ASIC contended, (and Mr O'Shea admitted) that Mr O'Shea is otherwise not a fit and proper person to remain registered as an auditor within s 1292(1) of the Corporations Act.

Summary of the Board's findings

18. For the reasons we have set out in detail in Parts D to F below, we are satisfied that Mr O'Shea failed, in numerous respects, and in many important respects, to comply with the requirements of the Auditing Standards in carrying out the audits or reviews in respect of the financial reports of Global Capital Property Fund Limited, UGC Global Alpha Fund Limited and United Global Capital Pty Ltd.
19. In the circumstances, we are satisfied (as the parties contended and agreed) that Mr O'Shea:
 - (a) Had failed to carry out or perform adequately and properly, the duties of an auditor (within the meaning of the Corporations Act, subparagraph 1292(1)(d)(i)); and
 - (b) Further and alternatively, was otherwise not a fit and proper person to remain registered as an auditor (as described in the Corporations Act, paragraph 1292(1)(d)).
20. In the circumstances, and for the reasons explained in detail in Part H, we have decided to exercise our powers under s 1292 of the Act by making the orders in paragraph 658 below, namely, that:
 1. Pursuant to s 1292(1) of the Corporations Act, the registration of Mr **Ryan William O'SHEA (Mr O'Shea)**, with auditor registration number 332618, as an auditor be cancelled.
 2. Pursuant to s 1297(1)(a) of the Corporations Act, the order for cancellation in paragraph 1 will come into effect at the end of the day on which the Board gives Mr O'Shea a notice of the decision in accordance with s 1296(1)(a) of the Corporations Act.

PART B. BACKGROUND FACTS

Introduction

21. As already indicated, on 5 June 2025, the parties jointly lodged with the Board a Statement of Agreed Facts and Admissions (**SAFA**).
22. At the Hearing, an agreed electronic hearing bundle containing, amongst other things, primary documents relating to the matter was tendered and admitted into evidence.
23. In this Part of the Decision, we set out the background facts and admissions contained in the SAFA.
24. We note, as a general matter, unless we expressly state otherwise in these Reasons, that we find that the matters of fact set out in the SAFA under the headings “Background Facts” and those set out under the heading “Relevant Facts” in Section D of the SAFA are made out. They are matters of fact which are capable of admission and were admitted by Mr O’Shea. They were supported by or consistent with documents tendered at the Hearing.

Background

25. At all material times and since 15 December 2008, Mr O’Shea has continuously been registered as a company auditor. Mr O’Shea’s registration number is 332618.
26. Mr O’Shea was the principal of the firm O’Shea Financial Group Pty Ltd (ACN 137 042 463), trading as audit.able (formerly Tax & Audit Solutions), operating from 19 Wildwood Walk Croydon South VIC 3136. We note the firm O’Shea Financial Group Pty Ltd (ACN 137 042 463), trading as audit.able is not an Authorised Audit Company and Mr O’Shea’s audit appointments were made on a personal basis.
27. On 9 September 2024, following an exchange of correspondence between ASIC and Mr O’Shea regarding his mental health, Mr O’Shea gave an undertaking to ASIC that he would not perform the duties of a registered company auditor and approved SMSF auditor until the earlier of:
 - (a) An independent clinical psychologist providing an opinion, having regard to the duties required of a registered company auditor and SMSF auditor, in a form satisfactory to ASIC, that he has recovered sufficiently from his psychological condition(s) to resume practising as a registered company auditor and SMSF auditor; or
 - (b) The final determination or withdrawal of any matters before the Board which directly involve him.
28. As part of this undertaking, Mr O’Shea agreed ASIC could include a notation on the public register of company auditors and approved SMSF auditors that he had given the undertaking.
29. Mr O’Shea’s undertaking with ASIC was still in place at the time of filing the SAFA and, we assume, as at the date of this Decision.

30. As already foreshadowed above, Mr O'Shea was appointed, in his capacity as individual auditor, to the following companies:
- (a) Global Capital Property Fund Limited (ACN 635 565 070) (**GCPF**) on 24 November 2020;
 - (b) UGC Global Alpha Fund Limited (ACN 648 915 851) (**UGAFL**) on 21 July 2021; and
 - (c) United Global Capital Pty Ltd (ACN 154 158 273)¹ (**UGC**) on 25 September 2017.
31. Liquidators have subsequently been appointed for GCPF and UGC.
32. Mr O'Shea was responsible for conducting the audit and review of the financial reports of the above companies, during the relevant financial years set out below:
- (a) GCPF for each of the financial years ended 30 June 2021 to 30 June 2023 and half year 31 December 2021;
 - (b) UGAFL for 30 June 2022 (**FY22**) and FY23; and
 - (c) UGC for FY21 and FY22.
33. For each of the financial years and half years set out above, Mr O'Shea signed an audit report or a review conclusion which contained no qualification and expressed opinions and conclusions that each entity's financial report was in accordance with the Corporations Act, including:
- (a) Giving a true and fair view of the financial position and performance of the entity; and
 - (b) Complying with the Australian Accounting Standards and the Corporations Regulations 2001 (Cth).
34. Between 15 December 2019 and 14 December 2023, Mr O'Shea disclosed in his annual auditor statements² lodged with ASIC for each of GCPF, UGC and UGAFL that he was the Lead Auditor (or person conducting the audit or engagement partner) of these entities (for the purposes of ASA 200).
35. At all material times, the directors of the audited entities, GCPF, UGC and UGAFL, is as set out below:

	GCPF	UGC	UGAFL
Directors	Joel Hewish Brett Dickinson Chris Pappas	Joel Hewish	Joel Hewish Brett Dickinson Hue Davies

² ASIC Form 912 annual statement for an individual auditor

Duties of an auditor

36. Section 307A(1) of the Corporations Act (for the purposes of the audits of GCPF and UGAFL) relevantly provides that if an individual auditor conducts an audit of the financial report for the financial year, the individual must conduct the audit in accordance with the Auditing Standards.
37. Section 989CA(1) of the Corporations Act (for the purpose of the audit of the UGC, being an AFSL holder) relevantly provides that if an individual auditor conducts an audit of a profit and loss statement and balance sheet, the individual auditor must conduct the audit in accordance with the Auditing Standards and include in the audit report on the profit and loss statement, and balance sheet, any statements or disclosure required by the Auditing Standards.
38. The Australian Auditing Standards (**ASAs**) referred to in the SAFA and discussed below are Auditing Standards for the purpose of sections 307A and s 989CA of the Corporations Act and were made by the Auditing and Assurance Standards Board pursuant to s 336 of the Corporations Act.
39. An auditor who audits the financial report for a financial year must form an opinion, and report to members, on whether the financial report is in accordance with the Corporations Act, including s 296 (compliance with accounting standards) and s 297 (true and fair view (see ss 307 and 308 Corporations Act)). In relation to the audit of UGC, the same obligation to form an opinion applies by virtue of s 989CA of the Act and ASA 700, paragraph [25b].
40. An audit conducted in accordance with the ASAs and relevant ethical requirements enables the auditor to form that opinion (ASA 200 [3]).
41. As the basis for the auditor's opinion, the ASAs require the auditor to obtain reasonable assurance as to whether the financial report as a whole is free from material misstatement, whether due to fraud or error. Reasonable assurance is a high level of assurance, which is obtained when the auditor has obtained sufficient appropriate audit evidence to reduce audit risk (being the risk the auditor expresses an inappropriate opinion when the financial report is materially misstated) to an acceptably low level (see ASA 200 [5]).
42. The ASAs contain objectives, requirements and application and other explanatory material that are designed to support the auditor in obtaining reasonable assurance (see ASA 200 [7]).
43. The overall objectives of the auditor are set out in ASA 200 [11]. To achieve these objectives, the auditor is relevantly required to apply professional scepticism, apply professional judgement and obtain sufficient appropriate audit evidence (see ASA 200 [15] to [17]).

PART C - OVERVIEW OF ADMISSIONS

44. The SAFA noted that Mr O'Shea admitted that he failed to carry out or perform adequately and properly the duties of an auditor in relation to:

- (a) The FY21, HY21, FY22 and FY23 audits of GCPF (**GCPF Audits**), in that Mr O'Shea failed to undertake any, or any adequate audit work to determine the appropriateness of investments it made in property development projects, including significant related party investments. Consequently, Mr O'Shea failed to obtain sufficient appropriate audit evidence about the accuracy, valuation and disclosure of these investments. This was work that a reasonably competent auditor would have undertaken and documented in accordance with their duties;
 - (b) The FY22 and FY23 audits of UGAFL (**UGAFL Audits**), in that Mr O'Shea failed to obtain and adequately evaluate sufficient appropriate audit evidence for the value of the entity's investment in a unit trust; and
 - (c) For the FY21 and FY22 audits of UGC (**UGC Audits**), in that Mr O'Shea failed to obtain any evidence about the recoverability of a related party loan to the owners of the entity, in circumstances where if those loans were not recoverable the entity may have been insolvent.
45. Mr O'Shea admits that by reason of the matters set out below, he failed to carry out and perform adequately and properly the duties of an auditor, for the purposes of s 1292(1)(d) of the Corporations Act.

PART D – CONTENTION 1 - GCPF AUDIT CONTRAVENTIONS

D1 - Relevant facts

46. The SAFA recorded the following facts relevant to the alleged GCPF contraventions.
47. At all material times, GCPF was registered under section 112 of the Corporations Act as a public company limited by shares.
48. During the relevant financial years, GCPF operated a business whereby it invested in property development projects. During the relevant financial years, GCPF was required, under Part 2M.3 of the Corporations Act, to prepare a financial report and have the report audited.
49. GCPF indirectly invested the funds it raised in 15 property development projects: 14 ongoing projects as at the reporting date in FY23 and one that was completed in FY22. The investments were made by loaning and/or advancing funds to, or taking an equity interest in, the property development projects.
50. A summary of GCPF's reported investment amounts for FY21 to FY23 are set out below:

Investment	FY21 \$	FY22 \$	FY23 \$	Form	Related Parties
Point Bay - JV	17,154,482	20,066,732	23,460,820	Joint venture	Pappas
Loan	-	7,922,312	9,996,492	Loan	Pappas
Kooyongkoot	3,048,000	4,851,071	7,129,185	Loan	Hewish/Dickinson

Carlile	8,994,630	6,863,188	1,360,105	Loan	Hewish/Dickinson
Serpells Road	2,225,315	3,256,892	5,278,545	Loan	Hewish/Dickinson
River Glen	-	6,235,449	5,218,301	Joint venture	Hewish/Dickinson/ Pappas (FY23 only)
Mt Atkinson	2,853,863	9,124,952	11,067,288	Unit holding & Loan	
The Elster Project	4,118,356	4,118,356	4,118,356	Preference shares	
111 Ormond	-	3,138,734	5,167,123	Preference shares	
Hindmarsh Estate	-	6,409,661	7,681,972	Joint venture	
Eloquent	-	2,029,877	2,611,666	Unit holding & Loan	
NDIS Preston	-	1,312,728	2,490,888	Loan	
Franklin NDIS	-	1,354,287	1,807,207	Joint venture	
Symphony	-	1,521,795	1,785,150	Joint venture	
Fulham Living	-	4,068,514	4,816,232	Joint venture	
Toowoomba	801,944	-	-	Joint venture	
Total	39,196,590	82,274,548	93,989,330		
Total Related Party investments	31,422,427	42,960,195	52,443,448		

Investment	FY21 \$	FY22 \$	FY23 \$	Form	Related Parties
As a percentage of total Investments	80%	52%	56%		

51. Five of the 15 developments in which GCPF has invested are with parties related (through the entities used as special purpose vehicles (SPVs)) to one or more of Mr Hewish, Mr Dickinson or Mr Pappas, being directors and 'Key Management Personnel' within the definition in AASB 124 *Related Party Disclosures*. A summary of each of the related party investments, including ASIC company register information, is set out below:

Investment	Terms	Related parties
a. The Carlile	\$8.5 million loan agreement entered into in FY21. Further funds were provided in FY22 and FY23, \$0.6 million and \$2.35 million respectively.	The SPV <i>929 High Street Armadale Pty Ltd</i>, was incorporated on 23 August 2018 (approximately a year before GPCF was created). Prior to the appointment of receivers on 6 September 2024, Mr Hewish and Mr Dickinson were directors of the SPV and through entities controlled by them and their respective spouses (Hewish Capital Pty Ltd, Bird Rock Investments Pty Ltd, UGC), each held a 33.3% interest in the SPV.
b. Kooyongkoot	\$9.5 million loan agreement entered into in FY21.	The SPV <i>Kooyongkoot Project Pty Ltd</i>, was incorporated on 1 December 2020. A controller was appointed on 25 October 2024. Mr Hewish and Mr Dickinson through entities controlled by them and their respective spouses (Bird Rock Investments Pty Ltd and Hewish Capital No.2 Pty Ltd), each held a 33.3% interest in the SPV.
c. Serpells	\$4.8 million loan agreement entered into in FY21. A further \$0.26 million was advanced in FY23.	The SPV <i>Serpells Road Pty Ltd</i>, was incorporated on 5 March 2020 with Mr Hewish and Mr Dickinson as its directors. Through entities controlled by Mr Hewish and Mr Dickinson and their respective spouses (Bird Rock Investments Pty Ltd and Hewish Capital Pty Ltd), each hold a 25% interest in the SPV.
d. Point Bay (also referred to as "The Pappy's Beach Project")	A joint venture (JV) agreement made in FY21, with GCPF advancing \$15 million. A loan agreement was subsequently made in FY22 for \$8.5 million.	The SPV is <i>Point Bay Developments Pty Ltd</i>, was incorporated on 13 July 2018 with Mr Pappas being its sole director from 21 November 2018. Mr Pappas' wife, Josephine Woodruff, is the sole shareholder.
e. River Glen	Joint venture agreement purportedly made in FY22, advancing \$3.86 million.	<i>The original investment was made in FY22 and became a related party in FY23.</i> The SPV <i>Wharton James Developments Yamba Pty Ltd</i>, was incorporated on 12 June 2020 and is now in liquidation as of 13 December 2024. On 12 May 2023, Mr Hewish and Mr Dickinson were each appointed directors and 49.8% of the shares in

	the SPV were issued to Global Capital Projects Pty Ltd, a company associated with Mr Hewish and Mr Dickinson (each being a director and holding 20% of the shares through entities they and their spouses control (Bird Rock Investments Pty Ltd and Hewish Capital Pty Ltd)) and Mr Pappas's daughters Isabella and Natasha (together 40%).
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52. GCPF did not own the land or the development assets. Most of the developments, including four of the five related party projects, were also financed by third-party lenders secured by first-ranking mortgages. The security for GCPF's investments mostly included rights to lower ranking mortgages. For GCPF to make a return on or recoup these investments the relevant projects needed to be sufficiently profitable to repay in full other lenders first.
53. The SPV's for three of the related party investments have subsequently had an administrator or controller appointed. They are the Carlile, Kooyongkoot and River Glen.
54. On 3 October 2024, the Federal Court made orders that GCPF be wound up and appointed liquidators.

D2 Failures common across investments

D2.1 Initial feasibility (recoverability)

Background facts

55. GCPF's FY21 and FY22 financial reports, at note 8 to the financial statements titled 'Investments' disclosed the investments and amounts listed in paragraph 50 above.
56. The FY21 audit file contained a copy of GCPF's Replacement Prospectus dated 10 January 2020, in relation to an offer of ordinary shares (**Replacement Prospectus**). The Key Risks table of the Replacement Prospectus disclosed:

"It is possible that a property development project presented for consideration may have connections to the management or the ordinary shareholder(s) of the Company. Notwithstanding any connection, association or interest held by any Director, associate or employee, each investment will be made on a commercial arm's length basis only, and any investment which involves any related party dealings will be highlighted to investors in the continuous investor updates.

All investments entered must meet and satisfy the Company's investment criteria.

If at any stage an investment proposal is submitted by an associate or related party of an officer of the Company, the officer will recuse themselves from the decision-making process surrounding such an investment submission. The independent directors and officers will review the investment submission in the normal

procedures of The Company and must vote unanimously in favour of such an investment being approved, along with ensuring each of the criteria in the Company investment mandate is met, before such an investment will be approved.

The independent directors and officers may use their discretion to determine that an independent party may also be appointed to the project development team to provide an unrelated review of the status of the project to The Company”.

57. Section 5 of the Replacement Prospectus discloses GCPF’s ‘Investment Mandate’ and that GCPF would invest in property development projects which meet the following criteria:

“

- Stage, type, and location of projects invested in be based on the target investment portfolio in section 5.3
- Projects with a target equity IRR of at least 20%
- Projects with targeted completion within 36 months, likely to be profitable and return the company investments based on the current and projected market conditions and the proposed development and its associated costs structures.
- The Project Development SPV should be able to service any interest obligations it takes on through the life of the project.
- The project feasibility must work in the current and future market conditions. The project is likely to be profitable and return the company investments based on the current and projected market conditions and the proposed development and its associated cost structures?
- Each investment decision must be accompanied by an independent valuation and assessment and completed Due Diligence Checklist.
- Each Project SPV must always provide access to financial records throughout the project.
- The Developer must be willing to accept the Company allocated team member(s) as part of the development management team for the project.

...

Each investment is expected to pass through the following evaluation process:

- (a) Opportunity Identified: The Company’s network of property professionals present development projects for funding on a regular basis.
- (b) Internal Appraisal: A project assessment and preliminary feasibility study conducted by the Investment Committee
- (c) External Appraisal: Independent consultants and qualified valuers engaged to evaluate the project viability
- (d) Due Diligence: In depth research and assessment of all project related matters to identify any likely risks.
- (e) Committee Review: The Investment Committee assess the due diligence reports, independent valuation and consultant reports to evaluate if there is enough information to decide.
- (f) Decision: The Investment Committee will make a decision as to whether to make an investment into the project and if so on what valuation and

terms.

- (g) Approval: The Board of GCPF will review the Investment Committee recommendation and decide if the approval fits within the company's ability to invest. When approved, the directors will issue the necessary contracts to the project company to formalize the investment."

58. The FY21 to FY22 financial reports, in Note 14 to the financial statements titled 'Related Parties' disclosed:

"The Company may make investments where a Director is a related party to the developer and will follow the strict assessment and decision-making process in such circumstances".

59. In the FY21 and FY22 audits, Mr O'Shea did not document any understanding of or perform audit work in relation to, the initial feasibility of the underlying projects for each new investment and the initial investment assessments made by GCPF³. This would include obtaining and considering for each investment evidence about:

- (a) The investment assessments made by GCPF, including whether they followed their stated investment criteria and processes;
- (b) The initial project cash flow forecasts (cost estimates and sales forecasts) being reasonable and supportable;
- (c) Whether there are other project financiers with higher ranking debt (ie, first mortgage holders) and the amounts owing to them – this should have formed part of a consideration of the cash flows and determining the minimum cash flows required before GCPF would be able to recover their investments; and
- (d) Any relevant investment security, including second ranking mortgages and guarantees – whether they were adequate and in place/registered.

60. Mr O'Shea did not undertake such audit work to properly and adequately plan and perform the audit in relation to:

- (a) Revenue recognition (whether the revenue was recoverable);
- (b) Valuation, including whether initial expected credit loss provisions or other valuation allowances should be recognised under AASB 9 [specifically, paragraphs 5.5.1, 5.5.3 and 5.5.17]; and
- (c) The completeness and accuracy of related party disclosures, including about following 'strict assessment and decision-making processes' for director related investments and that they are 'on normal commercial terms and conditions no more favourable than those available to other parties'.

Admissions

61. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the initial and new investments in the FY21 and FY22 audits, Mr O'Shea:

³ There was nothing presented in the evidence, including the audit files, which was inconsistent with this agreed position.

- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of new investments made by GCPF (including whether credit loss provisions should have been made), the recoverability of the revenue recognised for them or the completeness and accuracy of their related party disclosures, including that they were on 'normal commercial terms';
 - (b) Failed to perform procedures required in accordance with paragraph [22 to 26] of ASA 540 relating to the value estimates of new investments (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used;
 - (c) Contrary to paragraphs [24], and [25] of ASA 550, failed to obtain sufficient appropriate audit evidence about the reported assertion that the new investments had been made on terms equivalent to those prevailing in an arm's length transaction and he did not adequately evaluate whether the investments and director relationships had been appropriately disclosed; and
 - (d) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to the new investments, including their related party disclosures.
62. The lack of audit work on the new investments demonstrated that Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

63. The parties jointly submitted that for the FY21 and FY22 audits, Mr O'Shea did not undertake audit work to understand the initial feasibility of the underlying projects for each new investment and the initial investment made by GCPF, as set out in the table at paragraph 29 of the SAFA (reproduced in paragraph 50 above).
64. They submitted that the work required would have included the matters referred to in paragraph 59 above
65. The parties contended that, in the event, Mr O'Shea failed to comply with the requirements of paragraphs [6] of ASA 500, paragraphs [6] and [21] of ASA 330, paragraph [22 to 26] of ASA 540, paragraphs [24], and [25] of ASA 550, paragraphs [11] and [17] of ASA 200 and paragraph [15] of ASA 200, in the respects set out in paragraph 61 above.

Consideration

66. We are satisfied, on the basis of the facts admitted above, that Mr O'Shea breached the duties of an auditor by failing, in the FY21 and FY22 audits, to document any understanding of or perform audit work in relation to, the initial feasibility of the underlying projects for each new investment and the initial investment assessments made by GCPF.
67. As noted in paragraph 34 of the SAFA (reproduced in paragraph 55 above), the FY21 and FY22 Financial Reports for GCPF recorded the seven investments set out in the respective FY21 and FY22 columns of the Table at paragraph 50 above, at the values set out in those columns.
68. We accept, for the reasons advanced by the parties, that this constituted a failure by Mr O'Shea to carry out the audit in accordance with the paragraphs of the Auditing Standards relied upon by the parties, as referred to in the above table.
69. We deal with each of these paragraphs in turn, in the context of other introductory or surrounding paragraphs of the Standards.

Auditing Standard ASA 500 paragraph [6]

70. ***Auditing Standard ASA 500*** relates to "Audit Evidence".
71. By way of introduction, paragraph 1 of ASA 500 states, after the heading "Scope of this auditing standard" and states:
- "1. This Auditing Standard explains what constitutes audit evidence in an audit of a financial report, and deals with the auditor's responsibility to design and perform audit procedures to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor's opinion."
72. Paragraph 4 states, under the heading "Objective" and states:
- "4. The objective of the auditor is to design and perform audit procedures in such a way as to enable the auditor to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor's opinion".
73. Paragraph 6 states, under the Heading "Requirements" and the sub-heading
- "The auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence. (Ref: Para. A5-A29)"⁴.

Auditing Standard ASA 330 paragraphs [6] and [21]

74. ***Auditing Standard ASA 330*** relates to "The Auditor's Responses to Assessed Risks".
75. By way of introduction, paragraph 3 of ASA 330 states, under the heading "Objective":

⁴ Each of paragraphs 1, 4 and 6 appear in the same form in Compilation 5 and Compilation 6 of ASA 500

“The objective of the auditor is to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement, through designing and implementing appropriate responses to those risks.”

76. Paragraphs 5 and 6 of ASA 330 appears in the following context of ASA 330:

“Requirements

Overall Responses

5. The auditor shall design and implement overall responses to address the assessed risks of material misstatement at the financial report level. (Ref: Para. A1-A3).

Audit Procedures Responsive to the Assessed Risks of Material Misstatement at the Assertion Level

6. The auditor shall design and perform further audit procedures whose nature, timing, and extent are based on and are responsive to the assessed risks of material misstatement at the assertion level. (Ref: Para. A4-A8)”

77. Paragraph 21 of ASA 330 appears in the following context:

“Audit Procedures Responsive to the Assessed Risks of Material Misstatement at the Assertion Level

....

Substantive Procedures Responsive to Significant Risks

21. If the auditor has determined that an assessed risk of material misstatement at the assertion level is a significant risk, the auditor shall perform substantive procedures that are specifically responsive to that risk. When the approach to a significant risk consists only of substantive procedures, those procedures shall include tests of details. (Ref: Para. A53)”⁵.

78. Mr O’Shea failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of new investments made by GCPF (including whether credit loss provisions should have been made), the recoverability of the revenue recognised for them or the completeness and accuracy of their related party disclosures, including that they were on ‘normal commercial terms.
79. In the circumstances, we are satisfied that Mr O’Shea failed to comply with the obligations of an auditor to carry out the audits in accordance with ASA 500 paragraph [6] and ASA 330 paragraphs [6] and [21].

Auditing Standard ASA 540 paragraphs [22] to [26]

80. ***Auditing Standard ASA 540*** relates to “Auditing Accounting Estimates and Related Disclosures”

⁵ The provisions of ASA 330 set out appear in the same terms in the December 2015 compilation and Compilation No 2 compiled on 14 December 2021

81. Paragraphs 1 to 3 of ASA 540 appear in the following context:

“Introduction

Scope of this Auditing Standard

1. This Auditing Standard deals with the auditor’s responsibilities relating to accounting estimates and related disclosures in an audit of a financial report. Specifically, it includes requirements and guidance that refer to, or expand on, how ASA 315, ASA 330, ASA 450, ASA 500 and other relevant Auditing Standards are to be applied in relation to accounting estimates and related disclosures. It also includes requirements and guidance on the evaluation of misstatements of accounting estimates and related disclosures, and indicators of possible management bias.

Nature of Accounting Estimates

2. Accounting estimates vary widely in nature and are required to be made by management when the monetary amounts cannot be directly observed. The measurement of these monetary amounts is subject to estimation uncertainty, which reflects inherent limitations in knowledge or data. These limitations give rise to inherent subjectivity and variation in the measurement outcomes. The process of making accounting estimates involves selecting and applying a method using assumptions and data, which requires judgement by management and can give rise to complexity in measurement. The effects of complexity, subjectivity or other inherent risk factors on the measurement of these monetary amounts affects their susceptibility to misstatement. (Ref: Para. A1–A6, Appendix 1)

3. Although this Auditing Standard applies to all accounting estimates, the degree to which an accounting estimate is subject to estimation uncertainty will vary substantially. The nature, timing and extent of the risk assessment and further audit procedures required by this Auditing Standard will vary in relation to the estimation uncertainty and the assessment of the related risks of material misstatement. For certain accounting estimates, estimation uncertainty may be very low. For such accounting estimates, the risk assessment procedures and further audit procedures required by this Auditing Standard would not be expected to be extensive. When estimation uncertainty, complexity or subjectivity are very high, such procedures would be expected to be much more extensive. This Auditing Standard contains guidance on how the requirements of this Auditing Standard can be scaled. (Ref: Para. A7)”

82. Paragraph 11 of ASA 540 appears in the following context:

“Objective

11. The objective of the auditor is to obtain sufficient appropriate audit evidence about whether accounting estimates and related disclosures in the financial report are reasonable in the context of the applicable financial reporting framework.”

83. Paragraphs 22 to 26 provide as follows:

“Responses to the Assessed Risks of Material Misstatement

...

Testing How Management Made the Accounting Estimate

22. When testing how management made the accounting estimate, the auditor's further audit procedures shall include procedures, designed and performed in accordance with paragraphs 23–26, to obtain sufficient appropriate audit evidence regarding the risks of material misstatement relating to: (Ref: Para. A94)

(a) The selection and application of the methods, significant assumptions and the data used by management in making the accounting estimate; and

(b) How management selected the point estimate and developed related disclosures about estimation uncertainty.

Methods

23. In applying the requirements of paragraph 22, with respect to methods, the auditor's further audit procedures shall address:

(a) Whether the method selected is appropriate in the context of the applicable financial reporting framework, and, if applicable, changes from the method used in prior periods are appropriate; (Ref: Para. A95, A97)

(b) Whether judgements made in selecting the method give rise to indicators of possible management bias; (Ref: Para. A96)

(c) Whether the calculations are applied in accordance with the method and are mathematically accurate;

(d) When management's application of the method involves complex modelling, whether judgements have been applied consistently and whether, when applicable: (Ref: Para. A98–A100)

(i) The design of the model meets the measurement objective of the applicable financial reporting framework, is appropriate in the circumstances, and, if applicable, changes from the prior period's model are appropriate in the circumstances; and

(ii) Adjustments to the output of the model are consistent with the measurement objective of the applicable financial reporting framework and are appropriate in the circumstances; and

(e) Whether the integrity of the significant assumptions and the data has been maintained in applying the method. (Ref: Para. A101)

Significant Assumptions

24. In applying the requirements of paragraph 22, with respect to significant assumptions, the auditor's further audit procedures shall address:

(a) Whether the significant assumptions are appropriate in the context of the applicable financial reporting framework, and, if applicable, changes from prior periods are appropriate; (Ref: Para. A95, A102–A103)

(b) Whether judgements made in selecting the significant assumptions give rise to indicators of possible management bias; (Ref: Para. A96)

(c) Whether the significant assumptions are consistent with each other and with those used in other accounting estimates, or with related assumptions used in

other areas of the entity's business activities, based on the auditor's knowledge obtained in the audit; and (Ref: Para. A104)

(d) When applicable, whether management has the intent to carry out specific courses of action and has the ability to do so. (Ref: Para. A105)

Data

25. In applying the requirements of paragraph 22, with respect to data, the auditor's further audit procedures shall address:

(a) Whether the data is appropriate in the context of the applicable financial reporting framework, and, if applicable, changes from prior periods are appropriate;

(Ref: Para. A95, A106)

(b) Whether judgements made in selecting the data give rise to indicators of possible management bias; (Ref: Para. A96)

(c) Whether the data is relevant and reliable in the circumstances; and (Ref: Para. A107)

(d) Whether the data has been appropriately understood or interpreted by management, including with respect to contractual terms. (Ref: Para. A108)

Management's Selection of a Point Estimate and Related Disclosures about Estimation Uncertainty

26. In applying the requirements of paragraph 22, the auditor's further audit procedures shall address whether, in the context of the applicable financial reporting framework, management has taken appropriate steps to:

(a) Understand estimation uncertainty; and (Ref: Para. A109)

(b) Address estimation uncertainty by selecting an appropriate point estimate and by developing related disclosures about estimation uncertainty. (Ref: Para. A110–A114)"

84. We are satisfied that Mr O'Shea failed to perform procedures required in accordance with paragraph [22] to [26] of ASA 540 relating to the value estimates of new investments (and any necessary credit loss allowances or other valuation allowances) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used.

85. In the circumstances, we are satisfied that Mr O'Shea failed to comply with the obligations of an auditor to carry out the audits in accordance with ASA 540 paragraphs [22] to [26].

Auditing Standard ASA 550 paragraphs [24] and [25]

86. ***Auditing Standard ASA 550*** is entitled "Related Parties".

87. Paragraphs 1 and 2 of ASA 550 provide:

"Introduction

Scope of this Auditing Standard

1. This Auditing Standard deals with the auditor's responsibilities relating to related party relationships and transactions in an audit of a financial report. Specifically, it expands on how ASA 315, ASA 330, and ASA 240 are to be applied in relation to risks of material misstatement associated with related party relationships and transactions.

Nature of Related Party Relationships and Transactions

2. Many related party transactions are in the normal course of business. In such circumstances, they may carry no higher risk of material misstatement of the financial report than similar transactions with unrelated parties. However, the nature of related party relationships and transactions may, in some circumstances, give rise to higher risks of material misstatement of the financial report than transactions with unrelated parties. For example:

- Related parties may operate through an extensive and complex range of relationships and structures, with a corresponding increase in the complexity of related party transactions.
- Information systems may be ineffective at identifying or summarising transactions and outstanding balances between an entity and its related parties.
- Related party transactions may not be conducted under normal market terms and conditions; for example, some related party transactions may be conducted with no exchange of consideration."

88. Paragraphs 24 and 25 of ASA 550 provide:

"Responses to the Risks of Material Misstatement Associated with Related Party Relationships and Transactions

...

Assertions That Related Party Transactions Were Conducted on Terms Equivalent to Those Prevailing in an Arm's Length Transaction

24. If management has made an assertion in the financial report to the effect that a related party transaction was conducted on terms equivalent to those prevailing in an arm's length transaction, the auditor shall obtain sufficient appropriate audit evidence about the assertion.
(Ref: Para. A42-A45)

Evaluation of the Accounting for and Disclosure of Identified Related Party Relationships and Transactions

25. In forming an opinion on the financial report in accordance with ASA 700, the auditor shall evaluate: (Ref: Para. A46)

- (a) Whether the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework; and (Ref: Para. A47)
- (b) Whether the effects of the related party relationships and transactions:
 - (i) Prevent the financial report from achieving fair presentation (for fair presentation frameworks); or
 - (ii) Cause the financial report to be misleading (for compliance frameworks)."

89. Mr O'Shea failed to obtain sufficient appropriate audit evidence about the reported assertion that the new investments had been made on terms equivalent to those prevailing in an arm's length transaction and he did not adequately evaluate whether the investments and director relationships had been appropriately disclosed.
90. In the circumstances, we are satisfied that Mr O'Shea failed to comply with the obligations of an auditor to carry out the audits in accordance with ASA 550 paragraphs [24] and [25].

Auditing Standard ASA 200 paragraphs [11] and [17]

91. **Auditing Standard ASA 200** is entitled "Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards".

92. Paragraph 11 of ASA 200 provides:

"Overall Objectives of the Auditor

11. In conducting an audit of a financial report, the overall objectives of the auditor are:

- (a) To obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, thereby enabling the auditor to express an opinion on whether the financial report is prepared, in all material respects, in accordance with an applicable financial reporting framework; and
- (b) To report on the financial report, and communicate as required by the Australian Auditing Standards, in accordance with the auditor's findings."

93. Paragraph 17 of ASA 200 provides:

"Sufficient Appropriate Audit Evidence and Audit Risk

17. To obtain reasonable assurance, the auditor shall obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable the auditor to draw reasonable conclusions on which to base the auditor's opinion. (Ref: Para. A30-A54)."

94. It follows from the failures already identified above, that Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to the new investments, including their related party disclosures.
95. In the circumstances, we are satisfied that Mr O'Shea failed to comply with the obligations of an auditor to carry out the audits in accordance with ASA 200 paragraph [17]. (We note that paragraph [11] states the overall objectives of an auditor, rather than imposing an obligation).

Auditing Standard ASA 200 paragraph [15]

96. The last provision of the Auditing Standards relied upon, paragraph 15 of ASA 200, provides:

"Professional Scepticism

15. The auditor shall plan and perform an audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated. (Ref: Para. A20-A24)".

97. In our view, the absence of work performed in relation to the new investments as referred to above establishes that Mr O'Shea did not plan and perform the audits with professional scepticism, recognising that circumstances may exist that cause the financial report to be materially misstated.
98. In the circumstances, we are satisfied that Mr O'Shea failed to comply with the obligations of an auditor to carry out the audits in accordance with ASA 200 paragraph [15].

D2.2 Non related party investments

Background facts

99. As set out in paragraph 50 above, there were eight new non-party related investments made in FY22.
100. For the following six of these investments (set out below), Mr O'Shea in the FY22 and FY23 audits failed to obtain sufficient appropriate audit evidence about their valuation, the recognition of investment income, and their disclosure (including whether they were related party investments).

Investment	\$ FY22	\$ FY23	Form
111 Ormond	3,138,734	5,167,123	Preference shares
River Glen	6,235,449	5,218,301	Joint venture
NDIS Preston	1,312,728	2,490,888	Loan
Franklin NDIS	1,354,287	1,807,207	Joint venture
Symphony	1,521,795	1,785,150	Joint venture
Fulham Living	4,068,514	4,816,232	Joint venture
Total	17,631,507	21,284,901	
As a % of total investments	21%	23%	
Total investments	82,274,548	93,989,330	

101. Specifically:
- (a) There was no audit work on the FY22 audit file for these investments, including in response to risks relating to valuation, revenue recognition and the possibility of undisclosed related parties;
 - (b) The FY22 and FY23 audit files do not contain copies of investment agreements to evidence the nature of the terms and conditions of the investments; and

- (c) There was no supporting evidence for, or audit work performed on the GCPF prepared investment valuation spreadsheets, which were included on the audit files.

Admissions

102. In relation to the specific breaches of ASAs, by reasons of the matters set out above, for the six non-related party investments made in FY22 in the FY22 and FY23 audits, Mr O'Shea:
- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of the investments (including whether credit loss provisions should have been made), the recoverability of the revenue recognised for them or the completeness and whether they may have been related party transactions;
 - (b) Failed to perform procedures required in accordance with paragraph [22 to 26] of ASA 540 relating to the value estimates of the investments (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used;
 - (c) Contrary to paragraphs [24], and [25] of ASA 550, failed to obtain sufficient appropriate audit evidence about the reported assertion that the new investments had been made on terms equivalent to those prevailing in an arm's length transaction and did not adequately evaluate whether the investments and director relationships had been appropriately disclosed;
 - (d) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to the investments, including their related party disclosures; and
 - (e) Contrary to paragraphs [5], [8] and [9(a)] of ASA 230, he has otherwise failed to adequately document his audit of these investments.
103. The lack of audit work on these investments demonstrated that Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

104. The parties jointly submitted that for six of the non-related party investments made in FY22 set out in the table at paragraph 43 of the SAFA (which is reproduced at paragraph 100 above), for the FY22 and FY23 audits, Mr O'Shea failed to obtain sufficient appropriate audit evidence about their

valuation, the recognition of investment income and their disclosure including whether they were related party investments.

105. ASIC submitted that there was no audit work on the FY22 audit file and the FY23 audit files did not contain copies of investment agreements to evidence the nature of the terms and conditions of the investments and there was no supporting evidence or audit work performed on the GCPF prepared investment valuation spreadsheets that were included in the audit files.
106. The parties jointly submitted that Mr O'Shea failed to perform the audits in accordance with the Auditing Standards in the respects described in paragraph 102 above.
107. These are the same paragraphs as referred to in Section D2.1 above, (already set out above) with the addition of ASA 230 paragraphs [5], [8] and [9(a)].

Consideration

108. **As to ASA 500 paragraph [6]**, (see paragraph 73 above), in light of the absence of any work performed in the FY22 audit, the deficient work performed in the FY23 audit, and the absence of any supporting evidence for, or audit work performed on the GCPF prepared investment valuation spreadsheets as described in paragraph 101 above, we are satisfied that Mr O'Shea failed to design and perform audit procedures which were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence.
109. **As to ASA 330 paragraphs [6] and [21]**, (see paragraph 74 above), it was accepted that the audit had determined valuation of properties as an assessed risk. In those circumstances, in the light of the absence of work performed in the FY22 audit, the deficient work performed in the FY23 audit and the absence of any supporting evidence for, or audit work performed on the GCPF prepared investment valuation spreadsheets, we are satisfied that:
 - (a) Mr O'Shea failed to design and perform further audit procedures whose nature, timing, and extent were based on and were responsive to the assessed risks of material misstatement at the assertion level contrary to the requirements of ASA 330 paragraph [6]; and
 - (b) Mr O'Shea failed to perform substantive procedures that were specifically responsive to that risk, contrary to the requirements of ASA 330 paragraph [21].
110. **As to ASA 540 paragraphs [23] to [26]**, (see paragraph 83 above), the relevant accounting estimate was in respect of the valuation of properties. Mr O'Shea was obliged to design and perform further audit procedures in accordance with paragraphs [23] to [26] of the ASA 540 to obtain sufficient appropriate audit evidence regarding the risks of material misstatement relating to: (Ref: Para. A94)
 - (a) The selection and application of the methods, significant assumptions and the data used by management in making the accounting estimate; and

- (b) How management selected the point estimate and developed related disclosures about estimation uncertainty.
111. It was accepted that Mr O'Shea's work did not address:
- (a) The requirements of paragraph [23] with regard to selection and application of the methods,
 - (b) The requirements of paragraph [24] with regard to the significant assumptions;
 - (c) The requirements of paragraph [25] with regard to data; and
 - (d) Whether, in the context of the applicable financial reporting framework, management had taken appropriate steps to address estimation uncertainty by selecting an appropriate point estimate and by developing related disclosures about estimation uncertainty, as required by paragraph [26].
112. In those circumstances, we are satisfied that Mr O'Shea did not carry out the audits in compliance with the requirements of ASA 540, paragraphs [23] to [25].
113. **As to ASA 550 paragraph [24]**, (see paragraph 88 above) the financial statements contained a statement that the transactions between related parties were on normal commercial terms and conditions no more favourable than those available to other parties unless otherwise stated. In those circumstances, the Mr O'Shea was required by paragraph [24] to obtain sufficient appropriate audit evidence about the assertion.
114. It was accepted that there was no work undertaken in relation to confirming that the six investments did not involve related parties.
115. However, it was not clear that there was a statement specifically concerning the six investments, In the circumstances, we consider that this matter is more appropriately dealt with under other paragraphs of the Auditing Standards and we make no finding in relation to paragraph [24].
116. **As to ASA 550 paragraph [25]**, (see paragraph 88 above), this paragraph required Mr O'Shea to evaluate whether the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework. Again, it was not clear that the six investments were identified related party relationships, and we consider that this matter is more appropriately dealt with under other paragraphs of the Auditing Standards and we make no finding in relation to paragraph [25].
117. **As to ASA 200 paragraphs [11] and [17]**, it follows from the above findings in respect of the failure to comply with other standards, that Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to the investments, including their related party disclosures. In the circumstances, we are satisfied that Mr O'Shea failed to comply with the obligations of an auditor to carry out the audits in accordance with

ASA 200 paragraph [17]. We note that paragraph [17] appears to be the relevant paragraph here, as paragraph [11] only sets out objectives.

118. ***As to ASA 230 paragraphs [5], [8] and [9(a)]***, this allegation related to a failure by Mr O'Shea to adequately document his audit of these investments.
119. ASA 230 is an auditing standard entitled "Audit Documentation". The introductory paragraphs are as follows:

**"Introduction
Scope of this Auditing Standard**

1. This Auditing Standard deals with the auditor's responsibility to prepare audit documentation for an audit of a financial report. Appendix 1 lists other Auditing Standards that contain specific documentation requirements and guidance. The specific documentation requirements of other Auditing Standards do not limit the application of this Auditing Standard. Law or regulation may establish additional documentation requirements.

Nature and Purpose of Audit Documentation

2. Audit documentation that meets the requirements of this Auditing Standard and the specific documentation requirements of other relevant Australian Auditing Standards provides:

- (a) Evidence of the auditor's basis for a conclusion about the achievement of the overall objective of the auditor; and
- (b) Evidence that the audit was planned and performed in accordance with Australian Auditing Standards and applicable legal and regulatory requirements.

3. Audit documentation serves a number of additional purposes, including the following:

- Assisting the engagement team to plan and perform the audit.
- Assisting members of the engagement team responsible for supervision to direct and supervise the audit work, and to discharge their review responsibilities in accordance with ASA 220.
- Enabling the engagement team to be accountable for its work.
- Retaining a record of matters of continuing significance to future audits.
- Enabling the conduct of quality control reviews and inspections in accordance with ASQC 1.
- Enabling the conduct of external inspections in accordance with applicable legal, regulatory or other requirements."

120. The paragraphs relied upon by the parties, paragraphs [5], [8] and [9(a)], provide as follows. (We have also included paragraphs [10] and [11], which are considered later in these reasons):

"Objective

5. The objective of the auditor is to prepare documentation that provides:

- (a) A sufficient and appropriate record of the basis for the auditor's report; and
- (b) Evidence that the audit was planned and performed in accordance with Australian Auditing Standards and applicable legal and regulatory requirements.

...

Documentation of the Audit Procedures Performed and Audit Evidence Obtained

Form, Content and Extent of Audit Documentation

8. The auditor shall prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand: (Ref: Para. A2-A5, A16-A17)

(a) The nature, timing, and extent of the audit procedures performed to comply with the Australian Auditing Standards and applicable legal and regulatory requirements; (Ref: Para. A6-A7)

(b) The results of the audit procedures performed, and the audit evidence obtained; and

(c) Significant matters arising during the audit, the conclusions reached thereon, and significant professional judgements made in reaching those conclusions. (Ref: Para. A8-A11)

9. In documenting the nature, timing and extent of audit procedures performed, the auditor shall record:

(a) The identifying characteristics of the specific items or matters tested; (Ref: Para. A12)

(b) Who performed the audit work and the date such work was completed; and

(c) Who reviewed the audit work performed and the date and extent of such review. (Ref: Para. A13).

10. The auditor shall document discussions of significant matters with management, those charged with governance, and others, including the nature of the significant matters discussed and when and with whom the discussions took place. (Ref: Para. A14).

11. If the auditor identified information that is inconsistent with the auditor's final conclusion regarding a significant matter, the auditor shall document how the auditor addressed the inconsistency. (Ref: Para. A15)"

121. It was not in dispute that Mr O'Shea did not prepare audit documentation required by paragraphs [8] and [9(a)] of ASA 230 and no evidence was adduced to show that he had done so. In the circumstances, we are satisfied that Mr O'Shea did not perform the audits in accordance with the requirements of ASA 230 paragraphs 8 and 9(a) of ASA 230
122. **As to ASA 200 paragraphs [11], [15] and [17]**, (see paragraph 91 above), we are satisfied that the failures above demonstrated that Mr O'Shea did not plan and perform the audit with professional scepticism and that Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptable low level and thereby enable the auditor to draw reasonable conclusions on which to base the auditors opinion, contrary to the requirements of ASA 200, paragraphs [15] and [17].

D2.3 – Recoverability and GCPF valuations

Background facts

123. The FY22 and FY23 audit files, contained investment valuations prepared by GCPF titled, 'GCPF Valuation June 2022 - V2 - 24.08.22 (1).xlsx' and 'GCPF valuation June 2023' and 'GCPF September 2023', valuing each of its investments as at 30 June for those years. The associated spreadsheet workpapers appeared to have been prepared by GCPF or its advisers (i.e., accountants). The Board was provided with no evidence that Mr O'Shea documented that the information was prepared by the entity or the procedures undertaken regarding 'Information Produced by the Entity' (IPE), as required by ASA 500 paragraph [9].
124. The valuation spreadsheets had principal plus accrued interest calculations for each investment along with risk adjusted valuations.
125. There were some differences in the valuation approaches between investments, however mostly they appear to have involved some calculation of an internal rate of return (IRR), a future value (FV) discounted it to a present value (PV) using risk adjusted amounts and or discount rates. The FV included the cash invested and a forecast profit or loss amounts (or some portion thereof).
126. There were some variations in the types of assumptions applicable for each investment, but these predominantly included project forecast profits (or losses), delay costs, and risk related rates (discount, profit risk and delay risk).
127. There were brief notes under the heading 'monthly notes' next to each investment valuation that appear to be current matters for the relevant development project.
128. The FY23 audit working paper, 'D.18 WP - Carrying Values v IRR Reports.xlsx', with Mr O'Shea's comparison of the carrying values to the GCPF valuations. The stated objective in the working paper was 'Review asset valuations for evidence of impairment (compared to 30 June and 30 September IRR calculations)'. The overall conclusion documented on this work was 'Across portfolio of assets, no impairment appears to exist across assets on diminishing risk weighted PV basis'.
129. In performing the FY22 and FY23 audits, Mr O'Shea relied on the investment valuations prepared by GCPF, including as evidence of their recoverability (with the exception of the Point Bay investment in FY23)
130. In performing the FY22 and FY23 audits, Mr O'Shea did not:
 - (a) Perform or document performing any sufficient audit work on the GCPF valuations, including considering or evidencing the method, calculations and assumptions used;
 - (b) Consider or perform further evidence gathering procedures in relation to additional information in the GCPF valuation spreadsheets (under 'monthly notes') that appear to be about issues with the projects and were possible impairment indicators;
 - (c) In FY23, properly and adequately evaluate the results of a comparison of the carrying values to GCPF prepared risk adjusted values – anomalies and variances indicating possible issues including impairment were not considered;

- (d) Obtain and document further understanding about each of the development projects' status and risks, supported by relevant and reliable audit evidence;
- (e) Consider and evaluate the appropriateness of the valuation methods used for each investment, checked calculations, and obtained evidence for the assumptions used to determine whether they were reasonable and supportable. This would include the basis of and support for the discount rates and forecast profit or loss amounts used.
- (f) Evaluate and seek supporting evidence for the project's planned to date, actual and forecast cash flows. In the first instance this might have been obtained from project management update reports and forecasts.
- (g) Include in this work, given the higher-ranking lenders to the projects, specific attention to project funding and these other financiers. In considering GCPF's ability to recover their investments, Mr O'Shea did not seek to understand:
 - i. Whether the projects were sufficiently funded; the amount and timing of cash flows relating to other lenders (whether sufficient funds would be available to GCPF after the other lenders were paid); and
 - ii. Who the other lenders were and what the relevant terms and conditions of their lending were, such as for default events.
- (h) Consider, as potential impairment indicators, the project information in the 'monthly notes' to the valuation spreadsheets or performed audit work to follow-up on them.
- (i) In evaluating the results of the FY23 test of comparing carrying values to GCPF values, Mr O'Shea did not undertake further audit work in relation to the following variances:
 - i. The GCPF value for the Point Bay loan (June 2023 value was \$19.59m and September 2023 value was \$23.7m) were approximately twice the carrying value (\$9.9m). This indicates there may have been issues with the approach and assumptions used in GCPF's valuations.
 - ii. For the Hindmarsh and Serpells investments, the carrying values exceeding GCPF values. Given the purpose of the test, this was an indicator of impairment.
 - iii. For the River Glen investment there were no GCPF values. Mr O'Shea's conclusion on the workpaper was "*Carried on a potential refinancing (sic) valuation - different to other projects*". Mr O'Shea did not perform audit procedures to evidence that different valuation (the approach, calculations and assumptions).

Admissions

131. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the investments in the FY22 and FY23 audits, Mr O'Shea:

- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of the investments (including whether credit loss provisions should have been made), the revenue recognised for them or the completeness and accuracy of the related party transactions;
- (b) Contrary to [28(c)] of ASA 330 failed to document conclusions (refer to the Carlile specifically);
- (c) Failed to perform procedures required in accordance with paragraph [22 to 26] of ASA 540 relating to the value estimates of the investments (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used;
- (d) Contrary to paragraph [26] of ASA 330 and [33(c)] of ASA 540 failed to adequately evaluate whether sufficient appropriate audit evidence had been obtained about the investment values including not taking into account evidence obtained about investment performance and project issues that contradicted the values;
- (e) Contrary to paragraphs [24], and [25] of ASA 550, failed to obtain sufficient appropriate audit evidence about reported assertion that the investments had been made on an arm's length and did not adequately evaluate whether the investments and director relationships had been appropriately disclosed;
- (f) Contrary to paragraph [35] of ASA 540 failed to adequately determine whether the value of the investment and related disclosures were reasonable;
- (g) Contrary to paragraph [36] of ASA 540 failed to adequately evaluate in relation to the investment values whether disclosures beyond those specified by the reporting framework were necessary to achieve fair presentation of the financial report;
- (h) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's FY21 and FY22 financial reports were free from material misstatement relating to the new investments, including their related party and other disclosures; and
- (i) Contrary to paragraphs [5], [8] and [9(a)] of ASA 230, he has otherwise failed to adequately document his audit of these investments.

132. The lack of audit work on these investments demonstrated that Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

133. The parties submitted that Mr O'Shea failed to take the steps referred to in paragraph 130 above and accordingly failed to perform the audits in compliance with the Auditing Standards referred to in paragraph 131 above.
134. In submissions, the Panel was taken to the investment valuation spreadsheets prepared by GCPF showing the valuation approach and assumptions (see paragraph 123 above), which were in the audit files. The Panel was taken to the only audit working paper on the audit file (referred to in paragraph 128 above) showing the extent of work on the valuation, which was as follows:

	Global Capital Property Fund					
	Year Ended 30 June 2023					
	Asset Valuations					
	Objective Review asset valuations for evidence of impairment (compared to 30 June and 30 September IRR calculations)					
	Work Done					
	Project	CV 30/6/23	Risk PV 30/6/23	Excess	Risk PV 30/9/23	Excess
	Point Bay Development	23,460,820.14	25,467,556.00	2,006,735.86	27,182,447.00	3,721,626.86
	Point Bay Loan	9,996,491.73	19,596,139.00	9,599,647.27	23,778,680.00	13,782,188.27
	Kooyongkoot	7,129,185.35	10,811,655.00	3,682,469.65	9,297,196.00	2,168,010.65
	The Carlile	1,360,105.24	1,359,341.00	- 764.24	2,331,414.14	971,308.90
	Mt Atkinson	11,067,287.84	14,366,651.06	3,299,363.22	13,880,518.61	2,813,230.77
	The Elster	4,118,356.18	5,237,766.61	1,119,410.43	5,102,834.83	984,478.65
	Serpells Road	5,278,545.25	6,282,510.00	1,003,964.75	5,086,189.12	- 192,356.13
	111 Ormond	5,167,123.29	6,681,356.00	1,514,232.71	5,746,222.51	579,099.22
	River Glen	5,218,301.11	n/a	#VALUE!	-	5,218,301.11
	Hindmarsh Estate	7,681,971.56	6,479,968.00	- 1,202,003.56	6,547,235.00	- 1,134,736.56
	Eloquent	2,611,665.74	3,649,925.68	1,038,259.94	3,294,889.00	683,223.26
	NDIS Preston	2,490,887.44	2,613,766.00	122,878.56	3,133,970.00	643,082.56
	Franklin NDIS	1,807,207.43	1,899,132.00	91,924.57	1,905,642.00	98,434.57
	Symphony	1,785,150.00	2,380,085.00	594,935.00	2,514,659.00	729,509.00
	Fulham Living	4,816,231.63	5,407,531.80	591,300.17	5,009,112.13	192,880.50
		93,989,329.93	112,233,383.15	18,244,053.22	114,811,009.34	20,821,679.41
	Conclusion					
	Across portfolio of assets, no impairment appears to exist across assets on diminishing risk weighted PV basis					
	Ryan 28 November 2023					

Consideration

135. We are satisfied in the light of Mr O'Shea's admissions as to his failure to take the steps set out in paragraph 130 above and the evidence tendered in support of those admissions, that:
- (a) ***As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330***, Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation) to ensure sufficient appropriate evidence was obtained to support the values of the investments (including whether credit loss provisions should have been made);
 - (b) ***As to paragraph [23] to [26] of ASA 540***, Mr O'Shea failed to perform procedures required in accordance with relating to the value estimates of the investments (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used;
 - (c) ***As to paragraphs [24], and [25] of ASA 550***, Mr O'Shea failed to obtain sufficient appropriate audit evidence about the assertion that the

investments had been made on an arm's length and did not adequately evaluate whether the investments and director relationships had been appropriately disclosed;

- (d) **As to paragraphs [11] and [17] of ASA 200**, as a consequence of the above, Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's FY21 and FY22 financial reports were free from material misstatement relating to the new investments, including their related party and other disclosures. In the circumstances, we are satisfied that Mr O'Shea failed to comply with the obligations of an auditor to carry out the audits in accordance with ASA 200 paragraph [17]; and
 - (e) **As to paragraphs [5], [8] and [9(a)] of ASA 230**, Mr O'Shea otherwise failed to adequately document his audit of these investments. In the circumstances, we are satisfied that Mr O'Shea failed to comply with the obligations of an auditor to carry out the audits in accordance with ASA 230 paragraphs [8] and [9(a)].
136. In addition, the parties submitted that Mr O'Shea's failures also involved breaches of other Auditing Standards, namely
- (a) Paragraph [28(c)] of ASA 330,
 - (b) Paragraph [26] of ASA 330 and paragraph [33(c)] of ASA 540;
 - (c) Paragraphs [35] of ASA 540; and
 - (d) Paragraphs [36] of ASA 540.
137. **As to paragraph 28(c) of ASA 330**, we have already dealt with ASA 330 "The Auditor's Responses to Assessed Risks" generally at paragraph 74 above.
138. Paragraph 28(c) of ASA 330 appears in the following context:

"Evaluating the Sufficiency and Appropriateness of Audit Evidence

25. Based on the audit procedures performed and the audit evidence obtained, the auditor shall evaluate before the conclusion of the audit whether the assessments of the risks of material misstatement at the assertion level remain appropriate. (Ref: Para. A60-A61)

26. The auditor shall conclude whether sufficient appropriate audit evidence has been obtained. In forming an opinion, the auditor shall consider all relevant audit evidence, regardless of whether it appears to corroborate or to contradict the assertions in the financial report. (Ref: Para. A62)

27. If the auditor has not obtained sufficient appropriate audit evidence as to a material financial report assertion, the auditor shall attempt to obtain further audit evidence. If the auditor is unable to obtain sufficient appropriate audit evidence, the auditor shall express a qualified opinion or disclaim an opinion on the financial report.

Documentation

28. The auditor shall include in the audit documentation:
- (a) The overall responses to address the assessed risks of material misstatement at the financial report level, and the nature, timing, and extent of the further audit procedures performed;
 - (b) The linkage of those procedures with the assessed risks at the assertion level; and
 - (c) The results of the audit procedures, including the conclusions where these are not otherwise clear. (Ref: Para. A63)”

139. We are not sure that paragraph 28(c) is clearly apposite to Mr O’Shea’s failures. In a sense, Mr O’Shea did document the result of the audit procedures including his conclusion. The real problem is that his audit procedures were deficient. In circumstances where it is clear that Mr O’Shea has comprehensively failed in other respects to conduct the audits in accordance with the Auditing Standards, we prefer to make no finding in relation to paragraph 28(c).
140. ***As to paragraph [26] of ASA 330 and paragraph [33(c)] of ASA 540***, as just noted, we have already dealt with at ASA 330 generally at paragraph 74 above and paragraph [26] is set out in paragraph 138 above. We have also dealt with ASA 540 “Auditing Accounting Estimates and Related Disclosures”, generally at paragraph 80 above. Paragraph [33(c)] of ASA 540 appears in the following context:

“Overall Evaluation Based on Audit Procedures Performed

33. In applying ASA 330 to accounting estimates, the auditor shall evaluate, based on the audit procedures performed and audit evidence obtained, whether: (Ref: Para A137–A138)

- (a) The assessments of the risks of material misstatement at the assertion level remain appropriate, including when indicators of possible management bias have been identified;
- (b) Management’s decisions relating to the recognition, measurement, presentation and disclosure of these accounting estimates in the financial report are in accordance with the applicable financial reporting framework; and
- (c) Sufficient appropriate audit evidence has been obtained.

34. In making the evaluation required by paragraph 33(c), the auditor shall take into account all relevant audit evidence obtained, whether corroborative or contradictory. If the auditor is unable to obtain sufficient appropriate audit evidence, the auditor shall evaluate the implications for the audit or the auditor’s opinion on the financial report in accordance with ASA 705.

Determining Whether the Accounting Estimates are Reasonable or Misstated

35. The auditor shall determine whether the accounting estimates and related disclosures are reasonable in the context of the applicable financial reporting framework, or are misstated. ASA 450 provides guidance on how the auditor may distinguish misstatements (whether factual, judgemental, or projected) for the auditor’s evaluation of the effect of uncorrected misstatements on the financial report. (Ref: Para. A12–A13, A139–A144)

36. In relation to accounting estimates, the auditor shall evaluate:

- (a) In the case of a fair presentation framework, whether management has included disclosures, beyond those specifically required by the framework, that are necessary to achieve the fair presentation of the financial report as a whole; or
- (b) In the case of a compliance framework, whether the disclosures are those that are necessary for the financial report not to be misleading.”

141. Mr O’Shea admitted that he failed to adequately evaluate whether sufficient audit evidence had been obtained. Mr O’Shea admitted that he did not take into account evidence obtained about investment performance and project issues which contradicted the values. In the circumstances and having regard to the minimal audit work performed, we consider it follows that Mr O’Shea could not have:
- (a) Undertaken an evaluation, in applying ASA 330 to accounting estimates, whether sufficient audit evidence had been obtained, contrary to the requirements of paragraph 33(c) of ASA 540; and
 - (b) Concluded whether sufficient appropriate audit evidence had been obtained, considering all relevant audit evidence, regardless of whether it appears to corroborate or to contradict the assertions in the financial report, contrary to the requirements of paragraph 26 of ASA 330.
142. **As to paragraph [35] of ASA [540]**, that paragraph is set out in paragraph 140 above, and requires the auditor to determine whether the accounting estimates and related disclosures are reasonable. In the light of the minimal audit work performed by Mr O’Shea and the admission in paragraph 131(f) above, we are satisfied that Mr O’Shea failed to comply with the requirements of paragraph [35] of ASA 540.
143. **As to paragraph [36] of ASA 540**, that paragraph is set out in paragraph 140 above. As noted previously, the failure to perform the necessary audit procedures required in ASA 540, including as noted above, assessing the accounting estimates and associated disclosures, we are satisfied that Mr O’Shea failed to complete the requirements of AASB 7 *Financial Instruments: Disclosures* and AASB 13 *Fair Value Measurement*.

D2.4 Further lending

Background facts

144. Note 14 to each of GCPF’s financial statements from FY21-FY23, disclosed under the heading ‘Transactions with related parties’:
- “Transactions between related parties are on normal commercial terms and conditions no more favourable than those available to other parties unless otherwise stated.”
145. The working papers titled ‘FY22 GCPF valuation spreadsheet’ with a file title ‘GCPF Valuation June 2022 - V2 - 24.08.22 (1).xlsx’ in the FY22 audit file and ‘GCPF 30 June 2023 valuations spreadsheet’ and ‘GCPF September 2023 valuations spreadsheet’ in the FY23 audit file, show that in FY22 and FY23 GCPF

provided further funds to underperforming and already impaired loan investments beyond the initial loan agreement amounts.

146. The total amount of funds provided shown in the FY23 valuation spreadsheet for the Carlile is \$11.45 million and the loan agreement (principal sum) amount is \$8.5 million. The difference being further lending of \$2.95 million.
147. The total amount of funds provided shown in the FY23 valuation spreadsheet for the Serpells is \$5.06 million. The loan agreement amount is \$4.8 million. The difference being further lending of \$0.26 million.
148. GCPF's FY22 and FY23 financial reports did not disclose the further lending to the Carlile and Serpells projects.
149. The related directors to both the Carlile and Serpells investments were Mr Hewish and Mr Dickinson. The FY22 and FY23 audit files does not indicate or document who the funds were provided to, whether formal agreements were in place or who approved and authorised the further lending, such as the remaining director Pappas.
150. Mr O'Shea did not perform any audit work to evidence whether the loans were bona fide, GCPF had sufficient legal rights to recover the funds, and whether the project was capable of repaying GCPF.
151. Mr O'Shea did not:
 - (a) Consider and document an understanding of the commercial basis for the further lending, including in the context of the impairment of the existing loans;
 - (b) Obtain, review and document lending agreements, including the terms and any further security (if any) provided;
 - (c) Ensure there was appropriate security in place;
 - (d) Consider whether related parties providing guarantees over the loans would be overextended by the further lending and the consequential impact it may have had on the security and recoverability of those loans;
 - (e) Consider whether such lending was in any way not bona fide, fraudulent or in breach of laws or regulations. Consideration would be given to who assessed and approved the lending (if it was Hewish or Dickinson it would heighten the risk of the lending not being bona fide); and
 - (f) Conclude on whether the investments were made as disclosed (at an arms-length).

Admissions

152. In relation to the specific breaches of ASAs, by reason of the matters set out above, for further lending in the FY22 and FY23 audits, Mr O'Shea:

- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of the investments resulting from further lending (including whether credit loss provisions should have been made), the revenue recognised for them or the completeness and accuracy of related party and other disclosures about them (i.e. the absence of any such disclosures);
 - (b) Contrary to paragraphs [23] and [33(c)] of ASA 240 failed to evaluate as unusual transactions whether the business rationale (or the lack thereof) of the further lending suggests that they may have been entered into to engage in fraudulent financial reporting or to conceal misappropriation of assets;
 - (c) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's FY21 and FY22 financial reports were free from material misstatement relating to the investments resulting from further lending, including their related party and other disclosures.
 - (d) Contrary to paragraphs [5], [8] and [9(a)] of ASA 230, he has otherwise failed to adequately document his audit of these investments
153. The lack of audit work on these investments demonstrated that Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

154. The parties submitted that in the circumstances described in paragraphs 144 to 151 above, Mr O'Shea failed to comply with the Auditing Standards in the respects set out in paragraph 152 above.

Consideration

155. The content of paragraphs:

- (a) [6] of ASA 500 and paragraphs [6] and [21] of ASA 330;
- (b) [11] and [17] of ASA 200; and
- (c) [5], [8] and [9(a)] of ASA 230

have already been considered in relation to previous allegations above.

156. We are satisfied, in the light of the facts set out in paragraphs 144 to 151 above, Mr O'Shea's admissions as to his failures to take the steps set out in those paragraphs, the evidence tendered in support of those admissions, and Mr

O'Shea's admissions as to his failures as set out in paragraphs 151, 152 and 153 above that:

- (a) **As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330**, Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of the investments resulting from further lending (including whether credit loss provisions should have been made), the revenue recognised for them or the completeness and accuracy of related party and other disclosures about them (i.e. the absence of any such disclosures);
 - (b) **As to paragraphs [11] and [17] of ASA 200**, as a consequence of the above, Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's FY21 and FY22 financial reports were free from material misstatement relating to the new investments, including their related party and other disclosures; and
 - (c) **As to paragraphs [5] [8] and [9(a)] of ASA 230**, Mr O'Shea otherwise failed to adequately document his audit of these investments.
157. In addition, the parties submitted that Mr O'Shea's failures also involved breaches of other paragraphs of another auditing standard, namely paragraphs [23] and [33(c)] of ASA 240.
158. Auditing Standard ASA 240 is entitled "The Auditor's Responsibilities relating to Fraud in an Audit of a Financial Report".
159. Paragraphs [23] and [33(c)] of ASA 240 appear in the following context:

"Risk Assessment Procedures and Related Activities

17. When performing risk assessment procedures and related activities to obtain an understanding of the entity and its environment, the applicable financial reporting framework and the entity's system of internal control, required by ASA 315, the auditor shall perform the procedures in paragraphs 18-25 of this Auditing Standard to obtain information for use in identifying the risks of material misstatement due to fraud.

...

Unusual or Unexpected Relationships Identified

23. The auditor shall evaluate whether unusual or unexpected relationships that have been identified in performing analytical procedures, including those related to revenue accounts, may indicate risks of material misstatement due to fraud."

...

**Responses to the Assessed Risks of Material Misstatement Due to Fraud
Overall Responses**

29. In accordance with ASA 330, the auditor shall determine overall responses to address the assessed risks of material misstatement due to fraud at the financial report level. (Ref: Para. A34)

30. In determining overall responses to address the assessed risks of material misstatement due to fraud at the financial report level, the auditor shall:

(a) Assign and supervise personnel taking account of the knowledge, skill and ability of the individuals to be given significant engagement responsibilities and the auditor's assessment of the risks of material misstatement due to fraud for the engagement; (Ref: Para. A35-A36)

(b) Evaluate whether the selection and application of accounting policies by the entity, particularly those related to subjective measurements and complex transactions, may be indicative of fraudulent financial reporting resulting from management's effort to manage earnings; and

(c) Incorporate an element of unpredictability in the selection of the nature, timing and extent of audit procedures. (Ref: Para. A37)

Audit Procedures Responsive to Assessed Risks of Material Misstatement Due to Fraud at the Assertion Level

31. In accordance with ASA 330, the auditor shall design and perform further audit procedures whose nature, timing and extent are responsive to the assessed risks of material misstatement due to fraud at the assertion level.¹¹ (Ref: Para. A38-A41)

Audit Procedures Responsive to Risks Related to Management Override of Controls

32. Management is in a unique position to perpetrate fraud because of management's ability to manipulate accounting records and prepare a fraudulent financial report by overriding controls that otherwise appear to be operating effectively. Although the level of risk of management override of controls will vary from entity to entity, the risk is nevertheless present in all entities. Due to the unpredictable way in which such override could occur, it is a risk of material misstatement due to fraud and thus a significant risk.

33. Irrespective of the auditor's assessment of the risks of management override of controls, the auditor shall design and perform audit procedures to:

(a) Test the appropriateness of journal entries recorded in the general ledger and other adjustments made in the preparation of the financial report. In designing and performing audit procedures for such tests, the auditor shall:

- (i) Make enquiries of individuals involved in the financial reporting process about inappropriate or unusual activity relating to the processing of journal entries and other adjustments;
- (ii) Select journal entries and other adjustments made at the end of a reporting period; and
- (iii) Consider the need to test journal entries and other adjustments throughout the period. (Ref: Para. A42-A45)

- (b) Review accounting estimates for biases and evaluate whether the circumstances producing the bias, if any, represent a risk of material misstatement due to fraud. In performing this review, the auditor shall:
 - (i) Evaluate whether the judgements and decisions made by management in making the accounting estimates included in the financial report, even if they are individually reasonable, indicate a possible bias on the part of the entity's management that may represent a risk of material misstatement due to fraud. If so, the auditor shall re-evaluate the accounting estimates taken as a whole; and
 - (ii) Perform a retrospective review of management judgements and assumptions related to significant accounting estimates reflected in the financial report of the prior year. (Ref: Para. A46-A48)
- (c) For significant transactions that are outside the normal course of business for the entity, or that otherwise appear to be unusual given the auditor's understanding of the entity and its environment and other information obtained during the audit, evaluate whether the business rationale (or the lack thereof) of the transactions suggests that they may have been entered into to engage in fraudulent financial reporting or to conceal misappropriation of assets. (Ref: Para. A49)"

160. **As to paragraph 23 of ASA 240**, at question is whether the additional lending was unusual or outside the ordinary course of the business. A reasonable position might be that addition lending was within the ordinary course of business. The Board is of the view that Mr. O'Shea failed to comply with the broader requirements in ASA 240 regarding additional procedures required under paragraphs [32] and [33] as addressed below. Further, Mr O'Shea failed to meet other requirements regarding obtaining sufficient appropriate audit evidence, as required in other auditing standards, including ASA 200, ASA 230, ASA 500, ASA 540, and ASA 550. However, the case put forward by the parties here related to paragraph 23 of ASA 240. As the applicability of this paragraph, in the light of the question identified above, was not addressed in submissions, the Board makes no finding in relation to this paragraph.
161. **As to paragraph 33(c) of ASA 240** , the auditing standard requires the auditor to consider and respond to the risk of management override of controls. Considering the evidence presented in the SAFA, Mr. O'Shea failed to meet the auditor's obligations regarding responding to risks associated with the potential management override of controls. This was demonstrated in failures to assess additional related party lending as being within the defined investment parameters for GCPF, as admitted in the SAFA.

D2.5 Professional scepticism

Background facts

HY21 review

162. The HY21 review file included a working paper titled 'Note - The Carlile.docx', which includes audit consideration of impairment of the Carlile project investment. Mr O'Shea commented in that document saying: '*Reviewed other projects and*

reporting with Brett Dickinson and satisfied that no other projects would require impairment at this stage'.

163. Mr Dickinson was a related party and had direct financial interests in three of the investments at the time (Carlile, Kooyongkoot and Serpells totalling more than \$14 million in FY21).
164. The HY21 review file did not contain sufficient documentation of review procedures to corroborate that other projects were not impaired or documentation of any of the evidence obtained through the discussions and meetings with Dickinson to reach that conclusion, including whether project cash flow forecasts and updates were obtained and reviewed or evidence that they were reasonable and supportable.

FY23 Audit

165. The FY23 audit file included a working paper titled '*Minutes - GCPF 17 July.docx*'. This working paper outlines minutes of a meeting that occurred '17 July 2023, 1pm London Room'. The minutes:
 - (a) Document discussions about and a summary of the forecasting process and methodology used by the development project managers (external to GCPF); and
 - (b) Include brief updates for each of the projects, including what appear to be some significant performance, funding and ownership issues.
166. The minutes do not identify the attendees and sources of information that was provided.
167. The valuation process (by project managers) documented in the minutes was not tested as being implemented.
168. Mr O'Shea did not:
 - (a) Document who attended the meeting along with the sources for the information recorded in the minutes, particularly in these circumstances given the GCPF directors are related parties to the investments and there was a significant risk of management bias;
 - (b) Consider or follow-up on matters in the minutes that appear to be possible impairment indicators, including when evaluating the FY23 GCPF valuations;
 - (c) Consider or test whether the valuation process (by project managers) documented in the minutes was implemented; and
 - (d) Document any audit work considering the project updates in relation to the GCPF June 2023 and September 2023 valuations.

Admissions

169. In relation to the specific breaches of Auditing Standard on Review Engagement (ASRE) 2410, by reason of the matters set out above, for the HY21 review, Mr O'Shea:
- (a) Contrary to paragraph [10] failed to perform the review with an attitude of professional scepticism; and
 - (b) Contrary to paragraph [55] failed to adequately document the review, specifically the detailed work sufficient to corroborate that projects other than the Carlile were not also impaired, including obtaining and reviewing project cash flow forecasts and updates along with evidence to support they were reasonable and supportable.
170. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the FY23 audit, Mr O'Shea:
- (a) Contrary to paragraph [15] of ASA 200, failed to perform the audit with an attitude of professional scepticism; and
 - (b) Contrary to paragraph [10] of ASA 230, failed to adequately document discussions of significant matters with management, those charged with governance, and others, (i.e. the 17 July 2023 meeting) including the nature of the significant matters discussed and with whom the discussions took place.

Submissions

171. The parties submitted that, in reliance on the above facts and admissions, for the HY21 review and FY23 audit, Mr O'Shea failed to apply professional scepticism and for the HY21 review, Mr O'Shea failed to adequately document the review, and for the FY23 audit, failed to adequately document discussions of significant matters with management, those charged with governance, and others, (i.e. the 17 July 2023 meeting) including the nature of the significant matters discussed and with whom the discussions took place.

Consideration

Professional scepticism

172. We have already given consideration to paragraph [15] of ASA 200 at paragraph 96 above.
173. For convenience, we note that that paragraph provides:
- “15. The auditor shall plan and perform an audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.”
174. Auditing Standard on Review Engagements ASRE 2410 Review of a Financial Report Performed by the Independent Auditor of the Entity is applicable to review assignments for half-year reporting periods. Paragraph 1 deals with the application of the standard and provides:

“Application.

1. This Auditing Standard on Review Engagements applies to:

- (a) a review by the auditor of the entity, of a financial report for a half-year, in accordance with the Corporations Act 2001; and
- (b) a review, by the auditor of the entity, of a financial report, or a complete set of financial statements, comprising historical financial information, for any other purpose.”

175. Paragraph 10 of ASRE 2410 provides:

“10. The auditor shall plan and perform the review by exercising professional judgement and with an attitude of professional scepticism, recognising that circumstances may exist that cause the financial report to require a material adjustment for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework. (Ref: Para. A7)”

176. We are satisfied, on the basis of the facts set out in paragraph 162 to 164 above and the admissions in paragraph 169(a) above, that for the HY21 Review, Mr O’Shea failed to perform the review with an attitude of professional scepticism, contrary to the requirements of paragraph 10 of ASRE 2410. There was nothing in the review file to indicate that Mr O’Shea carried out any work to corroborate anything Mr Dickinson had said, (noting that Mr Dickinson had direct financial interests in three of the investments totalling \$14m at the time). There was nothing on the file of any evidence obtained through Mr O’Shea’s discussion or meeting with Mr Dickinson which supported Mr O’Shea’s conclusion that he was satisfied that “no other projects would require impairment at this stage”.

177. We are satisfied, on the basis of the facts set out in paragraphs 165 to 168 and the admissions in paragraph 170(a) above, that for the FY23 audit, Mr O’Shea failed to perform the audit with an attitude of professional scepticism, contrary to the requirements of paragraph [15] of ASA 200. Apart from anything else, the “Minutes” referred to what appeared to be some significant performance, funding and ownership issues. Mr O’Shea did not further consider or follow up on these. Further, the Minutes referred to the valuation process used by the development project managers (external to GCPF) and Mr O’Shea did not consider whether that process had been implemented.

Documentation

178. Paragraph [55] of ASRE 2410 provides:

“55. Documentation (Ref: Para. A64)

The auditor shall prepare review documentation that is sufficient and appropriate to provide a basis for the auditor’s conclusion, and to provide evidence that the review was performed in accordance with this Auditing Standard and applicable legal and regulatory requirements.”

179. Paragraph [10] of ASA 230 has been set out above, but for convenience, we set it out again:

“The auditor shall document discussions of significant matters with management, those charged with governance, and others, including the nature of the

significant matters discussed and when and with whom the discussions took place. (Ref: Para. A14)”

180. We are satisfied that by reason of the facts set out in paragraph 162 to 164 above and the admissions in paragraph 169(b) above, that for the HY21 Review, Mr O’Shea failed to adequately document the review, specifically the detailed work sufficiently to corroborate that projects other than the Carlile were not also impaired, including obtaining and reviewing project cash flow forecasts and updates along with evidence to support they were reasonable and supportable, contrary to the requirements of paragraph [55] of ASRE 2410.
181. We are satisfied, by reason of the facts set out in paragraphs 165 to 168 and the admissions in paragraph 170(b) above, that for the FY23 audit, Mr O’Shea failed to adequately document discussions of significant matters with management, those charged with governance, and others, including the nature of the significant matters discussed at the 17 July 2023 meeting and with whom the discussions took place.

D2.6 Investment Income

Background facts

182. GCPF reported income from investments was \$9.85 million in FY22 and \$8.94 million in FY23.
183. The audit files contained GCPF prepared investment valuation spreadsheets, which included accumulated interest calculations over the life of the investments up until 30 June for the respective financial year. They did not show the interest for the period.
184. The FY22 and FY23 audit files contained a specific working paper for some of the investments which included interest recalculations. Mr O’Shea recalculated interest for only 7 of the 15 investments in FY22 and 2 of the 15 investments in FY23, or 35% and 3.4% of the total investment income respectively.
185. For the Carlile in FY22 and Kooyongkoot in FY23, both of which did not accrue full interest, Mr O’Shea only recalculated the interest GCPF was entitled to under the investment agreements not the actual interest accrued.
186. The FY22 and FY23 audit files did not contain any reference to audit sampling or any aspects of audit sampling, including:
- (a) The sample testing objective, including what was being tested about the population such as whether tests of controls or substantive testing was being performed;
 - (b) What a deviation in the testing would be or the expected rate of deviation to be used in assessing results and determining sampling parameters;
 - (c) A basis for the sample size or selection; and
 - (d) An evaluation of and conclusions about the sample testing results.

Admissions

187. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the investment income in the FY22 and FY23 audits, Mr O'Shea:
- (a) Contrary to paragraphs [6] to [15] of ASA 530, did not perform any audit sampling that he considered to have been performed in relation to investment income in accordance with those requirements. Testing less than the full population on its own is not audit sampling and it requires all sampling units to have a chance of selection in order to provide the auditor with a reasonable basis on which to draw conclusions about the entire population;
 - (b) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk (including the significant risk relating to revenue recognition) to ensure sufficient appropriate evidence was obtained to support the investment income, including the recoverability of the revenue recognised;
 - (c) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to investment income; and
 - (d) Contrary paragraphs [5], [8] and [9(a)] of ASA 230, Mr O'Shea has otherwise failed to adequately document his audit of investment income, including any aspect of ASA 530 and audit sampling that he considers he performed.
188. The lack of audit work on the investment income demonstrated Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

189. The parties submitted, relying upon the facts in the SAFA and Mr O'Shea's admissions, that Mr O'Shea failed to perform sufficient audit work in relation to interest income, including by not recalculating interest for eight investments in FY22 and for 13 investments in FY23, and otherwise not conducting appropriate audit sampling during that time.

Consideration

190. ASA 530 Audit Sampling was initially issued in October 2009 and was revised by ASA 2020-1 in March 2020, with the revised ASA 530 being effective for reporting periods commencing on or after 15 December 2021. Accordingly, the GCPF audits for FY21 and FY22 would have applied the initial version of ASA 230. The GCPF audit for FY23 would have applied the revised version of ASA 530. The Board considers that the changes implemented in ASA 2020-1 are not significant to the conduct of the audits in question.

191. **As to paragraphs [6] to [15] of ASA 530**, Auditing Standard ASA 530 is entitled “Audit sampling”. It commences with the following paragraphs:

“Introduction

Scope of this Auditing Standard

1. This Auditing Standard applies when the auditor has decided to use audit sampling in performing audit procedures. It deals with the auditor’s use of statistical and non-statistical sampling when designing and selecting the audit sample, performing tests of controls and tests of details, and evaluating the results from the sample.
 2. This Auditing Standard complements ASA 500, which deals with the auditor’s responsibility to design and perform audit procedures to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor’s opinion. ASA 500 provides guidance on the means available to the auditor for selecting items for testing, of which audit sampling is one means.”
192. ASA 530 is applicable when an auditor applies audit sampling in the gathering of evidence and is based on the auditor’s decisions regarding the approach to obtaining audit evidence which is required in ASA 500 *Audit Evidence*. The Parties, in the SAFA agreed that Mr. O’Shea failed to document the design of the proposed audit procedures, including failing to document the approach to selecting items for testing, as is required under ASA 500 paragraph [10], and subsequently failed to meet the documentation requirements in ASA 530 as noted below.
193. The parties rely upon paragraphs [6] to [15] of ASA 530 which provide as follows:

“Requirements

Sample Design, Size and Selection of Items for Testing

6. When designing an audit sample, the auditor shall consider the purpose of the audit procedure and the characteristics of the population from which the sample will be drawn. (Ref: Para. A4-A9)
7. The auditor shall determine a sample size sufficient to reduce sampling risk to an acceptably low level. (Ref: Para. A10-A11)
8. The auditor shall select items for the sample in such a way that each sampling unit in the population has a chance of selection. (Ref: Para. A12-A13)

Performing Audit Procedures

9. The auditor shall perform audit procedures, appropriate to the purpose, on each item selected.
10. If the audit procedure is not applicable to the selected item, the auditor shall perform the procedure on a replacement item. (Ref: Para. A14)
11. If the auditor is unable to apply the designed audit procedures, or suitable alternative procedures, to a selected item, the auditor shall treat that item as a deviation from the prescribed control, in the case of tests of controls, or a misstatement, in the case of tests of details. (Ref: Para. A15-A16)

Nature and Cause of Deviations and Misstatements

12. The auditor shall investigate the nature and cause of any deviations or misstatements identified, and evaluate their possible effect on the purpose of the audit procedure and on other areas of the audit. (Ref: Para. A17)

13. In the extremely rare circumstances when the auditor considers a misstatement or deviation discovered in a sample to be an anomaly, the auditor shall obtain a high degree of certainty that such misstatement or deviation is not representative of the population. The auditor shall obtain this degree of certainty by performing additional audit procedures to obtain sufficient appropriate audit evidence that the misstatement or deviation does not affect the remainder of the population.

Projecting Misstatements

14. For tests of details, the auditor shall project misstatements found in the sample to the population. (Ref: Para. A18-A20)

Evaluating Results of Audit Sampling

15. The auditor shall evaluate:

(a) The results of the sample; and (Ref: Para. A21-A22)

(b) Whether the use of audit sampling has provided a reasonable basis for conclusions about the population that has been tested (Ref: Para. A23)".

194. ***As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330***, we have referred to the content of these paragraphs previously at paragraphs 73 and 74 above. Paragraph [6] of ASA 500 requires the auditor to design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence. Paragraph [6] of ASA 330 requires the auditor to design and perform further audit procedures whose nature, timing, and extent are based on and are responsive to the assessed risks of material misstatement at the assertion level. Paragraph [21] of ASA 300 requires that if the auditor has determined that an assessed risk of material misstatement at the assertion level is a significant risk, the auditor shall perform substantive procedures that are specifically responsive to that risk. When the approach to a significant risk consists only of substantive procedures, those procedures shall include tests of details.
195. We are satisfied, based upon the facts set out in paragraphs 182 to 186 and the admissions in paragraphs 187 to 188, in the circumstances where the assessed risk relating to revenue was a significant risk, that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk to ensure sufficient appropriate evidence was obtained to support the investment income, including the recoverability of the revenue recognised.
196. ***As to paragraphs [11] and [17] of ASA 200***, the content of those paragraphs are set out in paragraph 91 above. We are satisfied that by reason of the above failings, Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to investment income, in breach of the requirements of paragraph [17] of ASA 200.

197. ***As to paragraphs [5], [8] and [9(a)] of ASA 230***, the content of those paragraphs is set out in paragraph 120 above. Paragraph [8] includes the obligation of an auditor to prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand (amongst other things) the nature, timing, and extent of the audit procedures performed to comply with the Australian Auditing Standards and applicable legal and regulatory requirements, and the results of the audit procedures performed, and the audit evidence obtained. Paragraph [9(a)] requires the auditor, in documenting the nature, timing and extent of audit procedures performed, to record the identifying characteristics of the specific items or matters tested.
198. The allegation of breach is put in terms of Mr O'Shea otherwise failing "to adequately document his audit of investment income, including any aspect of ASA 530 and audit sampling that he considers he performed" (emphasis added). It was not clear on the evidence what aspect of ASA 530 and audit sampling Mr O'Shea considered he performed. It appears that Mr O'Shea purported to carry out audit sampling, and if he did, it appears that he failed to document the nature, timing and extent of the audit procedures he performed. In view of the admissions of breach of paragraphs [8] and [9(a)], the allegation may well have been intended to refer to a failure on the part of Mr O'Shea to adequately document his audit of investment income including the audit sampling which he purported to perform. In view of the fact that the FY22 and FY23 audit files did not contain any reference to audit sampling or any aspects of audit sampling, we are satisfied that Mr O'Shea failed to adequately document his audit of investment income including the audit sampling which he purported to perform, in breach of the requirements of paragraphs [8] and [9(a)] of ASA 530.
199. ***As to paragraph [15] of ASA 220***, we are satisfied that the lack of audit work on the investment income referred to above demonstrated Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

D2.7 – Impairment expense

Background facts

200. In FY22, GCPF reported \$2.5 million as 'Other expenses', which according to the FY22 trial balances includes \$2.23 million impairment expense relating to the Carlile. The FY22 journals show impairment adjustments made to the Carlile to be \$2.7 million. A transaction report in the FY22 audit file shows the difference was offset against revenue from other investments.
201. The FY23 audit file does not show which investments were impaired in FY23, by how much or how they were accounted for. There was no breakdown on the audit file of the reported \$9.4 million impairment expense in FY23. There was no transaction report on the FY23 audit file. In FY23 there were indications of impairment for the following investments: Carlile, Kooyongkoot, Serpells, River Glen and Symphony.
202. Mr O'Shea, in relation to the FY22 and FY23 audits, did not:

- (a) Perform sufficient testing or obtain sufficient appropriate evidence about the accuracy and accounting treatment of impairment expenses;
- (b) Perform testing of the calculation, or assess the reasonableness of impairment amounts for each investment;
- (c) Perform testing to tie back the disclosed impairment expense to the specific investments and impairment calculations – there were no such calculations on the audit file including in the GCPF prepared valuation spreadsheets;
- (d) As a consequence, in FY22 Mr O'Shea did not detect a misstatement in impairment expense and revenue, where an impairment expense amount was offset against revenue relating to the Carlile investment;
- (e) Check or reperform the calculations of the impairment amounts for each investment –particularly in FY23 when there were indications that a number of investments were being impaired;
- (f) tie those amounts back to journals and the financial report; and
- (g) as a result of performing these procedures, identify any amount of impairment expense that had been offset against revenue.

Admissions

203. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the impairment expense in the FY22 and FY23 audits, Mr O'Shea:

- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6]⁶ and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including the significant risk relating to revenue recognition) to ensure sufficient appropriate evidence was obtained to support impairment expense;
- (b) Contrary to paragraph [20] of ASA 330, failed to perform substantive procedures agreeing or reconciling the impairment expense in the financial report with the underlying accounting records and adequately examining material journal entries for the impairment expenses;
- (c) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to investment impairment expense; and
- (d) Contrary to paragraphs [5], [8] and [9(a)] of ASA 230, has otherwise failed to adequately document his audit of impairment expenses.

204. The lack of audit work on the impairment expenses demonstrated Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with

⁶ There was an obvious typographical error in the SAFA, in the omission of the words "and [21] of ASA 330", compare paragraph 52 of the Written Submissions.

professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

205. The parties submitted that Mr O'Shea did not perform sufficient testing or obtain appropriate evidence about the accuracy and accounting treatment of the impairment expenses, or assess the reasonableness of the impaired amounts for each investment when there were indicators of impairment for five investments. The parties relied upon the facts set out in the Background Facts above and the Admissions set out above to assert that Mr O'Shea acted in contravention of the paragraphs of the Auditing Standards set out above.

Consideration

206. **As to paragraphs [6] of ASA 500 and [6] and [21] of ASA 330**, we have referred to the content of these paragraphs previously at paragraphs 73 and 74 above. Paragraph [6] of ASA 500 requires the auditor to design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence. Paragraph [6] of ASA 330 requires the auditor to design and perform further audit procedures whose nature, timing, and extent are based on and are responsive to the assessed risks of material misstatement at the assertion level. Paragraph [21] of ASA 330 requires that if the auditor has determined that an assessed risk of material misstatement at the assertion level is a significant risk, the auditor shall perform substantive procedures that are specifically responsive to that risk.
207. We are satisfied that, on the basis of the facts set out in the Background Facts above, that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk (including the significant risk relating to revenue recognition) to ensure sufficient appropriate evidence was obtained to support impairment expense, as required by Paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330.
208. **As to paragraph [20] of ASA 330**, that paragraph appears in the following context in ASA 330:

"Audit Procedures Responsive to the Assessed Risks of Material Misstatement at the Assertion Level"

...

Substantive Procedures

18. Irrespective of the assessed risks of material misstatement, the auditor shall design and perform substantive procedures for each material class of transactions, account balance, and disclosure. (Ref: Para. A43-A49)

19. The auditor shall consider whether external confirmation procedures are to be performed as substantive audit procedures. (Ref: Para. A50-A53)

Substantive Procedures Related to the Financial Report Closing Process

20. The auditor's substantive procedures shall include the following audit procedures related to the financial report closing process:

(a) Agreeing or reconciling information in the financial report with the underlying accounting records, including agreeing or reconciling information in disclosures, whether such information is obtained from within or outside of the general and subsidiary ledgers; and

(b) Examining material journal entries and other adjustments made during the course of preparing the financial report. (Ref: Para. A54)"

209. We are satisfied, on the basis of the facts set out in the Background Facts above, that Mr O'Shea failed to perform substantive procedures agreeing or reconciling the impairment expense in the financial report with the underlying accounting records and adequately examining material journal entries for the impairment expenses, and thereby failed to conduct the audits in accordance with the requirements of paragraph 20 of ASA 300.
210. **As to paragraphs [11] and [17] of ASA 200**, those paragraphs are set out above at paragraph 91. On the basis of our findings above, we are satisfied that in the FY22 and FY23 audits, Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to investment impairment expense, and thereby failed to perform the audits in accordance with paragraph [17] of ASA 200,
211. **As to paragraphs [5], [8] and [9(a)] of ASA 230**, the content of those paragraphs is set out in paragraph 120 above. We summarised the requirements of those paragraphs in Section D2.6 above.
212. We are satisfied, on the basis of the facts set out in the Background Facts above that Mr O'Shea did not prepare audit documentation in connection with the audit of impairment expenses, sufficient to enable an experienced auditor, having no previous connection with the audit, to understand the nature, timing, and extent of the audit procedures performed to comply with the Australian Auditing Standards and applicable legal and regulatory requirements, and the results of the audit procedures performed, and the audit evidence obtained, and, in the circumstances, failed to carry out the audits in accordance with the requirements of paragraphs [8] of ASA 530.
213. **As to paragraph [15] of ASA 200**, in the circumstances, we are satisfied on the basis of the lack of audit work on the impairment expenses established above, that Mr O'Shea failed to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated, and thereby failed to carry out the audits in accordance with the requirements of paragraph [15] of ASA 200.

D2.8 – Related party investment disclosure completeness and accuracy of disclosures

Background facts

214. Paragraphs 50 and 51 above, set out the details of GCPF's related party investments.

215. GCPF's financial reports for each of the financial years FY21 to FY23, at note 14 to the financial statements contained the following related party disclosure:

"The Company may make investments where a Director is a related party to the developer and will follow the strict assessment and decision-making process in such circumstances.

...

Related Party entities to the Company are (1) Point Bay Developments Pty Ltd, (2) The Carlile Corporations Pty Ltd, (3) Kooyongkoot Project Pty Ltd, (4) GCPF Management Pty Ltd.

Other related parties include close family members of key management personnel and entities that are controlled or significantly influenced by those key management personnel or their close family members.

The Serpells Road Pty Ltd, established on 5 March 2021, is a related party entity to the directors Brett Aaron Dickinson and Joel James Hewish.

Transactions with related parties

Transactions between parties are on normal commercial terms and conditions no more favourable than those available to other parties.

...."

216. Note 8 to GCPF's financial statements for FY21 to FY23 contained the list of investments and only disclosed the project name and amount. There was no disclosure to describe the nature of the investments - the only exception to this was Point Bay because of its title the 'Point Bay Loan'.
217. GCPF's FY22 and FY23 financial statements disclosed in the statement of profit and loss, 'other expenses' of \$2.5m and \$9.4m respectively, without further explanation or details. Note 15 to the FY23 financial statements disclosed 'impairment loss' in the amount of \$9.4m. No items described as 'impairment loss' were disclosed in FY22 financial report.
218. There was no breakdown on the audit file of the reported \$9.4 million impairment expense. There was no transaction report on the FY23 audit file. It appears from the FY23 trial balances on the audit file, the following investments may have been impaired by at minimum the following amounts: Carlile (\$7.9 million), Kooyongkoot (\$0.872 million), Serpells, River Glen and Symphony (\$1 million across the two investments).
219. AASB 101 *Presentation of Financial Statements* paragraph [82(ba)] requires disclosure of 'impairment losses' determined in accordance with Section 5.5 of AASB 9 as a line item in the statement of profit or loss.
220. Paragraphs [18] and [19] of AASB 124 *Related Party Disclosures*, requires the following disclosure for related party transactions during the periods covered by the financial statements:
- (a) The nature of the related party relationship as well as information about those transactions and outstanding balances, including commitments;
 - (b) The amount of the transactions;

- (c) Their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement;
- (d) Details of any guarantees given or received;
- (e) Provisions for doubtful debts related to the amount of outstanding balances;
- (f) The expense recognised during the period in respect of bad or doubtful debts due from related parties; and
- (g) The disclosures required by 93(a) to (f) above, are required to be made separately for each of the following categories:
 - i. the parent;
 - ii. entities with joint control of, or significant influence over, the entity;
 - iii. subsidiaries;
 - iv. associates;
 - v. joint ventures in which the entity is a joint venturer;
 - vi. key management personnel of the entity or its parent; and
 - vii. other related parties.

Admissions

221. In conducting the FY21, FY22 and FY23 audits of GCPF, Mr O'Shea did not comply with:

- (a) Paragraph [24] of ASA 550, because he did not consider and perform audit work in relation to whether the investments were being maintained on commercial terms no more favourable than would be available to others. This includes consideration of the further lending on impaired assets or where interest ceased to be accrued;
- (b) Paragraph [25(a)] of ASA 550, because he failed to:
 - i. Identify the related party relationships and transactions had been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework or followed auditor reporting requirements in ASA 705 highlighting this;
 - ii. Consider the completeness and adequacy of the related party disclosures in GCPF's financial reports, including the absence of details about their nature, terms, conditions and events;
 - iii. Conclude that the related party disclosures were inadequate, including because they did not disclose:

1. the underperformance of related party investments and the further lending provided to those parties beyond the initial investment agreements – for Carlile and Serpells;
2. the impairment losses recognised for specific investments (or any discussion about this) – for Carlile, Kooyongkoot and River Glen;
3. that for certain investments, GCPF did not accrue some or any investment income it was entitled to – for the Carlile, Kooyongkoot, Serpells and River Glen;
4. the take-over of River Glen as a related party asset in FY23 – for River Glen;
5. other possible related parties existing for the Serpells investment – for Serpells;
6. the Point Bay put and call agreement entered into in FY23 and the subsequent sale – for Point Bay;
7. 929 High Street Armadale Pty Ltd as a related party (in respect to the Carlile loan) – for Carlile.

Submissions

222. The parties submitted that for FY21, FY22 and FY23, in relation to GCPF's related party investments set out in paragraphs 50 and 51, Mr O'Shea failed to consider whether these related party investments were being maintained on commercial terms or identify whether the related party relationships (and other relevant events and circumstances) were being properly disclosed.
223. The parties submitted that, in the light of the facts set out in the Background Facts and Admissions above, Mr O'Shea failed to comply with Paragraph [24] and [25(a)] of ASA 550 in the manner set out in the Admissions above.

Consideration

224. **As to paragraph [24] and [25(a)] of ASA 550**, those paragraphs have been set out in full in paragraph 88 above.
225. Paragraph [24] provides that if management has made an assertion in the financial report to the effect that a related party transaction was conducted on terms equivalent to those prevailing in an arm's length transaction, the auditor shall obtain sufficient appropriate audit evidence about the assertion.
226. Here, management had made an assertion in the financial report to the effect that a related party transaction was conducted on terms equivalent to those prevailing in an arm's length transaction. Mr O'Shea did not obtain appropriate audit evidence about the assertion. In the circumstances, he failed to carry out the audit in compliance with the requirements of paragraph [24] of ASA 550.
227. Paragraph [25(a)] provides that in forming an opinion on the financial report in accordance with ASA550, the auditor shall evaluate whether the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework. AASB 101 *Presentation of Financial Statements* paragraph [82(ba)] requires disclosure

of 'impairment losses' determined in accordance with Section 5.5 of AASB 9 as a line item in the statement of profit or loss.

228. Here, Mr O'Shea did not consider the completeness and adequacy of the related party disclosures in GCPF's financial reports, including the absence of details about their nature, terms, conditions and events and did not conclude that the related party disclosures were inadequate, because they did not disclose the matters set out in paragraph 221(b) above, as Mr O'Shea admitted.
229. In the circumstances, we are satisfied that Mr O'Shea failed to carry the audits in accordance with paragraphs [24] and [25(a)] of ASA 550 in this respect.

D3 - Specific aspects of the common issues applying to each of the related party investments – The Carlile investment

D3.1 - Recoverability and GCPF valuations

Background facts

230. On or around 18 December 2020, GCPF and 929 High Street Armadale Pty Ltd (929 High Street) entered into a loan deed, under which GCPF loaned a principal sum of \$8.5m to 929 High Street (borrower). The loan deed was executed by Mr Hewish and Mr Dickison on behalf of both GCPF and 929 High Street. The loan deed did not contain any clauses which permitted further lending to the borrower.
231. The FY22 audit file contained a spreadsheet titled 'GCPF valuation spreadsheet for FY2022', which outlines GCPF's valuation of its investments as at 30 June 2022. The tab titled 'Carlile' showed an assumed forecast loss of \$1.871 million and at a 3% discount rate. The net present value of the project was \$6.83m.
232. The FY22 audit file contained a valuation report prepared by Hub Project Management Pty Ltd titled, 'D.30-3 Armadale PCG #19 - September 2022 HUB update The Carlile.pdf' for the Carlile development located at 929 – 933 High Street, Armadale (**Hub Report**). Section 2 of the Hub Report outlines a feasibility review, which concluded a forecast loss of \$3.76million for the project as at September 2022. The Hub Report, also included and highlighted:
- (a) Forecast cash flows, including from finance costs, construction costs and sales income;
 - (b) Explanations by the project manager that the forecast sales were excessive comparative to comparable sales (above market); and
 - (c) An unnamed "financier" requiring presale contracts to be revised so that sunseting clauses could be extended given the project delay.
233. The assumed loss amount forecasted by GCPF in its valuations was approximately half the loss forecast for the project (\$3.76 million) determined by the Hub Report.
234. In the FY22 audit file, workpaper 'FY2022 D.30 The Carlile Development *Related Party*.xlsx', Mr O'Shea conducted the following analysis and noted under the heading 'Concerns':

"Funds should be advanced as follows:

Principal Sum - up to \$8.5m

Date of actual drawdowns are as follows:

Date	Amount	Comments
23/12/2020	\$ 500,000.00	First Drawdown
22/02/2021	\$ 7,500,000.00	Second Drawdown
15/06/2021	\$ 500,000.00	Third Drawdown
	\$ 8,500,000.00	

Concerns

2x additional \$200k advanceds (sic) made in excess of maximum amount in loan agreement (sic) PLUS an additional \$700k after year end no interest accrued past October, and amounts written BACK in January and Feb 2022 and not accrued after 31 October (sic) 2021

Discussed at length with Brett Dickinson. Project has had significant (sic) issues and overruns including:

- project delays
- loss of right of way access (which required significant ligfht (sic) rail expense to move tram lines for access, etc
- NPV of project is below expected returns (and will run at a loss).

Value as at 30 June 2022 is based on NPV at that poiunt (sic) in date. Fruther (sic) writedowns (sic) are in effect to write off further funds loaned to complete project. September 2022 update shows that an expected \$4.5m increase in expected sale prices has been offset by \$10.5m of extra vuilding (sic) costs (largely around construction and actual costs exceeding expectations as above). Project is now showing

Project has been delayed due to council and heritage works which ahs (sic) required extra remediation. NPV of project shows a PV of expected cash flows of \$6.863m which is initial valued cost. Queried where NPV of cash flows comes from if project has ~\$7.4m development loss?

235. There was no audit conclusion in the work paper (the audit conclusion section of the work paper was left blank). Mr O'Shea acknowledges that there was no audit conclusion.
236. An email was received by Mr O'Shea from Mr Dickinson on 7 November 2022 and Mr O'Shea sent an email to Mr Dickinson on 18 November 2022. These emails were not on the audit file. The email from Mr Dickinson contained documents relating to the Carlile investment, including project update reports (at September 2021 and 2022) and construction cost tender analysis and contracts. Of these the September 2022 project update was retained on the FY22 audit file. The email from Mr O'Shea included the following asset valuation query:

“I really need to discuss the valuation on The Carlile – probably a five minute call, looking to understand how GCPF will receive the funds back in due course – I’m in two minds on impairment and want to make a call one way or the other.”

237. The workpapers on the FY22 audit file show, Mr O’Shea did not:

- (a) Obtain further understanding and evidence about further lending, project issues and forecast losses through discussions with the directors;
- (b) Obtain evidence about the project status as well as the planned and forecast cash flows (including that they were reasonable and supportable), through discussions with the directors;
- (c) Seek to corroborate information provided by Mr Dickinson by reviewing information made available by Mr Dickinson for inspection for such purpose (though they did not receive such documents), such as cashflow projections, net present value calculations and other documents prepared by the quantity surveyor who had completed analysis relating to matters including sale price, market listing data and potential sale value; and
- (d) Carry out the attendances above which allowed for conclusions on the results of his audit work to be made.

Admissions

238. In relation to the Carlile investment in the FY22 audit, Mr O’Shea did not:

- (a) Comply with paragraph [26] of ASA 330 because he did not conclude whether sufficient appropriate audit evidence had been obtained considering the contradictory evidence in the concerns raised in the working paper;
- (b) Comply with paragraph [11] of ASA 230 where raised concerns in the working paper but did not document how he addressed them;
- (c) Failed to perform procedures required in accordance with paragraph [22 to 26] of ASA 540 relating to the value estimates of the investments (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used;
- (d) Contrary to paragraph [26] of ASA 330 and [33(c)] of ASA 540 failed to adequately evaluate whether sufficient appropriate audit evidence had been obtained about the investment value including not taking into account evidence obtained about investment performance and project issues that contradicted the values. This includes information in the HUB Report and the concerns identified in the audit working paper where no conclusion was made; and
- (e) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF’s

FY22 financial reports were free from material misstatement relating to the Carlile investment.

239. The lack of audit work on the investment demonstrated Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

240. The parties submitted that for the FY22 audit, Mr O'Shea did not obtain further understanding and evidence about the further lending, project issues and forecast losses, or obtain evidence about the project status as well as the planned and forecast cash flows, or seek to corroborate information provided by Mr Dickinson (a related party).
241. The parties submitted that by reason of the Background Facts and Admissions, Mr O'Shea failed to comply with the Auditing Standards referred to in the Admissions.

Consideration

242. **As to paragraph [26] of ASA 330**, we have already dealt with ASA 330 generally at paragraph 74 above and paragraph [26] is set out in paragraph 138 above. Paragraph [26] requires the auditor to conclude whether sufficient appropriate audit evidence has been obtained and, in forming an opinion, to consider all relevant audit evidence, regardless of whether it appears to corroborate or to contradict the assertions in the financial report.
243. Here, Mr O'Shea did not conclude whether sufficient appropriate audit evidence had been obtained considering the contradictory evidence in the concerns raised in the working papers.
244. In the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY22 audit in compliance with paragraph [26] of ASA 330.
245. **As to paragraph [11] of ASA 230**, we have set out certain paragraphs of ASA 230, including paragraph [11] at paragraph 120 above. For convenience, we set out paragraph [11] of ASA 230 again:
- "11. If the auditor identified information that is inconsistent with the auditor's final conclusion regarding a significant matter, the auditor shall document how the auditor addressed the inconsistency."
246. We were not specifically addressed on the "final conclusion on a significant matter", which is the trigger for this obligation. In the circumstances, we make no finding in relation to paragraph [11].
247. **As to paragraph [22 to 26] of ASA 540**, these paragraphs are set out at paragraph 83 above and relate to "Testing How Management Made the Accounting Estimate" and requires, amongst other things, the auditor's audit procedures to include procedures, designed and performed in accordance with paragraphs [22–26], to obtain sufficient appropriate audit evidence regarding the risks of material misstatement relating to the selection and application of the methods, significant

assumptions and the data used by management in making the accounting estimate.

248. In the light of the facts set out in the Background Facts above and the Admissions, we are satisfied that Mr O'Shea failed to perform procedures relating to the value estimates of the investments to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used. In the circumstances, we are satisfied that Mr O'Shea failed to carry the FY22 audit in compliance with the requirements of paragraphs [22-26] of ASA 540.
249. ***As to paragraph [26] of ASA 330 and [33(c)] of ASA 540***, we have just considered paragraph [26] of ASA 330, but in respect of its first requirement to conclude whether sufficient appropriate audit evidence has been obtained. That paragraph also requires the auditor, in forming an opinion, to consider all relevant audit evidence, regardless of whether it appears to corroborate or to contradict the assertions in the financial report. However, the breach alleged by the parties is that Mr O'Shea failed to adequately evaluate whether sufficient appropriate audit evidence had been obtained about the investment value. The parties contend that this was a breach of paragraph [26] of ASA 330 and [33(c)] of ASA 540.
250. Paragraph [33(c)] of ASA 540, (which has already been considered above in relation to other allegations), requires the auditor, in applying ASA 330 to accounting estimates, to evaluate, based on the audit procedures performed and audit evidence obtained, whether sufficient appropriate audit evidence has been obtained. We consider that paragraph [33(c)] is apposite to the alleged breach, rather than paragraph [26] of ASA 330.
251. In the light of the facts set out above in the Background Facts (particularly those in paragraph 237, and the Admissions, we are satisfied that Mr O'Shea failed to adequately evaluate whether sufficient appropriate audit evidence had been obtained about the investment value and thereby failed to carry out the FY22 audit in accordance with the requirements of paragraph [33(c)] of ASA 540.
252. ***As to paragraphs [11] and [17] of ASA 200***, on the basis of our findings above, we are satisfied that Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's FY22 financial reports were free from material misstatement relating to the Carlile investment, and in the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY22 audit in accordance with the requirements of paragraph [17] of ASA 200.
253. ***As to paragraph [15] of ASA 200***, we are satisfied, on the basis of our findings above, that the lack of audit work on the investment demonstrated that Mr O'Shea failed, to plan and perform the FY22 audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated and, in the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY22 Audit in accordance with the requirements of paragraph [15] of ASA 200.

D3.2 Further lending

Background facts

254. As of 30 June 2023, GCPF had provided \$2.95 million more funds to the developer than the original \$8.5 million loan agreement amount. At the same time, the loan was being written-off as impaired, resulting in an FY23 balance of just \$1.36 million.
255. GCPF lent a further \$0.6 million in FY22 and \$2.35m in FY23 while also writing-off around \$2.73 million and \$7.85 million in those years respectively:
- (a) The \$2.73 million is: the Carlile loan FY22 opening balance (i.e. FY21 closing) reported as \$8.99m plus the \$0.6m in further drawdowns/lending in FY22 less the FY22 closing balance reported as \$6.86m; and
 - (b) The \$7.85 million is: the Carlile loan FY23 opening balance (i.e. FY22 closing) reported as \$6.863m plus the \$2.35m in further lending less the FY23 closing balance reported as \$1.36m.
256. Mr O'Shea did not obtain and review the investment agreements for this funding to evidence whether the loans were bona fide and on a commercial basis (arm's-length as disclosed), including in light of concurrent impairment write-offs.

Admissions

257. In relation to the specific breaches of ASAs, by reason of the matters set out above, for further lending provided for the Carlile investment in the FY22 and FY23 audits, Mr O'Shea:
- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of the investment resulting from further lending (including whether credit loss provisions should have been made), the revenue recognised for it or the completeness and accuracy of related party and other disclosures about it (i.e. the absence of any such disclosures). This includes evidence about whether the loans were bona fide and on a commercial basis (arm's-length as disclosed), including in light of concurrent impairment write-offs;
 - (b) Contrary to paragraphs [23] and [33(c)] of ASA 240 failed to evaluate as an unusual transaction whether the business rationale (or the lack thereof) of the further lending suggests that they may have been entered into to engage in fraudulent financial reporting or to conceal misappropriation of assets;
 - (c) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's FY22 and FY23⁷ financial reports were free from material misstatement

⁷ We consider that the reference to the FY21 Audit in the SAFA is a typographical error.

relating to the Carlile further lending, including the related party and other disclosures that may have been required; and

- (d) Contrary to paragraphs [5], [8] and [9(a)] of ASA 230, has otherwise failed to adequately document his audit of the further lending.

258. The lack of audit work on the further lending demonstrates Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

259. The parties submitted that Mr O'Shea did not obtain or review lending agreements (or evidence that they existed) for the further lending to the Carlile investment. They submitted that on the basis of the facts set out in the Background Facts, and on the basis of the above Admissions, Mr O'Shea failed to perform the FY22 and FY23 audits in compliance with the requirements of the various Auditing Standards set out in the Admissions above.

Consideration

260. **As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330**, we have referred to the content of these paragraphs previously at paragraphs 73 and 74 above. In summary:

- (a) Paragraph [6] of ASA 500 requires the auditor to design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence;
- (b) Paragraph [6] of ASA 330 requires the auditor to design and perform further audit procedures whose nature, timing, and extent are based on and are responsive to the assessed risks of material misstatement at the assertion level;
- (c) Paragraph [21] of ASA 300 requires that if the auditor has determined that an assessed risk of material misstatement at the assertion level is a significant risk, the auditor shall perform substantive procedures that are specifically responsive to that risk. When the approach to a significant risk consists only of substantive procedures, those procedures shall include tests of details.

261. Here, it was accepted that the assessed risk included significant risk relating to valuation and revenue recognition. In our view, Mr O'Shea's admitted failure to obtain or review lending agreements (or evidence that they existed) for the further lending to the Carlile investment demonstrated a failure to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence, demonstrated a failure to design and perform audit procedures whose nature, timing, and extent were based on and responsive to the assessed risks of material misstatement at the assertion level and demonstrated a failure to perform substantive procedures that were specifically responsive to the significant assessed risk significant risk relating to valuation and

revenue recognition. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY22 and FY23 Audits in compliance with the requirements of paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330.

262. **As to paragraphs [23] and [33(c)] of ASA 240**, it was not clear to us that Mr O'Shea identified unusual or unexpected relationships in performing analytical procedures, which is the trigger for para [23], or that transactions were outside the normal course of business or otherwise appeared unusual given Mr O'Shea's understanding. In the circumstances, we do not make a specific finding in relation to these paragraphs.
263. **As to paragraphs [11] and [17] of ASA 200**, having regard to our findings above, we are satisfied that Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's FY22 and FY23 financial reports were free from material misstatement relating to the Carlile further lending, including the related party and other disclosures that may have been required as a consequence. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY22 and FY23 Audits in accordance with the requirements of paragraph [17] of ASA 200.
264. **As to paragraphs [5], [8] and [9(a)] of ASA 230**, the content of those paragraphs is set out in paragraph 120 above. Paragraph 8 includes the obligation of an auditor to prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand (amongst other things) the nature, timing, and extent of the audit procedures performed to comply with the Australian Auditing Standards and applicable legal and regulatory requirements, and the results of the audit procedures performed, and the audit evidence obtained. Paragraph 9(a) requires the auditor, in documenting the nature, timing and extent of audit procedures performed, to record the identifying characteristics of the specific items or matters tested.
265. Mr O'Shea has admitted that he failed to adequately document his audit of the further lending. We note that this involves a value judgment about the adequacy of his documentation. The parties' evidence and submissions did not particularise the nature of the inadequacy. The essence of the complaint was a contained allegation of failure to obtain and review the investment agreements for this funding. We do not consider that we are in a position to make a finding on this contention concerning documentation.
266. **As to paragraph [15] of ASA 200**, we are satisfied, on the basis of our findings above, that the lack of audit work on the investment demonstrated that Mr O'Shea failed, to plan and perform the FY22 and FY23 Audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated and, in the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY22 and FY23 Audits in accordance with the requirements of paragraph [15] of ASA 200.

D3.3 – Professional scepticism

Background facts

267. In the HY21 engagement file a working paper titled 'Note - The Carlile.docx' included:

"Whilst reviewing subsequent events, noted that a journal to reverse interest was recognised on this investment, and interest was not accrued post 31 October 2021.

Had meeting with Brett Dickinson on 29 April 2022 at 360 Collins Street where he can(sic) through the valuation model used, which showed that due to unexpected cost overruns involving tram lines and power – which were not contemplated at project commencement – that return would be diminished (sic). These issues arose due to a change in site access caused by an adjacent property being sold.

Management have decided to stop accrtuing (sic) interest and based on recent sales and performance project, wrote back to expected recoveries. Project is still profitable. Aas (sic) interest is not "earned", no need to recognise on gross basis and impair.

Impairment journal to \$9.2m and resultant tax adjustments recognised via additional impairment journal."

Reviewed other projects and reporting with Brett Dickinson and satisfied that no other projects would require impairment at this stage.

268. The FY22 audit working paper, 'The Carlile Development *Related Party*.xlsx', for the investment refers to discussions with 'Brett Dickinson' and 'concerns' raised by Mr O'Shea. The discussions were not corroborated, and the concerns were not followed up by Mr O'Shea, as detailed above in paragraph 237 above.
269. In the FY23 audit, the minutes of a meeting on 17 July 2023 included as a project update (which may also have come from a related party director):

"Had expense blowouts due to a change in building type needed in basement. Discussed if it is impairment or ECL and whether income should be recognised; will need to speak to JTP to ensure correct treatment in accounting standards. Believe it is well under way. Website has QS reports available."

Admissions

270. By reasons of the matters set out above, Mr O'Shea failed to comply with paragraph [10] of ASRE 2410 for the HY21 review and the Carlile investment, he failed to perform the review with an attitude of professional scepticism because he failed to obtain corroborative evidence for information or explanations from the directors about the Carlile project including further detailed substantiation of the project issues and the cost impacts.
271. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the FY22 and FY23 audit, Mr O'Shea:
- (a) Contrary to paragraph [15] of ASA 200, failed to perform the audit with an attitude of professional scepticism because he failed to obtain corroborative evidence for information or explanations from the directors about the Carlile project including further detailed substantiation of the project issues and the cost impacts; and

- (b) Contrary to paragraph [10] of ASA 230, failed to adequately document discussions of significant matters with management, those charged with governance, and others, (i.e. the 17 July 2023 meeting) including with whom the discussions took place.

Submissions

- 272. The parties submitted that for the HY21 review, Mr O'Shea did not obtain evidence to corroborate information or explanations from the directors about the Carlile project including about the project issues and cost impacts noted in the working papers. The parties submitted that by reason of the facts set out in the Background Facts and the Admissions, Mr O'Shea failed to carry out the HY21 and FY22 and FY23 audits in accordance with the requirements of the Standards referred to in the Admissions above.

Consideration

- 273. **As to paragraph [10] of ASRE 2410**, in relation to the HY21 review, we find that Mr O'Shea failed to obtain corroborative evidence for information or explanations from the directors about the Carlile project including further detailed substantiation of the project issues and the cost impacts. In those circumstances, we are satisfied that Mr O'Shea failed to perform the review by exercising professional judgement and with an attitude of professional scepticism, recognising that circumstances may exist that cause the financial report to require a material adjustment for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework. In those circumstances, we are satisfied that Mr O'Shea failed to conduct the review in compliance with the requirements of paragraph [10] of ASRE 2410.
- 274. **As to paragraph [15] of ASA 200**, we find that Mr O'Shea for the FY22 Audit, failed to obtain corroborative evidence for information or explanations from the directors about the Carlile project including further detailed substantiation of the project issues and the cost impacts. In the circumstances, we are satisfied that Mr O'Shea failed to perform the audit with an attitude of professional scepticism and, accordingly, that he failed to perform the audit in compliance with the requirements of paragraph [15] of ASA 200.
- 275. **As to paragraph [10] of ASA 230**, that paragraph has been set out above, but for convenience, we set it out again:
 - “10. The auditor shall document discussions of significant matters with management, those charged with governance, and others, including the nature of the significant matters discussed and when and with whom the discussions took place. (Ref: Para. A14)”
- 276. We have already made findings in relation to similar allegations and we are satisfied that Mr O'Shea failed, as demonstrated in respect of the 17 July 2023 meeting, to adequately document discussions of significant matters with management, those charged with governance, and others, including with whom the discussions took place.
- 277. Accordingly, we are satisfied that Mr O'Shea failed, in this respect, to perform the audit in compliance with the requirements of paragraph [10] of ASA 230.

D3.4 - Impairment expense

Background facts

278. In FY22, approximately \$0.487 million accrued interest was initially recognised as income for the Carlile (a credit entry to income) and an increase in the asset balance (a debit). The investment asset balance was then credited approximately \$1 million and investment income was debited the same, with a transaction description 'Carlile writedown'. A transaction report showing this was on the audit file. This firstly had the effect of reversing or derecognising the \$0.487 million accrued interest. The audit file did not document the basis for debiting income by more than the \$0.487 that had been accrued for Carlile during FY22. Approximately \$0.5 million impairment expense for the Carlile was offset against income from other investments.
279. The \$0.5 million should instead have been included as an impairment expense. Total impairment expense in FY22 for Carlile would then have been \$2.7 million.
280. In FY23, the Carlile appears to have had a further impairment expense recognised, however, the amount is not identifiable from the audit file. Its opening carrying value was \$6.9 million, there was further lending of \$2.35 million and the closing balance was \$1.36 million – a minimum write-off of \$7.9 million could therefore be expected. No transaction reports were on the audit file. The GCPF valuation spreadsheets did not show impairment amounts, calculations or accounting treatments.
281. Mr O'Shea did not identify that impairment had been offset against income.

Admissions

282. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the impairment expense for the Carlile in the FY22 and FY23 audits, Mr O'Shea:
- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including the significant risk relating to revenue recognition) to ensure sufficient appropriate evidence was obtained to support impairment expense. This includes not checking the calculation of impairment;
 - (b) Contrary to paragraph [20] of ASA 330, failed to perform substantive procedures agreeing or reconciling the impairment expense in the financial report with the underlying accounting records and adequately examining material journal entries for the impairment expenses;
 - (c) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to investment impairment expense; and

- (d) Contrary to paragraphs [5], [8] and [9(a)] of ASA 230, has otherwise failed to adequately document his audit of the Carlile impairment expenses.
283. The lack of audit work on the Carlile impairment expense demonstrated, Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

284. The parties submitted that for the FY22 and FY23 audits, Mr O'Shea did not obtain evidence to support impairment expenses or check the calculation of impairment. They submitted that on the basis of the facts referred to above in the Background Facts and the Admissions, Mr O'Shea failed to comply with the requirements of the Auditing Standards referred to in the Admissions.

Consideration

285. ***As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330***, we have referred to these paragraphs a number of times in our reasons above. In regard to this contention, there was assessed risk (including significant risk relating to valuation and revenue recognition). We are satisfied, on the basis of the matters set out in the Background Facts above, that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk to ensure sufficient appropriate evidence was obtained to support impairment expense, and that this included not checking the calculation of impairment. In the circumstances, we are satisfied that Mr O'Shea did not perform the FY22 and FY23 Audits in accordance with the requirements of paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330,
286. ***As to paragraph [20] of ASA 330***, the requirements of this paragraph have been considered a number of times above. Mr O'Shea did not identify that impairment had been offset against income and it is evident that he did not check the calculation of impairment.
287. In the circumstances, we are satisfied that for the FY22 and FY23 Audits, Mr O'Shea failed to design or perform procedures that were responsive to the assessed risk which included the significant risk relating to revenue recognition to ensure sufficient appropriate evidence was obtained to support impairment expense. Accordingly, we are satisfied that Mr O'Shea failed to perform the FY22 and FY23 Audits in compliance with the requirements of paragraph [20] of ASA 330.
288. ***As to paragraphs [11] and [17] of ASA 200***, we have considered these paragraphs a number of times above in relation to other allegations. It follows from our finding above, that Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports for FY22 and FY23 were free from material misstatement relating to investment impairment expense. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY22 and FY23 Audits in accordance with the requirements of paragraph [17] of ASA 200.

289. **As to paragraphs [5], [8] and [9(a)] of ASA 230**, the content of those paragraphs is set out in paragraph 120 above and impose various requirements to prepare audit documentation. The primary allegation in this Section is that Mr O'Shea did not obtain sufficient appropriate audit evidence regarding investment valuations or to support the value and calculation impairment expenses or check the calculation of impairment. The allegation regarding documentation is that Mr O'Shea otherwise failed to adequately document his audit of the Carlile recoverable value and potential impairment expenses. Mr O'Shea did not point to evidence showing that the audit documentation was prepared in accordance with ASA 230 and accordingly the Board finds Mr O'Shea failed to comply with the requirements of the auditing standard.
290. **As to paragraph [15] of ASA 200**, in our view the failings on the Carlile impairment expense demonstrated that Mr O'Shea failed to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY22 and FY23 audits in compliance with the requirements of paragraph [15] of ASA 200.

D3.5 – Related party investments, completeness and accuracy of disclosures

Background facts

291. Note 14 to GCPF's FY21, FY22 and FY23 financial statements disclosed "Carlile Corporation Pty Ltd" as a related party.
292. GCPF's FY22 and FY23 financial reports, did not include any disclosure of the further lending in FY22 and FY23, described in paragraph 254 above or the indications of impairment as described in paragraphs 587ff.
293. Based on an ASIC company search there appears to be no connection of this entity to GCPF or their investments. The party to the loan agreement and the relevant related party for the Carlile loan was 929 High Street Armadale Pty Ltd, which was not disclosed.
294. Mr O'Shea did not identify:
- (a) That an incorrect party had been disclosed;
 - (b) That disclosure was required to be made (and ensured it was made) of:
 - i. the further lending of \$2.95 million, as a significant related party transaction.
 - ii. the recoverability issues with and impairment of the investment.

Admissions

295. In conducting the FY21, FY22 and FY23 audits of GCPF, and the Carlile investment Mr O'Shea did not comply with:
- (a) Paragraph [24] and [25(a)] of ASA 550, because he did not consider and perform audit work in relation to whether the investment was being

maintained on commercial terms no more favourable than would be available to others. This includes in the FY22 and FY 23 audits consideration of the further lending on the impaired asset or where interest ceased to be accrued for it; and

- (b) Paragraph [25(a)] of ASA 550, because he failed to:
- i. identify the related party relationships and transactions had been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework or followed auditor reporting requirements in ASA 705 highlighting this. This includes that the incorrect related party was disclosed for the Carlile investment.
 - ii. consider the completeness and adequacy of the related party disclosures in GCPF's financial reports, including the absence of details about their nature, terms, conditions and events; and
 - iii. conclude that the related party disclosures were inadequate, including because they did not disclose in FY22 and FY23:
 1. the underperformance of related party investments and the further lending provided beyond the initial investment agreements;
 2. the impairment losses recognised (or any discussion about this) for the Carlile;
 3. that GCPF did not accrue some or any investment income it was entitled to for the Carlile;
 4. 929 High Street Armadale Pty Ltd as the related party for the Carlile loan.

Submissions

296. The parties submitted that Mr O'Shea did not identify that an incorrect party had been disclosed in GCPF's financial statements in relation to the Carlile investment, or that disclosure was required to be made (and ensure it was made) of the further lending and recoverability issues with the investment.
297. The parties submitted that on the basis of the facts in the Background Facts and Admissions, Mr O'Shea failed to perform the FY21, FY22 and FY23 audits in accordance with the requirements of the Auditing Standards referred to in the Admissions above.

Consideration

298. **As to paragraph [24] and [25(a)] of ASA 550**, those paragraphs have been set out in full in paragraph 88 above and have been considered a number of times above.
299. Paragraph [24] provides that if management has made an assertion in the financial report to the effect that a related party transaction was conducted on terms equivalent to those prevailing in an arm's length transaction, the auditor shall obtain sufficient appropriate audit evidence about the assertion.

300. Here, management had made an assertion in the financial report to the effect that a related party transaction was conducted on terms equivalent to those prevailing in an arm's length transaction. Mr O'Shea did not consider and perform audit work in relation to whether the investment was being maintained on commercial terms no more favourable than would be available to others, in particular, in the FY22 and FY23 in relation to the further lending on the impaired asset or where interest ceased to be accrued for it.
301. Paragraph [25(a)] provides that in forming an opinion on the financial report in accordance with ASA 700, the auditor shall evaluate whether the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework.
302. Mr O'Shea did not identify that the related party relationships and transactions had been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework or followed auditor reporting requirements in ASA 705. This includes that the incorrect related party was disclosed for the Carlile investment. Mr O'Shea did not consider the completeness and adequacy of the related party disclosures in GCPF's financial reports, including the absence of details about their nature, terms, conditions and events. Mr O'Shea did not conclude that the related party disclosures were inadequate, including because of the matters in paragraph 296. Further, no evidence was provided to the Board that the disclosure deficiencies had been identified by Mr. O'Shea and either accepted as not material to the financial statements as a whole, or communicated to the directors, as would have been required under ASA 450 *Evaluation of Misstatements Identified during the Audit*.
303. In the circumstances, we are satisfied that Mr O'Shea failed to carry the audits in accordance with paragraphs [24] and [25(a)] of ASA 550 in this respect.

D4 – Specific aspects of the common issues applying to each of the related party investments - Kooyongkoot investment

D4.1 Recoverability and GCPF valuations

Background facts

304. For FY23, the reported opening balance for the Kooyongkoot investment was \$4.851 million. It increased by \$3.15 million in further drawdowns during the year to \$8.001 million (at least), which was reduced to a closing balance of \$7.129 million, being the GCPF risk adjusted Present Value (PV). Any further decrease in the PV would result directly in more impairment.
305. The FY23 audit file contained a separate working paper for the Kooyongkoot investment, D.25 Kooyongkoot Development *Related Party*.xlsx. The working paper shows that Mr O'Shea simply recalculated interest using the loan agreement rate of 20%, however, no interest had been accrued due to the investment being impaired. The workpaper included the comment:

"Project is considered impaired and carried at risk weighted valuation – accept

Conclusion

Balance appears reasonable for project after impairment is recognised.”

306. The “monthly notes” in the GCPF valuation spreadsheets indicated the project was seeking further funding and that other external funding was coming due. The June 2023 spreadsheet included “*SPV obtaining additional \$400k- \$800k from private lender*” and in the September 2023 spreadsheet included “*2nd Mortgage with Possability (sic) for \$1.3m*” and “1st Mortgage due November 7th”.
307. The project update noted for Kooyongkoot in the 17 July 2023 client meeting minutes (Minutes – GCPF 17 July.docx) included:
- “Impacted by ability to get funding to it – was funding for \$9.5m but could not bring money in and has had to reduce how quickly it can pay invoice/perform works – timeline has now expanded which will decrease valuationa (sic) through increased risk”
308. The FY23 audit file, did not contain any evidence of or document:
- (a) The circumstances relating to the impairment and whether further write down was necessary – i.e. further evidence in general about recoverability;
 - (b) Whether a default event may have occurred in relation to the loan, for either GCPF or any other financier(s), particularly if they hold higher ranking debt and security (i.e. first mortgage); and
 - (c) Whether appropriate security was in place (or remained in place) for GCPF, including that mortgagees are registered and guarantors (the related parties) have or continue to have the capacity and commitment to repay the loan.
309. In the FY23 audit Mr O’Shea did not:
- (a) Perform any audit work on the valuation of the investment;
 - (b) Consider or perform audit work to follow-up on notes to the valuation or project update minutes that may have been further impairment indicators relating to project funding;
 - (c) Perform audit work in relation to the valuation approach, calculations and assumptions used to derive the PV;
 - (d) Identify that the loan had been written down to the \$7.129 million loan principle and that this may be a possible indicator of management bias in that this may have been a management chosen value point, rather than a reasonable and supportable recoverable valuation; or
 - (e) Consider the funding comments in monthly notes and minutes as potential indicators of further impairment.

Admissions

310. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the Kooyongkoot investment in the FY22 and FY23 audits, Mr O’Shea:

- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of the investment (including whether credit loss provisions should have been made), the revenue recognised for it or the completeness and accuracy of the related party transactions;
 - (b) Failed to perform procedures required in accordance with paragraph [22 to 26] of ASA 540 relating to the value estimates of the investments (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used;
 - (c) Contrary to paragraph [26] of ASA 330 and [33(c)] of ASA 540 failed to adequately evaluate whether sufficient appropriate audit evidence had been obtained about the investment value including not taking into account evidence obtained about investment performance and project issues that contradicted the values. This includes information in the “monthly notes” in the GCPF valuation spreadsheets that indicated the project was seeking further funding and that other external funding was coming due, as well as the project update noted for Kooyongkoot in the 17 July 2023 client meeting minutes referring to funding issues and expanding timelines;
 - (d) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF’s FY23 financial reports were free from material misstatement relating to the Kooyongkoot investment; and
 - (e) Contrary to paragraphs [5], [8] and [9(a)] of ASA 230, has otherwise failed to adequately document his audit of the investment.
311. The lack of audit work on the investment demonstrated Mr O’Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

312. The parties submitted that for Kooyongkoot, a related party investment, for the FY22 and FY23 audits, Mr O’Shea did not perform any audit work on the valuation of the investment, or consider or perform any audit work to follow up on notes to the valuation regarding further impairment indicator.
313. The parties submitted that on the basis of the facts set out in the Background Facts above and on the basis of the Admissions set out above, Mr O’Shea failed to comply with the paragraphs of the Auditing Standards referred to in the Admissions above.

Consideration

314. **As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330**, we have referred to these paragraphs a number of times in our reasons above. Here, there was assessed risk (including significant risk relating to valuation and revenue recognition). In our view, in the light of the matters set out in the Background Facts above, and in the light of the failings referred to in paragraphs 308 and 309, we are satisfied that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk to ensure sufficient appropriate evidence was obtained to support the values of the investment (including whether credit loss provisions should have been made), the revenue recognised for it or the completeness and accuracy of the related party transactions.
315. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY23 audit in accordance with the requirements of paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330.
316. **As to paragraphs [22 to 26] of ASA 540**, these paragraphs are set out at paragraph 83 above and, as indicated a number of times in the above reasons, relate to "Testing How Management Made the Accounting Estimate" and requires, amongst other things, the auditor's audit procedures to include procedures, designed and performed in accordance with paragraphs [23–26], to obtain sufficient appropriate audit evidence regarding the risks of material misstatement relating to the selection and application of the methods, significant assumptions and the data used by management in making the accounting estimate.
317. We find that in the FY23 audit Mr O'Shea did not:
- (a) Perform any audit work on the valuation of the investment;
 - (b) Consider or perform audit work to follow-up on notes to the valuation or project update minutes that may have been further impairment indicators relating to project funding; and
 - (c) Perform audit work in relation to the valuation approach, calculations and assumptions used to derive the PV.
318. In the light of the facts set out in the Background Facts above and the Admissions, we are satisfied that Mr O'Shea failed to perform procedures required in accordance with paragraph [22-26] of ASA 540 relating to the value estimates of the investments (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used. In the circumstances, we are satisfied that Mr O'Shea failed to carry the FY23 audit in compliance with the requirements of paragraphs [22-26] of ASA 540.
319. **As to paragraph [26] of ASA 330**, we have already dealt with ASA 330 generally at paragraph 74 above and paragraph [26] is set out in paragraph 138 above. Paragraph [26] requires the auditor to conclude whether sufficient appropriate audit evidence has been obtained and, in forming an opinion, to consider all relevant audit evidence, regardless of whether it appears to corroborate or to contradict the assertions in the financial report.

320. **As to paragraph 33(c) of ASA 540**, (which has already been considered above in relation to other allegations), requires the auditor, in applying ASA 330 to accounting estimates, to evaluate, based on the audit procedures performed and audit evidence obtained, whether sufficient appropriate audit evidence has been obtained.
321. In our view, paragraph [33(c)] of ASA 540 is more apposite to the present complaint than paragraph [26] of ASA 330. In our view, in the light of Mr O'Shea's failures as found above, (in particular Mr O'Shea's failure perform any audit work on the valuation of the investment, his failure to consider or perform audit work to follow-up on notes to the valuation or project update minutes that may have been further impairment indicators relating to project funding and his failure to perform audit work in relation to the valuation approach, calculations and assumptions used to derive the PV), Mr O'Shea failed to adequately evaluate whether sufficient appropriate audit evidence had been obtained about the investment value.
322. In the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY23 audit in compliance with the requirements of paragraph [33(c)] of ASA 540.
323. **As to paragraphs [11] and [17] of ASA 200**, in the light of our findings above, we are satisfied that Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's FY23 financial reports were free from material misstatement relating to the Kooyongkoot investment.
324. In the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY23 audit in compliance with the requirements of paragraph [17] of ASA 200.
325. **As to paragraphs [5], [8] and [9(a)] of ASA 230**, as with some previous contentions regarding failure to comply with these paragraphs, the Parties contend that Mr O'Shea has otherwise failed to "adequately" document his audit of the investment. There were not specific submissions dealing with the evidence said to establish what was inadequate about Mr O'Shea's documentation. In the circumstances, we make no finding with regard to this allegation.
326. **As to paragraph [15] of ASA 200**, we are satisfied that the lack of audit work on the investment (see in particular the matters in paragraphs 308 and 309 above) demonstrated Mr O'Shea failed, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.
327. In the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY23 audit in compliance with the requirements of paragraph [15] of ASA 200.

D4.2 – Impairment expense

Background facts

328. The FY23 audit does not identify a Kooyongkoot impairment amount. There are indications that the investment was impaired in FY23 by about \$0.872 million. The reported opening investment balance was \$4.851 million. Adding the further \$3.15 million drawn down in FY23 (from the June valuation spreadsheet) this would be a

minimum expected FY23 balance of \$8.001 million (before any interest accrual for FY23). The \$8.001 million less the final carrying value of \$7.129 million indicates a write-off of at least \$0.872 million.

329. Mr O'Shea did not check the calculation of impairment and trace it from supporting records to journals and the financial statements.

Admissions

330. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the impairment expense for the Kooyongkoot investment in FY23 audit, Mr O'Shea:
- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330⁸, failed to design and perform procedures that were responsive to the assessed risk (including the significant risk relating to revenue recognition) to ensure sufficient appropriate evidence was obtained to support impairment expense;
 - (b) Contrary to paragraph [20] of ASA 330, failed to perform substantive procedures agreeing or reconciling the impairment expense in the financial report with the underlying accounting records and adequately examining material journal entries for the impairment expenses;
 - (c) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to the investment's impairment expense; and
 - (d) Contrary paragraphs [5], [8] and [9(a)] of ASA 230, has otherwise failed to adequately document his audit of the impairment expense.
331. The lack of audit work on the impairment expenses demonstrated Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

332. The Parties submitted that Mr O'Shea did not perform any audit work to check the calculation of impairment. ASIC relied upon the matters set out in the Background Facts and the Admissions above to support the contention that Mr O'Shea acted in breach of various paragraphs of the Auditing Standards set out in the Admissions above.

Consideration

333. **As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330**, there was assessed risk (including significant risk relating to valuation and revenue recognition). The FY23 audit does not identify a Kooyongkoot impairment amount.

⁸ The SAFA appeared to contain a typographical error in omitting reference to ASA 330

Despite indications that the investment was impaired in FY23, Mr O'Shea did not check the calculation of impairment and traced it from supporting records to journals and the financial statements.

334. In these circumstances, and having regard to the Background Facts and the Admissions above, we are satisfied that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk to ensure sufficient appropriate evidence was obtained to support impairment expense. Accordingly we are satisfied that Mr O'Shea failed to carry out the FY23 Audit in accordance with paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330,
335. **As to paragraph [20] of ASA 330**, Mr O'Shea was required by this paragraph to perform substantive procedures agreeing or reconciling the impairment expense in the financial report with the underlying accounting records and adequately examining material journal entries for the impairment expenses, but he failed to do so.
336. In the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY23 Audit in accordance with the requirements of paragraph [20] of ASA 330.
337. **As to paragraphs [11] and [17] of ASA 200**, it follows from the above findings, that Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to the investment's impairment expense.
338. Accordingly, we are satisfied that Mr O'Shea failed to carry out the FY23 audit in compliance with the requirements of paragraph [17] of ASA 200.
339. **As to paragraphs [5], [8] and [9(a)] of ASA 230**, as with some previous contentions regarding failure to comply with these paragraphs, the Parties contend that Mr O'Shea has otherwise failed to "adequately" document his audit of the investment. There were not specific submissions dealing with the evidence said to establish what was inadequate about Mr O'Shea's documentation. In the circumstances, we make no finding with regard to this allegation.
340. **As to paragraph [15] of ASA 200**, by reason of our findings above, we are satisfied that the lack of audit work on the impairment expenses demonstrated that Mr O'Shea failed, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.
341. Accordingly, we are satisfied that Mr O'Shea failed to carry out the FY23 audit in compliance with the requirements of paragraph [15] of ASA 200,

D4.3 – Related party disclosures, lack of disclosure

Background facts

342. The relevant facts are set out in paragraphs 214 above.
343. GCPF's FY23 financial report shows no disclosure was made about the recoverability issues and actual impairment of the KooyongKoot investment.

344. Mr O'Shea did not:

- (a) In evaluating the adequacy of the disclosures in the FY23 financial report, identify disclosure was required to be made (and ensured it was made) of the recoverability issues with and impairment of the investment; and
- (b) Perform procedures to determine whether the investment was being maintained at an arm's length and ensure that it was disclosed appropriately in this regard.

Admissions

345. In conducting the FY21, FY22 and FY23 audits of GCPF, Mr O'Shea did not comply with:

- (a) Paragraph [24] and [25(a)] of ASA 550, because he did not consider and perform audit work in relation to whether the investments were being maintained on commercial terms no more favourable than would be available to others; and
- (b) Paragraph [25(a)] of ASA 550, because he failed to conclude that the related party disclosures were inadequate, including because they did not disclose:
 - i. the impairment losses recognised for the investment (or any discussion about this); and
 - ii. that for the Kooyongkoot investment, GCPF did not accrue some or any investment income it was entitled to.

Submissions

346. The parties submitted that Mr O'Shea did not evaluate the adequacy of the disclosures in the financial reports or identify disclosure was required to be made about the recoverability issues and actual impairment of the Kooyongkoot Investment.

347. They submitted, relying on the matters set out in the Background Facts and the Admissions above, that Mr O'Shea failed to carry out the FY21, FY22 and FY23 Audits in accordance with the requirements of the Auditing Standards referred to in the Admissions above.

Consideration

348. **As to paragraph [24] and [25(a)] of ASA 550**, those paragraphs have been considered a number of times above.

349. Paragraph [24] provides that if management has made an assertion in the financial report to the effect that a related party transaction was conducted on terms equivalent to those prevailing in an arm's length transaction, the auditor shall obtain sufficient appropriate audit evidence about the assertion.

350. Here, management had made an assertion in the financial reports for FY21, FY22 and FY23 to the effect that a related party transaction was conducted on terms

equivalent to those prevailing in an arm's length transaction (see paragraph 215 above).

351. However, Mr O'Shea did not perform procedures to determine whether the KooyongKoot investment was being maintained at an arm's length and ensure that it was disclosed appropriately in this regard.
352. Paragraph 25(a) provides that in forming an opinion on the financial report in accordance with ASA 700, the auditor shall evaluate whether the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework.
353. GCPF's FY23 financial report shows no disclosure was made about the recoverability issues and actual impairment of the KooyongKoot investment. There was no evidence on the audit file that Mr O'Shea evaluated whether disclosure was required and ensured it was made, of the recoverability issues with the Kooyongkoot investment and impairment of the investment.
354. In the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY23 audits in accordance with paragraphs [24] and [25(a)] of ASA 550 in this respect.

D5 – Specific aspects of the common issues applying to each of the related party investments - Serpells

D5.1 - Recoverability and GCPF valuations

Background facts

Impairment indicator - Ceasing to accrue interest

355. Mr O'Shea identified in the FY22 audit that interest had not been accrued for Serpells. The FY22 audit working paper, D.40 WP - Serpells Road *Related Party*.xlsx, for the investment included:

“- no interest (sic) accrued for June as NPV of expected cash flows maximised – writte (sic) back to actual GL value in worksheet

Reviewed subsequent worksheets - June had a further writeback but August/September were accrued as normal - no nevidence (sic) of fuirther (sic) impairment on balance as at 30 June 2022

Impairment has been recognised, in effect, by reversing against investment income accrued -given that rate of return will not be realised unless profit is met then this would meet non-recognition criteria – accept”

356. In conducting the FY22 audit, Mr O'Shea did not perform (or adequately document) audit work to evidence whether the valuation approach was appropriate, and the assumptions used were reasonable and supportable (including the forecast profit and discount rate assumptions). That interest had ceased to be accrued would have caused the auditor to review the valuations in significant detail.

Valuation approach – change to apportioning

357. The carrying value for Serpells in the GCPF valuation spreadsheets was determined in:

- (a) FY22 using GCPF's PV valuation approach.
- (b) FY23 by apportioning a forecast profit amount for the project to GCPF and some other investors in the project (referred to as 'partners'), with a weighting calculated from the age and amount of their investments.

358. The FY23 audit file contained minutes of a meeting on 17 July 2023. It included as a project update for Serpells:

"Complicated valuation as it has third party investors – equity came in earlier so have methodology to assign and how profits are apportioned – is unique in this nature.

Losses are apportioned as well as gains. Well under construction but has a sales risk and needs more funding – only covers building costs not marketing etc – need funding from GCPF to drive program"

359. Mr O'Shea did not:

- (a) Consider the appropriateness of the change in valuation approach, including any associated disclosure requirements (about the change);
- (b) Evaluate whether the approach was appropriate, considering that the investment was a loan with a fixed interest rate;
- (c) Obtain evidence about the existence, nature, amount, age and ranking of the debts, including the preference shareholdings, which ordinarily might be expected to rank after lenders (and if so, may mean the approach was inappropriate);
- (d) Consider whether there were indicators of management bias in this approach given the director related parties, including whether it may have been advantageous for them to value the investment based on a ranking of other related parties equal to or ahead of GCPF; and
- (e) Consider whether this indicates the loans were not maintained on arms-length basis as disclosed.

Assumptions - Monthly notes

360. The 'monthly notes' in the June 2023 and September 2023 valuation spreadsheets indicate that:

- (a) The developer was seeking but could not obtain mezzanine finance and that marketing and sales were on hold as a result; and
- (b) GCPF assumed a profit of \$0.4 million in their June valuation but excluded a

"\$0.94 million contingency risk amount determined by the project manager, which would otherwise have resulted in a forecast loss of \$0.46 million."

361. The June 2023 valuation spreadsheet 'monthly notes' stated:

"Mezzaning (sic) Finance progressing through Wingspan VM Items being reviewed, some may require reinstatement Display Suite lease extended to end of 2023

Marketing on hold until additional funds available - only 4/20 apartments sold
Hub Feasibility (sic) -\$463,204 including \$940,235 risk contingency
GCPF removing risk contingency and adopting profit of \$404,227 No
Change to Profit or Delay Risk"

362. The FY23 September valuation spreadsheet 'monthly notes' stated:

'Mosaic not providing Mezzanine, alternate source required Pricing of VM items estimated at \$800,000

Display Suite currently month to month

Limited marketing activity until Mezz finance available Hub Feasibility corrected for Contingency

Settlement date delayed 3 months No Change to Profit or Delay Risk'

363. Mr O'Shea did not:

- (a) Consider these notes and seek further details and evidence about them;
- (b) Consider whether, in light of the contingency amount, the assumed profit was reasonable and supportable;
- (c) consider whether the financing issue was a possible impairment indicator – that there may be insufficient funds to complete the project or potential costly delays;
- (d) obtain further evidence about the affect of any funding issues including whether:

Admissions

364. In relation to the specific breaches of ASAs, by reasons of the matters set out above, for the Serpells investment in the FY22 and FY23 audits, Mr O'Shea:

- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of the investments (including whether credit loss provisions should have been made) and the revenue recognised for them;
- (b) Failed to perform procedures required in accordance with paragraph [22 to 26] of ASA 540 relating to the value estimates of the investments (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the

selection and application of methods, significant assumptions and the data used. In FY23 this would have included procedures relating to the appropriateness of the change in valuation method and consideration of the issues raised in the GCPF valuation 'monthly notes'

- (c) Contrary to paragraph [33(c)] of ASA 540 failed to adequately evaluate whether sufficient appropriate audit evidence had been obtained about the investment values including not taking into account evidence obtained about investment performance and project issues that contradicted the values, including the issues raised in the GCPF valuation 'monthly notes'; and
- (d) Contrary to paragraphs [24], and [25] of ASA 550, failed to obtain sufficient appropriate audit evidence about the reported assertion that the investments had been made on terms equivalent to those prevailing in an arm's length transaction.

Submissions

- 365. The Parties submitted (relying on the matters in the Background Facts and Admissions set out above) that Mr O'Shea did not perform audit work to evidence whether the valuation approach was appropriate and whether the assumptions were reasonable and supportable, and for the FY23 audit, did not consider the appropriateness of the change in valuation approach, or consider whether the issue of mezzanine finance was an impairment issue or how the funding issues would affect the loan.
- 366. They submitted that in the circumstances, Mr O'Shea failed to perform the FY22 and FY23 Audits in compliance with the requirements of the Auditing Standards referred to in the Admissions above.

Consideration

- 367. **As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330**, we accept the facts set out in the Background Facts and Admissions above. On the basis of those facts, we find that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of the investments (including whether credit loss provisions should have been made) and the revenue recognised for them.
- 368. We are satisfied, in the circumstances, that Mr O'Shea failed to perform the FY22 and FY23 Audits in accordance with the requirements of paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330.
- 369. **As to paragraphs [22 to 26] of ASA 540**, these paragraphs are set out at paragraph 83 above and, as indicated a number of times in the above reasons, relate to "Testing How Management Made the Accounting Estimate" and requires, amongst other things, the auditor's audit procedures to include procedures, designed and performed in accordance with paragraphs [23–26], to obtain sufficient appropriate audit evidence regarding the risks of material misstatement relating to the selection

and application of the methods, significant assumptions and the data used by management in making the accounting estimate.

370. On basis of the facts set out in the Background Facts and Admissions above, we find that Mr O'Shea failed to perform procedures relating to the value estimates of the investments (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used.
371. In the circumstances we are satisfied that Mr O'Shea failed to perform the FY22 and FY23 Audits in accordance with the requirements of paragraphs [22 to 26] of ASA 540
372. ***As to paragraph [33(c)] of ASA 540***, on basis of the facts set out in the Background Facts and Admissions above, we find that Mr O'Shea failed to adequately evaluate whether sufficient appropriate audit evidence had been obtained about the investment values including not taking into account evidence obtained about investment performance and project issues that contradicted the values, including the issues raised in the GCPF valuation 'monthly notes'. In the circumstances we are satisfied that Mr O'Shea failed to perform the FY22 and FY23 Audits in accordance with the requirements of paragraph [33(c)] of ASA 540.
373. ***As to paragraphs [24], and [25] of ASA 550***, on the basis of the facts set out in the Background Facts and Admissions above, we find that Mr O'Shea failed to obtain sufficient appropriate audit evidence about the reported assertion that the investments had been made on terms equivalent to those prevailing in an arm's length transaction.
374. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY22 and FY23 Audits in accordance with the requirements of paragraphs [24], and [25] of ASA 550.

D5.2 - Further lending

Background facts

375. The June 2023 valuation spreadsheet in the FY23 audit file showed, further lending of \$0.26 million was provided to the developer in FY23 as shown in the FY23 GCPF June valuation spreadsheet.
376. At the same time, GCPF had ceased to accrue interest on the loan and was approaching the value of the investment by apportioning project returns to other parties at least on an equal ranking.
377. Mr O'Shea did not:
- (a) Obtain and review the investment agreements for this funding to evidence whether the loans were bona fide and on a commercial basis (arm's-length as disclosed), including considering interest was not being accrued; and
 - (b) Consider the ranking of the additional funding given that on an equal ranking basis (the valuation approach) the additional lending would dilute the project returns available for GCPF's existing loan and to the other parties.

Admissions

378. In relation to the specific breaches of ASAs, by reason of the matters set out above, for further lending provided for the Serpells investment in the FY23 audit, Mr O'Shea:

- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of the investment resulting from further lending (including whether credit loss provisions should have been made), the revenue recognised for it or the completeness and accuracy of related party and other disclosures about it (i.e. the absence of any such disclosures). This includes evidence about whether the loans were bona fide and on a commercial basis (arm's-length as disclosed), including in light of concurrent impairment write-offs;
- (b) Contrary to paragraphs [23] and [33(c)] of ASA 240 failed to evaluate as an unusual transaction whether the business rationale (or the lack thereof) of the further lending suggests that they may have been entered into to engage in fraudulent financial reporting or to conceal misappropriation of assets;
- (c) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's FY21 and FY22 financial reports were free from material misstatement relating to the Serpells further lending, including the related party and other disclosures that may have been required; and
- (d) Contrary paragraphs [5], [8] and [9(a)] of ASA 230, he has otherwise failed to adequately document his audit of the further lending.

379. The lack of audit work on the further lending demonstrates Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

380. The parties submitted that, for the FY23 audit, Mr O'Shea did not obtain the investment agreement (or evidence one existed) for the further funding, or consider the effect of the further lending and whether it would dilute the project returns available for GCPF's existing loan and to other parties. The parties relied upon the matters in the Background Facts and Admissions above in support of the contention that Mr O'Shea breached the Auditing Standards set out in the Admissions above.

Consideration

381. ***As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330***, we find, on the basis of the fact in the Background Facts above, that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support:
- (a) The values of the investment resulting from further lending (including whether credit loss provisions should have been made);
 - (b) The revenue recognised for it;
 - (c) The completeness and accuracy of related party and other disclosures about it (i.e. the absence of any such disclosures); and
 - (d) Whether the loans were bona fide and on a commercial basis (arm's-length as disclosed), including in light of concurrent impairment write-offs.
382. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY23 Audit in accordance with the requirements of paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330.
383. ***As to paragraphs [23] and [33(c)] of ASA 240***, it is not clear that Mr O'Shea identified unusual or unexpected relationships in performing analytical procedures, which is the trigger for para [23]. And in relation to para 33(c), it is not clear that the transactions were outside the normal course of business or otherwise appeared unusual given Mr O'Shea's understanding. In the circumstances, we do not make a specific finding in relation to these paragraphs.
- see below:
384. ***As to paragraphs [11] and [17] of ASA 200***, based upon our findings above, we are satisfied that as a consequence of the above, Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's FY23 financial report was free from material misstatement relating to the Serpells further lending, including the related party and other disclosures that may have been required.
385. ***As to paragraphs [5], [8] and [9(a)] of ASA 230***, as with some previous contentions regarding failure to comply with these paragraphs, the Parties contend that Mr O'Shea has otherwise failed to "adequately" document his audit of the investment. There were not specific submissions dealing with the evidence said to establish what was inadequate about Mr O'Shea's documentation. In the circumstances, we make no finding with regard to this allegation.
386. ***As to paragraph [15] of ASA 200***, we are satisfied by reason of the lack of audit work on the further lending that Mr O'Shea failed to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.
387. In the circumstances we are satisfied that Mr O'Shea failed to perform the FY 23 Audit in accordance with the requirements of paragraph [15] of ASA 200.

D5.3 – Professional scepticism

Background facts

388. The relevant facts are set out in paragraph 355 above.

389. Mr O'Shea did not:

- (a) Demonstrate professional scepticism and perform audit work to obtain further corroborating evidence about the project update. This includes about the 'sales risk' and marketing expenses not being covered;
- (b) Consider the impact on the valuation; and
- (c) Consider the related party aspects of the valuation methodology.

Admissions

390. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the FY23 audit, Mr O'Shea:

- (a) Contrary to paragraph [15] of ASA 200, failed to perform the audit with an attitude of professional scepticism because he failed to obtain corroborative evidence for information or explanations from the directors about the Serpells project including further detailed substantiation of the project issues and the cost impacts; and
- (b) Contrary to paragraph [10] of ASA 230, failed to adequately document discussions of significant matters with management, those charged with governance, and others, (i.e. the 17 July 2023 meeting) including with whom the discussions took place.

Submissions

391. The parties submitted that Mr O'Shea did not demonstrate professional scepticism and perform audit work to obtain further evidence about the project sales and fundings issues (referred to in paragraph 355 above), or consider the impact on the valuation or the related party aspects of the valuation methodology

Consideration

392. **As to paragraph [15] of ASA 200**, we accept, on the basis of the above facts referred to in the Background Facts, that Mr O'Shea failed to obtain corroborative evidence for information or explanations from the directors about the Serpells project including further detailed substantiation of the project issues and the cost impacts.

393. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY 23 Audit in accordance with the requirements of paragraph [15] of ASA 200.

394. **As to paragraph [10] of ASA 230**, we accept on the basis of the above facts that Mr O'Shea failed to adequately document discussions of significant matters with management, those charged with governance, and others, (i.e. the 17 July 2023 meeting) including with whom the discussions took place.

395. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY 23 Audit in accordance with the requirements of paragraph [10] of ASA 230,

D5.4 Impairment expense

Background facts

396. In FY23, the reported value of Serpells was \$5.3 million. The GCPF June 2023 valuation spreadsheet shows that had interest been fully accrued per the loan agreement then the amount owing to GCPF at that time would have been \$6.5 million.
397. The FY23 audit file does not include whether any of the \$1.2 million difference (in carrying amount to the fully accrued amount) was included in the impairment expense or whether interest was only accrued up until the carrying amount equalled the valuation.
398. Mr O'Shea did not:
- (a) Check the calculation of impairment and traced it from the financial statements supporting records, calculations and journals; and
 - (b) In checking the calculations, determine which investments were impaired and whether adjustments to Serpells investment were appropriately accounted for.

Admissions

399. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the impairment expense for the Serpells investment in the FY23 audit, Mr O'Shea:
- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6]⁹ and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including the significant risk relating to revenue recognition) to ensure sufficient appropriate evidence was obtained to support impairment expense;
 - (b) Contrary to paragraph [20] of ASA 330, failed to perform substantive procedures agreeing or reconciling the impairment expense in the financial report with the underlying accounting records and adequately examining material journal entries for the impairment expenses;
 - (c) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to the investment's impairment expense; and

⁹ The SAFA appears to have contained a typographical error in not referred to paragraph [21] of ASA 330.

- (d) Contrary paragraphs [5], [8] and [9(a)] of ASA 230, he has otherwise failed to adequately document his audit of the impairment expense.
400. The lack of audit work on the impairment expenses demonstrated Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

401. The parties submitted, relying upon the above facts and admissions, that for the FY23 audit, Mr O'Shea did not check the valuation of impairment or trace it from the financial statements to supporting records, calculations and journals, or check which investments were impaired and whether adjustments to Serpells were appropriately accounted for.

Consideration

402. **As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330**, we accept that on the basis of the above facts, that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk (including the significant risk relating to revenue recognition) to ensure sufficient appropriate evidence was obtained to support impairment expense.
403. Accordingly, we are satisfied that Mr O'Shea failed to carry out the FY23 Audit in accordance with the requirements of paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330,
404. **As to paragraph [20] of ASA 330**, we accept that on the basis of the above facts that Mr O'Shea failed to perform substantive procedures agreeing or reconciling the impairment expense in the financial report with the underlying accounting records and adequately examining material journal entries for the impairment expenses.
405. Accordingly, we are satisfied that Mr O'Shea failed to carry out the FY23 Audit in accordance with the requirements of paragraph [20] of ASA 330,
406. **As to paragraphs [11] and [17] of ASA 330**, we accept that as a consequence of the above findings, Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to the investment's impairment expense.
407. Accordingly, we are satisfied that Mr O'Shea failed to carry out the FY23 Audit in accordance with the requirements of paragraph [17] of ASA 200.
408. **As to paragraphs [5], [8] and [9(a)] of ASA 230**, as with some previous contentions regarding failure to comply with these paragraphs, the Parties contend that Mr O'Shea has otherwise failed to "adequately" document his audit of the investment. There were not specific submissions dealing with the evidence said to establish what was inadequate about Mr O'Shea's documentation. In the circumstances, we make no finding with regard to this allegation.

409. **As to paragraph [15] of ASA 200**, we are satisfied that the lack of audit work on the impairment expenses demonstrated Mr O'Shea failed to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.
410. Accordingly, we are satisfied that Mr O'Shea failed to carry out the FY23 Audit in accordance with the requirements of paragraph [15] of ASA 200, in this respect.

D5.5 – Related party investments, lack of disclosure

Background facts

411. At some point in FY21, GCPF entered into an agreement with Serpells Road Pty Ltd, whereby GCPF agreed to advance \$4.8m to the Serpells project (**Serpells loan agreement**). The agreement was signed by Mr Pappas and Mr Pappas' daughter on behalf of GCPF, and Mr Dickinson and Mr Hewish on behalf of Serpells Road Pty. The purpose of the loan was described in the agreement as being 'specifically advanced for business purposes only to complete the Project.' The agreement was not dated.
412. Mr O'Shea had a copy of the Serpells loan agreement on the audit files from FY21 to FY23. The loan agreement contained the following terms that would indicate non-arm's length dealings or that would otherwise require disclosure:
- (a) There is no guarantor specified – refer to the schedule in the Serpells loan agreement; and.
 - (b) Clause 18.4 of the Serpells loan agreement includes that the loan to GCPF ranks equally with any obligations of the borrower to its Redeemable Preference Shareholders.
413. The GCPF valuation spreadsheets on the audit files for FY22 and FY23 show other parties with some form of equity interests in the development. They are referenced by terms that include 'UGC' which would indicate they may be director related given their connection with UGC.
414. The FY22 valuation spreadsheet lists (along with amount totalling around \$1 million) under the heading 'Partner Loans':
- 'Gacesa Hub
 - UGC Projects
 - UGC Projects (Directors)'
415. The FY23 June and September valuation spreadsheets also includes details about preference shareholders titled 'UGC Clients' (with 'equity' values totalling \$1.9 million). These are included in the apportioned value calculation.
416. Mr O'Shea did not:
- (a) In evaluating the evidence obtain, identify these parties and the potential for them to be related;

- (b) Make further enquiries and obtain corroborative evidence about whether the parties were related and ensured they and any transactions with them were disclosed appropriately; and
- (c) Consider whether the disclosures about investments being on an arms-length basis accorded with the loan agreement not including a guarantor and providing equal ranking of the loan with preference shareholders.

Admissions

417. In conducting the FY21, FY22 and FY23 audits of GCPF, and the Serpells investment, Mr O'Shea did not comply with:

- (a) Paragraph [24] and [25(a)] of ASA 550, because he did not consider and perform audit work in relation to whether the investments were being maintained on commercial terms no more favourable than would be available to others. This includes consideration of the further lending on impaired assets or where interest ceased to be accrued;
- (b) Paragraph [25(a)] of ASA 550, because he failed to:
 - i. consider the completeness and adequacy of the related party disclosures in GCPF's financial reports, including the absence of details about their nature, terms, conditions and events;
 - ii. conclude that the related party disclosures were inadequate, including because they did not disclose:
 - 1. the underperformance of related party investment and the further lending provided to it beyond the initial investment agreements;
 - 2. that GCPF did not accrue some investment income it was entitled to for the Serpells loan;
 - 3. other possible related parties existing for the Serpells investment.

Submissions

418. The parties submitted that for the FY21, FY22 and FY23 audits, Mr O'Shea did not obtain evidence to identify the parties relevant to the further lending in FY21 to determine whether they were related, and if so ensure any transactions were appropriately disclosed or accorded with the loan agreements.

Consideration

419. **As to paragraph [24] and [25(a)] of ASA 550**, as will be recalled from previous consideration of these paragraphs above (see paragraph 88 above) these require that if management has made an assertion in the financial report to the effect that a related party transaction was conducted on terms equivalent to those prevailing in an arm's length transaction, the auditor shall obtain sufficient appropriate audit evidence about the assertion (paragraph [24]) and that in forming an opinion on the financial report in accordance with ASA 700, the auditor shall evaluate whether the identified related party relationships and transactions have been appropriately

accounted for and disclosed in accordance with the applicable financial reporting framework (paragraph [25(a)]).

420. Here, management had made an assertion in the financial report to the effect that a related party transaction was conducted on terms equivalent to those prevailing in an arm's length transaction.
421. Mr O'Shea
- (a) Did not consider and perform audit work in relation to whether the investment was being maintained on commercial terms no more favourable than would be available to others; and
 - (b) Consider the completeness and adequacy of the related party disclosures in GCPF's financial reports, including the absence of details about their nature, terms, conditions and events, or conclude that the related party disclosures were inadequate, including because they did not disclose other possible related parties existing for the Serpells investment.
422. In the circumstances, we are satisfied that Mr O'Shea failed to carry the FY21, FY22 and FY23 Audits in accordance with paragraphs [24] and [25(a)] of ASA 550 in this respect.

D6 - Specific aspects of the common issues applying to each of the related party investments – Point Bay investments

D6.1 – Initial feasibility

Background facts

Joint Venture Agreement

423. In or around 2020, GCPF entered into a Joint Venture Agreement with Point Bay Developments Pty Ltd (**Point Bay JV Agreement**). The agreement was signed by Mr Dickinson and Mr Hewish for GCPF and Mr Pappas for Point Bay Development Pty Ltd. The agreement was not dated.
424. Appendix B to the Point Bay JV Agreement included feasibility forecast cash flows for the project.
425. The Joint venture agreement specified that borrowing from an external financier would be obtained. Section 6(a) of the Joint Venture Agreement includes (Party 1 being Point Bay Developments Pty Ltd and Party 2 being GCPF) :
- “the parties must contribute the capital required to complete the project in the following proportions.
- (i) Party 1 All funds for the Project will be provided by an external financier and by Party 2 pursuant to the Funding Terms.
 - (ii) Party 2 In accordance with the Funding Terms.”

426. In the FY21 audit, Mr O'Shea did not consider or perform audit work in relation to:
- (a) The forecast cash flows in the joint venture agreement; or
 - (b) The initial project feasibility and whether credit losses should have been provided for in accordance with AASB 9.

Subsequent loan

427. In or around 2021, GCPF entered into a deed with Point Bay Developments Pty Ltd, to provide an \$8.5 million loan (**Point Bay Loan Agreement**). Clause 22 of the Point Bay Loan Agreement refers to the Point Bay JV agreement dated 26 June 2020.
428. The FY21 audit file contained a copy of the Point Bay Loan Agreement.
429. The FY22 audit file contained GCPF's June 2022 valuation spreadsheet, which shows the first draw down on the loan occurred on 22 July 2021.
430. GCPF's FY21 financial report did not disclose the loan as a subsequent event in or as a related party transaction.
431. In the FY21 and FY22 audits, regarding further lending provided under the Point Bay Loan Agreement, Mr O'Shea did not consider its relevance to or effect on the feasibility of the joint venture project or the recoverability of the investment.
432. Mr O'Shea did not:
- (a) Consider why the loan was made including whether the loan was made because of issues with the project;
 - (b) Obtain and document an understanding of the commercial basis for the loan including in the context of the joint venture agreement which stipulated external finance would be obtained; and
 - (c) Enquire about this departure from the agreement including whether there had been issues in obtaining external financing that may have indicated issues with the project's feasibility or risk.
433. Such audit work, if performed in relation to such a significant related party joint venture investment in these circumstances, would be to audit:
- (a) Revenue recognition and whether the revenue was recoverable and therefore able to be recognised;
 - (b) Valuation and whether expected credit losses should be recognised in accordance with AASB 9;
 - (c) Whether there may be related adjusting events; and
 - (d) Of the adequacy of disclosure, including about related parties and subsequent events – the auditor would have ensured it was actually disclosed.

Admissions

434. In relation to the specific breaches of ASAs, by reasons of the matters set out above, for the Point Bay investment (including the loan) in the FY21 and FY22 audits, Mr O'Shea:

- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of investment (including whether credit loss provisions should have been made), the recoverability of the revenue recognised it or the completeness and accuracy of their related party disclosures, including that they were on 'normal commercial terms';
- (b) Contrary to paragraphs [24], and [25] of ASA 550, failed to obtain sufficient appropriate audit evidence about reported assertion that the new investments had been made on terms equivalent to those prevailing in an arm's length transaction and did not adequately evaluate whether the investments and director relationships had been appropriately disclosed; and
- (c) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to the new investments, including their related party disclosures.

Submissions

435. The parties submitted that:

- (a) For the FY21 audit, for the joint venture agreement, Mr O'Shea did not consider or perform audit work in relation to the feasibility cash flows in the agreement and whether credit losses should have been provided for in accordance with AASB 9; and
- (b) For the FY21 audit, for the loan agreement first drawn down in July 2021, Mr O'Shea did not consider its lack of disclosure as a subsequent event. For the FY21 and FY22 audits, Mr O'Shea did not consider or obtain an understanding of why the loan was made (its commercial basis), including whether the loan was made because of issues with the project or how providing the loan was a departure from the joint venture agreement.

Consideration

436. **As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA**, there was assessed risk (including significant risk relating to valuation and revenue recognition). We accept that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk to ensure sufficient appropriate evidence was obtained to support the values of investment (including whether

credit loss provisions should have been made), the recoverability of the revenue recognised it or the completeness and accuracy of their related party disclosures, including that they were on 'normal commercial terms'.

437. We are satisfied, in the circumstances, that Mr O'Shea failed to carry out the FY21 Audit in accordance with the requirements of paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330.
438. **As to paragraph [24] and [25] of ASA 330**, here, management had made an assertion in the financial report to the effect that a related party transaction was conducted on terms equivalent to those prevailing in an arm's length transaction. We are satisfied, on the basis of the facts set out in the Background Facts and the Admissions above, that Mr O'Shea failed to obtain sufficient appropriate audit evidence about the reported assertion that the new investments had been made on terms equivalent to those prevailing in an arm's length transaction and did not adequately evaluate whether the investments and director relationships had been appropriately disclosed.
439. We are satisfied, in the circumstances, that Mr O'Shea failed to carry out the FY21 Audit in accordance with the requirements of paragraphs [24] and [25] of ASA 500.
440. As to paragraphs [11] and [17] of ASA 200, on the basis of the facts above and our findings, we are satisfied that Mr O'Shea did not, in respect of the FY21 Audit, obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial reports were free from material misstatement relating to the new investments, including their related party disclosures.
441. Accordingly we are satisfied that Mr O'Shea failed to carry out the FY21 Audit in accordance with the requirements of paragraph [17] of ASA 200.

D6.2 – Recoverability and GCPF valuations

Background facts

442. The FY22 audit file included a FY21 audit file working paper, D.20 WP - Point Bay Development *Related Party*.xlsx, for the Point Bay investment. The working paper was not updated for FY22. A copy of the Point Bay Loan Agreement was also on the FY22 audit file. No other audit work on the investment was on the FY22 audit file.
443. In the FY22 audit Mr O'Shea did not perform audit work in relation to the Point Bay investments, including in relation to the continuing joint venture or the loan made to the developer in FY22 (other than retaining a copy of the loan agreement obtained in the FY21 audit). Mr O'Shea did not:
- (a) Perform audit procedures and obtain audit evidence about the valuation, revenue recognition and disclosure – these were each assessed as "significant risks". Valuation and revenue recognition required evidence about recoverability;

- (b) Obtain evidence about the status and progress of the project, its performance against initial budgets and current forecast cash flow including that they were reasonable and supportable; or
- (c) Obtain evidence about the registration of mortgages or other caveats over the development property and whether they had been registered in accordance with the joint venture loan agreement - that is evidence that GCPF had a first mortgage registered per the loan agreement. Confirmation of this security would ordinarily be required to evidence the recoverability of such an investment, particularly given its director related party status.

Admissions

444. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the Point Bay investments in the FY22 audit, Mr O'Shea:

- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of the investments (including whether credit loss provisions should have been made), the revenue recognised for them or the completeness and accuracy of the related party transactions. He performed no audit work;
- (b) Failed to perform procedures required in accordance with paragraph [22 to 26] of ASA 540 relating to the value estimates of the investments (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used;
- (c) Contrary to paragraphs [24], and [25] of ASA 550, failed to obtain sufficient appropriate audit evidence about reported assertion that the investments had been made on an arm's length and did not adequately evaluate whether the investments and director relationships had been appropriately disclosed;
- (d) Contrary to paragraph [35] of ASA 540 failed to adequately determine whether the value of the investment and related disclosures were reasonable;
- (e) Contrary to paragraph [36] of ASA 540 failed to adequately evaluate in relation to the investment values whether disclosures beyond specified by the reporting framework were necessary to achieve fair presentation of the financial report;
- (f) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF financial reports was free from material misstatement relating to the Point Bay investments, including their related party and other disclosures; and

- (g) Contrary paragraphs [5], [8] and [9(a)] of ASA 230, he has otherwise failed to adequately document his audit of these investments.

445. The lack of audit work on these investments demonstrated Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

446. The parties submitted that, for the FY22 audit, Mr O'Shea did not perform any audit work in relation to the Point Bay investments including in relation to the continuing joint venture or the loan made to the developer in FY22. They relied upon the facts set out in the Background Facts and Admissions above in support of their contention that Mr O'Shea failed to perform the FY22 Audit in compliance with the requirements of the Auditing Standards referred to in the Admissions above.

Consideration

447. **As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330**, valuation, revenue recognition and disclosure were each assessed as "significant risks". In view of the facts set out in the Background Facts and Admissions above (which we accept) and the failure to perform any audit work in relation to the Point Bay investments in the FY22 Audit, as detailed above, we are satisfied that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk to ensure sufficient appropriate evidence was obtained to support the values of the investments (including whether credit loss provisions should have been made), the revenue recognised for them or the completeness and accuracy of the related party transactions.

448. Accordingly, we are satisfied that Mr O'Shea failed to perform the FY22 Audit in accordance with the requirements of paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330

449. **As to paragraph [22 to 26] of ASA 540**, In view of the failure to perform any audit work in relation to the Point Bay investments in the FY22 Audit, as detailed above, we are satisfied that Mr O'Shea failed to perform procedures required in accordance with paragraph [22 to 26] of ASA 540 relating to the value estimates of the investments (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used.

450. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY22 Audit in accordance with the requirements of ASA 540 in this regard.

451. **As to paragraphs [24], and [25] of ASA 550**, in the light of our findings above, we are satisfied that Mr O'Shea failed to obtain sufficient appropriate audit evidence about reported assertion that the investments had been made on an arm's length basis and did not adequately evaluate whether the investments and director relationships had been appropriately disclosed.

452. Accordingly we are satisfied that Mr O'Shea failed to perform the FY22 Audit in accordance with the requirements of ASA 550 in this regard.
453. **As to paragraph [35] of ASA 540**, again, in the light of the facts set out in the Background Facts and Admissions and our above findings, we are satisfied that Mr O'Shea failed to adequately determine whether the value of the investment and related disclosures were reasonable, and, accordingly are satisfied that Mr O'Shea failed to perform the FY22 Audit in accordance with the requirements of paragraph [35] of ASA 540.
454. **As to paragraph [36] of ASA 540**, as noted previously, by reason of the failure to perform the necessary audit procedures required in ASA 540, including as noted above, assessing the accounting estimates and associated disclosures, we are satisfied that Mr O'Shea failed to complete the requirements of AASB 7 *Financial Instruments: Disclosures* and AASB 13 *Fair Value Measurement*.
455. **As to paragraphs [11] and [17] of ASA 200**, in the light of the facts set out in the Background Facts and Admissions and our above findings, we are satisfied that Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF financial reports was free from material misstatement relating to the Point Bay investments, including their related party and other disclosures.
456. Accordingly, we are satisfied that Mr O'Shea failed to perform the FY22 Audit in accordance with the requirements of paragraph [17] of ASA 200.
457. **As to paragraphs [5], [8] and [9(a)] of ASA 230**, as with some previous contentions regarding failure to comply with these paragraphs, the Parties contend that Mr O'Shea has otherwise failed to "adequately" document his audit of these investments. There were not specific submissions dealing with the evidence said to establish what was inadequate about Mr O'Shea's documentation. In the circumstances, we make no finding with regard to this allegation.
458. **As to paragraph [15] of ASA 200**, in our view, having regard to the facts set out in the Background Facts and Admissions and our above findings, the lack of audit work on these investments demonstrated Mr O'Shea failed, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.
459. Accordingly, we are satisfied that Mr O'Shea failed to perform the FY22 Audit in accordance with the requirements of paragraph [15] of ASA 200.

D6.3 – Related party investments, lack of disclosure

No disclosure of put and call options agreement and subsequent sale

460. The FY23 audit file included a put and call agreement for the sale of the majority of the Point Bay development for \$50.15 million once certain conditions had been met.¹⁰

¹⁰ F55.0010.0001.1291 (FY23 - put and call options deed)

461. The put and call agreement included:
- (a) The seller as Point Bay Developments Pty Ltd;
 - (b) The buyer as Pappy View Pty Ltd;
 - (c) As 'recitals'

“The Seller has requested the Buyer to grant to the Seller an option to require the Buyer to purchase the Land which the Buyer has agreed to do on the terms and conditions contained in this Deed.

The Buyer has requested the Seller to grant to the Buyer an option to purchase the Land which the Seller has agreed to do on the terms and conditions contained in this Deed.”
 - (d) A 'deposit' amount of \$12 million.
 - (e) An execution date of 9 February 2023.
462. The sale proceeded with a deposit being paid after balance date but prior to the audit report being issued.
463. The FY23 audit file included a letter from the lawyer of the developer (Chris Pappas) stated his commitment to repaying GCPS once the full sale amount was received.¹¹
464. Mr O'Shea relied on the agreement and sale as evidence about the recoverability of the investment in FY23. In the FY23 audit working paper titled D.21 WP - Point Bay Development.xlsx Mr O'Shea refers to it being a 'type 2 adjusting event'. No further consideration was on the audit file as to whether the agreement or sale event should have been disclosed, either as a related party matter or as a subsequent event.
465. A copy of an FY21 working paper for subsequent event was included in the FY23 audit file with no update or consideration of FY23 related events. The same FY21 working paper is also included in and was not updated for the FY22 audit file.
466. In the FY23 audit Mr O'Shea gave insufficient consideration about whether disclosure should have been made about a significant sale agreement entered into by the developer during FY23 or the subsequent sale. Mr O'Shea did not:
- (a) ensure the sale agreement entered into and the subsequent sale were disclosed;
 - (b) consider and make enquiries about why the sale was occurring so as to properly and adequately plan and perform the audit.

Admissions

467. In conducting FY23 audit of GCPF, Mr O'Shea did not comply with paragraph [25(a)] of ASA 550 and [8] of ASA 560, because he failed to conclude that the related party

¹¹ F55.0010.0001.1289

disclosures were inadequate, including because they did not disclose the Point Bay put and call agreement entered into in FY23 and the subsequent sale

Submissions

468. The parties submitted that, for the FY23 audit, Mr O'Shea did not give sufficient consideration about whether disclosure should have been made about a significant sale agreement entered into by the developer during FY23 or the subsequent sale.

Consideration

469. **As to paragraph 25(a) of ASA 550** (see paragraph 88), that paragraph provides that in forming an opinion on the financial report in accordance with ASA 700, the auditor shall evaluate whether the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework. AASB 101 *Presentation of Financial Statements* paragraph [82(ba)] requires disclosure of 'impairment losses' determined in accordance with Section 5.5 of AASB 9 as a line item in the statement of profit or loss.
470. In view of the facts set out in the Background Facts and Admissions above (which we accept), we accept that Mr O'Shea failed to conclude that the related party disclosures were inadequate, including because they did not disclose the Point Bay put and call agreement entered into in FY23 and the subsequent sale.
471. Accordingly, we are satisfied that Mr O'Shea failed to perform the FY22 Audit in accordance with the requirements of paragraph [25(a)] of ASA 550.
472. **As to paragraph [8] of ASA 560**, Auditing Standard 560 deals with "Subsequent Events". The Standard commences:

"Introduction

Scope of this Auditing Standard

1. This Auditing Standard deals with the auditor's responsibilities relating to subsequent events in an audit of a financial report. It does not deal with matters relating to the auditor's responsibilities for other information obtained after the date of the auditor's report, which are addressed in ASA 720. However, such other information may bring to light a subsequent event that is within the scope of this Auditing Standard. (Ref: Para. A1)

Subsequent Events

2. A financial report may be affected by certain events that occur after the date of the financial report. Many financial reporting frameworks specifically refer to such events. Such financial reporting frameworks ordinarily identify two types of events:

(a) Those that provide evidence of conditions that existed at the date of the financial report; and

(b) Those that provide evidence of conditions that arose after the date of the financial report.

ASA 700 explains that the date of the auditor's report informs the reader that the auditor has considered the effect of events and transactions of which the auditor becomes aware and that occurred up to that date.

Effective Date

3. [Deleted by the AUASB. Refer Aus 0.3]

Objectives

4. The objectives of the auditor are:

(a) To obtain sufficient appropriate audit evidence about whether events occurring between the date of the financial report and the date of the auditor's report that require adjustment of, or disclosure in, the financial report are appropriately reflected in that financial report in accordance with the applicable financial reporting framework; and

(b) To respond appropriately to facts that become known to the auditor after the date of the auditor's report, that, had they been known to the auditor at that date, may have caused the auditor to amend the auditor's report.

Definitions

5. For the purposes of this Auditing Standard, the following terms have the meanings attributed below:

(a) Date of the financial report means the date of the end of the latest period covered by the financial report. Date of approval of the financial report means the date on which all the financial statements that comprise the financial report, including the related notes, have been prepared and those with the recognised authority have asserted that they have taken responsibility for that financial report. (Ref: Para. A2)

(b) Date of the auditor's report means the date the auditor dates the report on the financial report in accordance with ASA 700. (Ref: Para. A3)

(c) Date the financial report is issued means the date that the auditor's report and audited financial report are made available to third parties. (Ref: Para. A4-A5)

(d) Subsequent events means events occurring between the date of the financial report and the date of the auditor's report, and facts that become known to the auditor after the date of the auditor's report."

473. Paragraph [8] of ASA [560] refers to paragraphs 6 and 7. Accordingly, we set out paragraphs [6] to [8] of ASA 560:

"Requirements

Events Occurring between the Date of the Financial Report and the Date of the Auditor's Report

6. The auditor shall perform audit procedures designed to obtain sufficient appropriate audit evidence that all events occurring between the date of the financial report and the date of the auditor's report that require adjustment of, or disclosure in, the financial report have been identified. The auditor is not, however,

expected to perform additional audit procedures on matters to which previously applied audit procedures have provided satisfactory conclusions. (Ref: Para. A6)

7. The auditor shall perform the procedures required by paragraph 6 of this Auditing Standard so that they cover the period from the date of the financial report to the date of the auditor's report, or as near as practicable thereto. The auditor shall take into account the auditor's risk assessment in determining the nature and extent of such audit procedures, which shall include the following: (Ref: Para. A7-A8)

(a) Obtaining an understanding of any procedures management has established to ensure that subsequent events are identified.

(b) Enquiring of management and, where appropriate, those charged with governance, as to whether any subsequent events have occurred which might affect the financial report. (Ref: Para. A9)

(c) Reading minutes, if any, of the meetings, of the entity's owners, management and those charged with governance, that have been held after the date of the financial report and enquiring about matters discussed at any such meetings for which minutes are not yet available. (Ref: Para. A10)

(d) Reading the entity's latest subsequent interim financial report, if any.

8. If, as a result of the procedures performed as required by paragraphs 6 and 7 of this Auditing Standard, the auditor identifies events that require adjustment of, or disclosure in, the financial report, the auditor shall determine whether each such event is appropriately reflected in that financial report in accordance with the applicable financial reporting framework."

474. It was not clear to us that Mr O'Shea identified events that required adjustment, and in the circumstances, we make no finding in relation to paragraph [8].

D7 – Specific aspects of the common issues applying to each of the related party investments – River Glen investment

D7.1 – Non-related party investments

475. The River Glen investment was not a related party investment in FY22.

D7.2 – Recoverability and GCPF valuations

Background facts

476. There was no loan agreement for the River Glen loan in the FY23 audit file. There was also no loan agreement for it in previous audit files.

477. In the FY23 audit file, there is a working paper comparing carrying values to GCPF risk adjusted values. There were no GCPF PV values included in the analysis for River Glen. There was only the carrying value and a comment "*Carried on a potential refinancing (sic) valuation - different to other projects*". There was no further explanation or consideration by Mr O'Shea.

478. The June FY23 GCPF valuation spreadsheet calculated a value based on the cash provided to the joint venture and accrued interest at 20%. Under 'forecast profit' it

includes 'TBC'. Under 'terms' it includes '50% of Project Profit subject to minimum return of 20% compounding annually'.

479. In the FY22 audit file, the carrying value was based on the FY22 GCPF valuation spreadsheet and the PV calculated using 50% of a forecast profit of \$15.7 million.
480. Tab 'River Glen' in the FY23 valuation spreadsheet included the following 'Monthly notes':

"GC Projects Management Agreement pending Finance Offer
Finance from Centuria Bass progressing - forecast settlement mid August
Current first Mortgage with Assured extended providing (sic) interest payments are made
GCPF Project Director conducted site visits and DD with contractor GCPF
Identified changes to Feasibility after DD

GCPF to revert to minimum rate until finance settled and feasibility (sic) updated"

481. Mr O'Shea did not:

- (a) Perform any audit work on the valuation of the investment;
- (b) Consider or perform audit work to follow-up on notes to the valuation that may have been further impairment indicators relating to project funding and feasibility;
- (c) Perform work to evidence whether the joint venture investment was recoverable, including at the 20% rate. He did not obtain current cash flow forecasts and evidence to support them;
- (d) Obtain an understanding of why there was a change in valuation approach; and
- (e) Follow-up on and obtain evidence about the project funding and feasibility issues identified and the impact on recoverability.

Admissions

482. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the River Glen investment in the FY23 audit, Mr O'Shea:

- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including significant risk relating to valuation and revenue recognition) to ensure sufficient appropriate evidence was obtained to support the values of the investment (including whether credit loss provisions should have been made), the revenue recognised for them or the completeness and accuracy of the related party transactions (or the lack thereof);

- (b) Failed to perform procedures required in accordance with paragraph [22 to 26] of ASA 540 relating to the value estimates of the investment (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used;
- (c) Contrary to paragraph [26] of ASA 330 and [33(c)] of ASA 540 failed to adequately evaluate whether sufficient appropriate audit evidence had been obtained about the investment values including not taking into account evidence obtained about investment performance and project issues that contradicted the values;
- (d) Contrary to paragraphs [24], and [25] of ASA 550, failed to obtain sufficient appropriate audit evidence about reported assertion that the investments had been made on an arm's length and did not adequately evaluate whether the investments and director relationships had been appropriately disclosed;
- (e) Contrary to paragraph [35] of ASA 540 failed to adequately determine whether the value of the investment and related disclosures were reasonable;
- (f) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial report was free from material misstatement relating to the investment, including related party and other disclosures.
- (g) Contrary paragraphs [5], [8] and [9(a)] of ASA 230, he has otherwise failed to adequately document his audit of these investments.

483. The lack of audit work on the investment demonstrated Mr O'Shea failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.

Submissions

484. The parties submitted that Mr O'Shea did obtain a copy of the loan agreement for the investment and did not perform any audit work on the valuation or recoverability of the investment. They relied upon the facts in the Background Facts and Admissions in support of their contention that Mr O'Shea failed to perform the FY23 Audit in accordance with the requirements of the Standards referred to in the Admissions above.

Consideration

485. **As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330**, the assessed risk included significant risk relating to valuation and revenue recognition. In view of the facts set out in the Background Facts and Admissions above (which we accept), we are satisfied that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk to ensure sufficient appropriate evidence was obtained to support the values of the investment

(including whether credit loss provisions should have been made), the revenue recognised for them or the completeness and accuracy of the related party transactions (or the lack thereof).

486. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY23 Audit in accordance with the requirements of paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330.
487. **As to paragraph [22 to 26] of ASA 540**, on the basis of the facts set out in the Background Facts and Admissions above, we are satisfied that Mr O'Shea failed to perform procedures required in accordance with paragraphs [22 to 26] of ASA 540 relating to the value estimates of the investment (and any necessary credit loss provisions) to obtain sufficient appropriate audit evidence regarding the selection and application of methods, significant assumptions and the data used.
488. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY23 Audit in accordance with the requirements of paragraphs [22 to 26] of ASA 540.
489. **As to paragraph [26] of ASA 330**, we have already dealt with ASA 330 generally at paragraph 74 above and paragraph [26] is set out in paragraph 138 above. Paragraph [26] requires the auditor to conclude whether sufficient appropriate audit evidence has been obtained and, in forming an opinion, to consider all relevant audit evidence, regardless of whether it appears to corroborate or to contradict the assertions in the financial report.
490. **As to paragraph 33(c) of ASA 540**, (which has already been considered above in relation to other allegations), requires the auditor, in applying ASA 330 to accounting estimates, to evaluate, based on the audit procedures performed and audit evidence obtained, whether sufficient appropriate audit evidence has been obtained.
491. In our view, paragraph [33(c)] of ASA 540 is more appropriate to the present complaint than paragraph [26] of ASA 330. In our view, in the light of Mr O'Shea's failures as found above, (including the failure to obtain a copy of the loan agreement for the investment and to perform any audit work on the valuation or recoverability of the investment), we are satisfied that Mr O'Shea failed to evaluate, based on the audit procedures performed and audit evidence obtained, whether sufficient appropriate audit evidence has been obtained.
492. In the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY23 audit in compliance with the requirements of paragraph [33(c)] of ASA 540.
493. **As to paragraphs [24], and [25] of ASA 550**, In our view, in the light of Mr O'Shea's failures as found above, (including the failure to perform any audit work on the valuation or recoverability of the investment), we are satisfied that Mr O'Shea failed to obtain sufficient appropriate audit evidence about reported assertion that the investments had been made on an arm's length and did not adequately evaluate whether the investments and director relationships had been appropriately disclosed.
494. In the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY23 audit in compliance with the requirements of paragraphs [24], and [25] of ASA 550,

failed to obtain sufficient appropriate audit evidence about reported assertion that the investments had been made on an arm's length and did not adequately evaluate whether the investments and director relationships had been appropriately disclosed.

495. **As to paragraph [35] of ASA [540]**, that paragraph is set out in paragraph 140 above, and requires the auditor to determine whether the accounting estimates and related disclosures are reasonable. In the light of the minimal audit work performed by Mr O'Shea and the admission in paragraph 131(f) above, we are satisfied that Mr O'Shea failed to comply with the requirements of paragraph [35] of ASA 540 and accordingly are satisfied that Mr O'Shea failed to carry out the FY23 audit in compliance with the requirements of paragraph.
496. **As to paragraphs [11] and [17] of ASA 200**, in the light of the facts set out in the Background Facts and Admissions above, and Mr O'Shea's failures as found above, we are satisfied that Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial report was free from material misstatement relating to the investment, including related party and other disclosures.
497. In the circumstances, we are satisfied that Mr O'Shea failed to carry out the FY23 audit in compliance with the requirements of paragraph [17] of ASA 200.
498. **As to paragraphs [5], [8] and [9(a)] of ASA 230**, as with some previous contentions regarding failure to comply with these paragraphs, the Parties contend that Mr O'Shea has otherwise failed to "adequately" document his audit of these investments. There were not specific submissions dealing with the evidence said to establish what was inadequate about Mr O'Shea's documentation. In the circumstances, we make no finding with regard to this allegation.
499. **As to paragraph [15] of ASA 200**, in our view, having regard to the facts set out in the Background Facts and Admissions and our above findings, the lack of audit work on these investments demonstrated Mr O'Shea failed, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.
500. Accordingly, we are satisfied that Mr O'Shea failed to perform the FY22 Audit in accordance with the requirements of paragraph [15] of ASA 200.

D7.3 – Professional scepticism

Background facts

501. The FY23 audit file includes working paper 'Minutes - GCPF 17 July.docx', which contained minutes of a meeting that occurred at 1pm on 17 July 2023 in the 'London Room'. The minutes do not identify the persons that attended this meeting. The minutes outlined the following project updates:

River Glen (Yamba)

'Likely to take this one over – concern from old developer is that they ran into roadblocks with funding – GCPF has right to step in and become

directors of the company and see project through to completion. **Does this become a consolidation?** 49% of company will be owned by GC Projects Pty Ltd – done 49% to avoid stamp duty. GCPF will get money back under JV arrangement in place, any residual profit will go to GC Projects – **Related Party Disclosure Needed**

Symphony

'Related to same developer as River Glen (Dementia facility). GCPF could not raise full amount expected so told developer to find further equity, then price of construction blew out – project effecticely (sic) non viable for GCPF to provide funding.

Considered selling site but e3ntered into arrangement where with has been provided will be rolled into River Glen – doing deeds of reassignment with lawyers. Will not be transferred until point in time where finance is approved for developer – will effectively exit Symphony and getting into River Glen.

Advised that it would appear to be a type 1 adjusting event after year end, note disclosure only.'

502. Mr O'Shea did not demonstrate professional scepticism by performing audit work to obtain further corroborating evidence about the project update. This includes evidence about possible impairment indicators relating to funding as well as events changing the River Glen and possibly the Symphony investments into related party investments.

Admissions

503. In relation to the specific breaches of ASAs, Mr O'Shea admits that by reasons of the matters set out above, for the FY23 audit contrary to paragraph [15] of ASA 200, he failed to perform the audit with an attitude of professional scepticism because he failed to obtain corroborative evidence for information or explanations from the directors about the River Glen project including further detailed substantiation of the project issues and the cost impacts.

Submissions

504. The parties submitted that Mr O'Shea did not demonstrate any professional scepticism by performing audit work to obtain further corroborating evidence about the project update noted in the FY23 working paper on the FY23 audit file, including evidence about possible impairment indicators relating to funding as well as events changing the River Glen (and possibly the Symphony) investments into related party investments.

Consideration

505. We accept the facts set out above and the parties' submissions. We accept that Mr O'Shea failed to perform the FY23 Audit with an attitude of professional scepticism because he failed to obtain corroborative evidence for information or explanations from the directors about the River Glen project including further detailed substantiation of the project issues and the cost impacts.
506. In the circumstances, we are satisfied that Mr O'Shea failed to perform the FY23 Audit in this respect in accordance with the requirements of paragraph [15] of ASA 200.

D7.4 – Impairment expense

Background facts

507. In the FY23 audit Mr O'Shea did not perform or did not adequately perform procedures to tie back the reported impairment amount to underlying records or to check impairment calculations.
508. GCPF's FY23 financial report reported the carrying value of River Glen decreased by \$1 million from \$6.2 million in FY22 to \$5.2 million in FY23. The FY23 Symphony carrying value was \$1.8 million, which was the amount of principal cash invested (no accrued interest was included). This indicates the decrease was impairment, however there is nothing on the audit file to identify the impairment amount for River Glen.
509. Mr O'Shea did not check the calculation of impairment and trace it from supporting records to journals and the financial statements.

Admissions

510. In relation to the specific breaches of ASAs, by reason of the matters set out above, for the impairment expense for the River Glen in FY23 audit, Mr O'Shea:
- (a) Contrary to paragraph [6] of ASA 500 and paragraphs [6]¹² and [21] of ASA 330, failed to design and perform procedures that were responsive to the assessed risk (including the significant risk relating to revenue recognition) to ensure sufficient appropriate evidence was obtained to support impairment expense. This includes not checking the calculation of impairment;
 - (b) Contrary to paragraph [20] of ASA 330, failed to perform substantive procedures agreeing or reconciling the impairment expense in the financial report with the underlying accounting records and adequately examining material journal entries for the impairment expenses;
 - (c) As a consequence of the above, contrary to paragraphs [11] and [17] of ASA 200, did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial report was free from material misstatement relating to investment impairment expense;
 - (d) The lack of audit work on the River Glen impairment expense demonstrated failed, contrary to paragraph [15] of ASA 200, to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated; and
 - (e) Contrary paragraphs [5], [8] and [9(a)] of ASA 230, has otherwise failed to adequately document his audit of the River Glen impairment expenses.

Submissions

¹² There appears to be a typographical omission of a reference to paragraphs [6] and [21] of ASA 330 in the SAFA.

511. The parties submitted that Mr O'Shea did not perform or adequately perform procedures to tie back the reported impairment amount to underlying records or to check impairment. They relied upon the facts set out above in the Background Facts and Admissions to support their contention that Mr O'Shea failed to perform the FY23 Audit in compliance with the Standards referred to in the Admissions above.

Consideration

512. **As to paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330**, the assessed risk included significant risk relating to revenue recognition. In view of the facts set out in the Background Facts and Admissions above (which we accept), we are satisfied that Mr O'Shea failed to design and perform procedures that were responsive to the assessed risk to ensure sufficient appropriate evidence was obtained to support impairment expense.
513. Accordingly, we are satisfied that Mr O'Shea failed to perform the FY23 Audit in accordance with the requirements of paragraph [6] of ASA 500 and paragraphs [6] and [21] of ASA 330.
514. **As to paragraph [20] of ASA 330**, in view of the facts set out in the Background Facts and Admissions above, we are satisfied that Mr O'Shea failed to perform substantive procedures agreeing or reconciling the impairment expense in the financial report with the underlying accounting records and adequately examining material journal entries for the impairment expenses.
515. Accordingly, we are satisfied that Mr O'Shea failed to perform the FY23 Audit in accordance with the requirements of paragraph [20] of ASA 330.
516. **As to paragraphs [11] and [17] of ASA 200**, we are satisfied, on the basis of our findings above, that Mr O'Shea did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level to obtain reasonable assurance that GCPF's financial report was free from material misstatement relating to investment impairment expense.
517. Accordingly, we are satisfied that Mr O'Shea failed to perform the FY23 Audit in accordance with the requirements of paragraph [17] of ASA 200,
518. **As to paragraph [15] of ASA 200**, we are satisfied that the lack of audit work on the River Glen impairment expense demonstrated that Mr O'Shea failed to plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.
519. Accordingly, we are satisfied that Mr O'Shea failed to perform the FY23 Audit in accordance with the requirements of paragraph [15] of ASA 200.
520. **As to paragraphs [5], [8] and [9(a)] of ASA 230**, as with some previous contentions regarding failure to comply with these paragraphs, the Parties contend that Mr O'Shea has otherwise failed to "adequately" document his audit of these investments. There were not specific submissions dealing with the evidence said to establish what was inadequate about Mr O'Shea's documentation. In the circumstances, we make no finding with regard to this allegation.

D7.5 – Related party investments, lack of disclosure

Background facts

521. The FY23 audit file contained minutes of a meeting held on 17 July 2023, which included significant project events including the take-over by GCPF of the River Glen development, for which the minutes had a comment '*related party disclosure needed*'; and a potential subsequent event affecting the Symphony investment (rolling it into the River Glen development), with the minutes including '*Advised that it would appear to be a type 1 adjusting event after year end, note disclosure only*'.
522. These significant project events were not disclosed in GCPF's FY23 financial report.

Admissions

523. For the FY23 audit, Mr O'Shea did not comply with paragraph [25(a)] and [A47] of ASA 550 and [8] of ASA 560, in relation to significant project events related to the River Glen and Symphony investments, by ensuring these matters were disclosed as related party or subsequent event matters.

Submissions

524. The parties submitted that Mr O'Shea did not ensure that significant project events related to the River Glen projects (that it was to become a related party investment, and the Symphony investment would be rolled into it) were disclosed as related party or subsequent event matters.
525. They submitted that by reason of the facts set out in the Background Facts, Mr O'Shea failed to perform the FY23 Audit in compliance with the requirement of the Standards set out in the Admissions above.

Consideration

526. ***As to paragraph [25(a)] of ASA 550***, as previously discussed, this paragraph requires that in forming an opinion on the financial report in accordance with ASA 700, the auditor shall evaluate whether the identified related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework.
527. Here, the complaint is not so much that Mr O'Shea failed to evaluate, but that he failed to ensure that the matters were disclosed as subsequent matters. The parties made reference to [A47] of ASA 550 which provides:

"Evaluation of Related Party Disclosures (Ref: Para. 25(a))

A47. Evaluating the related party disclosures in the context of the disclosure requirements of the applicable financial reporting framework means considering whether the facts and circumstances of the entity's related party relationships and transactions have been appropriately summarised and presented so that the disclosures are understandable. Disclosures of related party transactions may not be understandable if:

(a) The business rationale and the effects of the transactions on the financial report are unclear or misstated; or

(b) Key terms, conditions, or other important elements of the transactions necessary for understanding them are not appropriately disclosed.”

528. Whilst we accept that Mr O’Shea failed to evaluate, the actual complaint does not accord with the precise requirements of the Standard and we make no finding in relation to this contention.

529. **As to paragraph [8] of ASA 560**, It was not clear to us that Mr O’Shea identified events that required adjustment, and in the circumstances, we make no finding in relation to paragraph [8].

D8 – Specific aspects of the common issues applying to each of the related party investments – Audit finalisation issues

D8.1 – Written representations (FY22 and FY23)

Background facts

530. The FY22 and FY23 audit files, contained representation letters dated 13 November 2021, titled ‘134-660 Rep Letter 2021.docx’ and ‘4-660 Rep Letter 2023.docx’, respectively. The letters disclosed:

“This representation letter is provided in connection with your audit of the financial report of the Global Capital Property Fund Limited for the year ended 30 June 2021 for the purpose of expressing an opinion as to whether the financial report gives a true and fair view in accordance with the Australian Accounting Standards and the Corporations Act 2001.”

531. The letters were unsigned and were purportedly from GCPF director, Brett Dickison.

532. The FY22 and FY23 audit files did not contain any signed written representation letters from GCPF’s management relevant to the FY22 and FY23 audits or any documentation about whether the representation letters were requested or refused.

Admissions

533. In FY22 and FY23 audits of GCPF, Mr O’Shea did not:

- (a) Request written representations from management as required by paragraphs [9] to [12] of ASA 580 (written representations were not obtained);
- (b) Obtain specific representations about related party relationships and transactions as required by paragraph 26 of ASA 550; and
- (c) Undertake the steps prescribed by paragraphs 19 and 20 of ASA 580 where requested representations were not provided, including disclaiming the audit opinion on the financial report in accordance with ASA 705.

Submissions

534. The parties submitted that Mr O'Shea did not obtain signed written representation letters from GCPF's management relevant to the FY22 and FY23 audits (or any documentation about whether the representation letters were requested or refused).
535. They submitted that by reason of the facts in the Background Facts and Admissions, Mr O'Shea failed to perform the FY22 and FY23 Audits in compliance with the requirements of the Standards referred to in the Admissions.

Consideration

536. ***As to paragraphs [9] to [12] of ASA 580***, these paragraphs require written representations as follows:

"Requirements

Management from whom Written Representations are Requested

9. The auditor shall request written representations from management with appropriate responsibilities for the financial report and knowledge of the matters concerned. (Ref: Para. A2-A6)

Written Representations about Management's Responsibilities

Preparation of the Financial report

10. The auditor shall request management to provide a written representation that it has fulfilled its responsibility for the preparation of the financial report in accordance with the applicable financial reporting framework, and other statutory reporting requirements, including where relevant their fair presentation, as set out in the terms of the audit engagement. (Ref: Para. A7-A9, A14, A22)

Information Provided and Completeness of Transactions

11. The auditor shall request management to provide a written representation that:

(a) It has provided the auditor with all relevant information and access as agreed in the terms of the audit engagement; and

(b) All transactions have been recorded and are reflected in the financial report. (Ref: Para. A7-A9, A14, A22)

Description of Management's Responsibilities in the Written Representations

12. Management's responsibilities shall be described in the written representations required by paragraphs 10 and 11 of this Auditing Standard in the manner in which these responsibilities are described in the terms of the audit engagement."

537. The parties agree that the FY22 and FY23 audit files did not contain any signed written representation letters from GCPF's management relevant to the FY22 and FY23 audits or any documentation about whether the representation letters were requested or refused.

538. As we understand that parties' position, they unequivocally state that "In FY22 and FY23 audits of GCPF, ... Mr O'Shea did not request written representations from management as required by paragraphs [9] to [12] of ASA 580". This appears to be backed up by their agreed statement "FY22 and FY23 audit files did not contain any signed written representation letters from GCPF's management relevant to the FY22 and FY23 audits or any documentation about whether the representation letters were requested or refused".
539. In the circumstances, we are satisfied that Mr O'Shea did not undertake the FY22 and FY23 Audits in accordance with the requirements of paragraphs [9] to [12] of ASA 580.
540. ***As to paragraph 26 of ASA 550***, that paragraph requires:

"Written Representations"

26. Where the applicable financial reporting framework establishes related party requirements, the auditor shall obtain written representations from management and, where appropriate, those charged with governance that: (Ref: Para. A48-A49)

- (a) They have disclosed to the auditor the identity of the entity's related parties and all the related party relationships and transactions of which they are aware; and
- (b) They have appropriately accounted for and disclosed such relationships and transactions in accordance with the requirements of the framework."

541. ***As to paragraphs 19 and 20 of ASA 580***, those paragraphs provide:

"Requested Written Representations Not Provided"

19. If management does not provide one or more of the requested written representations, the auditor shall:

- (a) Discuss the matter with management;
- (b) Re-evaluate the integrity of management and evaluate the effect that this may have on the reliability of representations (oral or written) and audit evidence in general; and
- (c) Take appropriate actions, including determining the possible effect on the opinion in the auditor's report in accordance with ASA 705, having regard to the requirement in paragraph 20 of this Auditing Standard.

Written Representations about Management's Responsibilities

20. The auditor shall disclaim an opinion on the financial report in accordance with ASA 705 if:

- (a) The auditor concludes that there is sufficient doubt about the integrity of management such that the written representations required by paragraphs 10 and 11 of this Auditing Standard are not reliable; or
- (b) Management does not provide the written representations required by paragraphs 10 and 11 of this Auditing Standard. (Ref: Para. A26-A27)".

542. These paragraphs deal with a situation where an auditor has requested written representations but these have not been provided. They are not apposite to the

situation where the auditor fails to request representation letters, which, as we understand the parties' contentions, is what occurred here.

543. the Mr. O'Shea failed to comply with the requirements of ASA 580, ASA 500, and ASA 705. Failure to obtain a signed 'Management Representation Letter' (MRL) in respect of each period should have resulted in the issuance of a disclaimer opinion by Mr. O'Shea. As these opinions were not issued in accordance with requirements in ASA 705, it would have been open to the Board to find that Mr. O'Shea failed to meet his obligations as an Registered Company Auditor, in this respect. However, we do not understand the parties to have advanced the case this way and in the circumstances, we make no finding in relation to paragraphs [19] and [20].

D8.2 – Financial reporting framework and disclosure review (FY21-FY23)

Background facts

544. AASB 1053 *Application of Tiers of Australian Accounting Standards* establishes a differential reporting framework consisting of two tiers of reporting requirements for preparing general purpose financial statements. 'Simplified Disclosures' are available to 'Tier 2 Entities' under Australian Accounting Standard AASB 1060 *General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities*.
545. Paragraph [11(a)] of AASB 1053 requires entities that are for-profit private sector entities that have public accountability and are required by legislation to comply with Australian Accounting Standards to prepare general purpose financial statements that comply with Tier 1 financial report requirements.
546. Appendix B to AASB1053 provides that for-profit entities which are disclosing entities, are deemed to have public accountability even if their debt or equity instruments are not traded in a public market.
547. GCPF became a disclosing entity in FY21.
548. 'Overall Audit Strategy' workpaper contained on the each of the FY21 – FY23 audit files, identified that GCPF is a 'disclosing entity'.
549. AASB 1060 applies to financial years commencing on or after 1 July 2021, although earlier application is permitted.
550. GCPF's FY21, FY22 and FY23 financial reported contained declarations from the directors of GCPF that the financial report reports comply with 'Australian Accounting Standards – Simplified Disclosures'. The auditor's reports for these financial years, signed by Mr O'Shea, include that the directors' declarations were audited.
551. In conducting the FY21 audit, Mr O'Shea's review of the financial report disclosures is documented in marked-up copies of the draft financial reports. Mr O'Shea did not identify, reference or consider the applicable reporting requirements in their review of the FY21 financial report disclosures or consideration on the audit files

about whether AASB 1060 had been early adopted for FY21. There were no checklists or other documentation of disclosure reviews.

- 552. For FY22 and FY23 there was no documented disclosure review at all.
- 553. The FY22 audit file did not contain a copy of a draft or final financial reports, marked-up or otherwise.
- 554. The FY23 audit file contained a draft and final copy of the financial report but there was no documentation of their review (no mark-ups or notations etc).

Admissions

- 555. Mr O'Shea failed to comply paragraphs [12], [13], and [15] of ASA 700, in the FY21, FY22 and FY23 audits, as he did not:
 - (a) Perform disclosure reviews of the FY22 and FY23 financial reports;
 - (b) Consider the director's declaration about complying with Simplified Disclosures or whether the use of Simplified Disclosures was appropriate;
 - (c) Identify and conclude that it was not appropriate for GCPF to have applied Simplified Disclosure reporting or for such a declaration to have been made;
 - (d) Determine what the appropriate reporting framework was and whether it had been applied and disclosed appropriately (in the financial reports and directors' declarations);
 - (e) Consider whether the directors' declarations were accurate and appropriate, including whether a simplified disclosure reporting framework was applicable and actually applied;
 - (f) When considering the appropriateness of the simplified disclosure framework, determined that GCPF was a disclosing entity and concluded that it was not applicable; and
 - (g) In FY21, establish whether AASB 1060 had been early adopted.

Submissions

- 556. The parties submitted that Mr O'Shea did not perform disclosure reviews of the FY22 and FY23 financial reports, consider the director's declaration about complying with Simplified Disclosures or whether the use of Simplified Disclosures was appropriate, or determine whether the reporting framework was appropriate.
- 557. They submitted that by reason of the facts in the above Background Facts and Admissions, Mr O'Shea failed to perform the FY21, FY22 and FY23 Audits in accordance with the requirements of paragraphs [12], [13], and [15] of ASA 700.

Consideration

558. ***As to paragraphs [12], [13], and [15] of ASA 700***, ASA 700 is entitled “Forming an Opinion and Reporting on a Financial Report”. Paragraphs [12], [13] and [15], and relevant contextual paragraphs, are set out below:

“Requirements

Forming an Opinion on the Financial Report

10. The auditor shall form an opinion on whether the financial report is prepared, in all material respects, in accordance with the applicable financial reporting framework.

11. In order to form that opinion, the auditor shall conclude as to whether the auditor has obtained reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error. That conclusion shall take into account:

- (a) The auditor’s conclusion, in accordance with ASA 330, whether sufficient appropriate audit evidence has been obtained;
- (b) The auditor’s conclusion, in accordance with ASA 450, whether uncorrected misstatements are material, individually or in aggregate; and
- (c) The evaluations required by paragraphs 12–15 of this Auditing Standard.

12. The auditor shall evaluate whether the financial report is prepared, in all material respects, in accordance with the requirements of the applicable financial reporting framework. This evaluation shall include consideration of the qualitative aspects of the entity’s accounting practices, including indicators of possible bias in management’s judgements. (Ref: Para. A1–A3)

13. In particular, the auditor shall evaluate whether, in view of the requirements of the applicable financial reporting framework:

- (a) The financial report appropriately discloses the significant accounting policies selected and applied. In making this evaluation, the auditor shall consider the relevance of the accounting policies to the entity, and whether they have been presented in an understandable manner; (Ref: Para. A4)
- (b) The accounting policies selected and applied are consistent with the applicable financial reporting framework and are appropriate;
- (c) The accounting estimates and related disclosures made by management are reasonable;
- (d) The information presented in the financial report is relevant, reliable, comparable, and understandable. In making this evaluation, the auditor shall consider whether:
 - The information that should have been included has been included, and whether such information is appropriately classified, aggregated or disaggregated, and characterised.
 - The overall presentation of the financial report have been undermined by including information that is not relevant or that

obscures a proper understanding of the matters disclosed. (Ref: Para. A5);

(e) The financial report provides adequate disclosures to enable the intended users to understand the effect of material transactions and events on the information conveyed in the financial report; and (Ref: Para. A6)

(f) The terminology used in the financial report, including the title of each financial statement, is appropriate.

14. When the financial report is prepared in accordance with a fair presentation framework, the evaluation required by paragraphs 12–13 of this Auditing Standard shall also include whether the financial report achieves fair presentation. The auditor's evaluation as to whether the financial report achieves fair presentation shall include consideration of: (Ref: Para A7-A9)

(a) The overall presentation, structure and content of the financial report; and

(b) Whether the financial report represents the underlying transactions and events in a manner that achieves fair presentation.

15. The auditor shall evaluate whether the financial report adequately refers to or describes the applicable financial reporting framework. (Ref: Para. A10–A15)."

559. Having regard to the matters admitted by Mr O'Shea in the Admissions section above, we are satisfied that Mr O'Shea failed to comply paragraphs [12], [13], and [15] of ASA 700, in the FY21, FY22 and FY23 audits, in the manner referred to in that Admissions section.

PART E – CONTENTION 2 – UGAFL AUDITS CONTRAVENTIONS

Background facts

560. UGAFL is a public company incorporated in Australia on 23 March 2021. During the relevant financial years (FY22 and FY23), UGAFL was required, under Part 2M.3 of the Act, to prepare a financial report and have the report audited.

561. UGAFL invested in an unregistered managed investment scheme (held units in a unit trust), UGC Global Alpha Fund.

562. UGAFL FY22 financial report disclosed current other assets of \$6,707,880, being 'Investment Account – Vasco Funds Services Pty Ltd' and unrealised investment losses of \$898,150.

563. UGAFL FY23 financial report disclosed current other assets of \$6,486,813, being 'Investment Account – Vasco Funds Services Pty Ltd' and unrealised investment losses of \$115,877.

564. The FY22 and FY23 audit file contained holding statements addressed to UGAFL, which showed the number of securities held, the price per unit and the total value of the holdings.

565. The holding statement contained in the FY22 audit file issued on 16 June 2022 showed the 'price date' was 31 May 2022 and the total value of the securities as \$6,848,039. The value of the securities reported in the holding statement was higher than the value of the investment reported in UGAFL's FY22 financial report.
566. The holding statement contained in the FY23 audit file issued on 20 November 2023, showed the 'price date' was 30 June 2023 and total value of the securities as \$6,486,813.32.
567. Each of the holding statements, contained the following disclaimer:

"The information on this statement is being provided solely for the benefit of the investor to whom this statement is addressed and is not intended to be relied upon by any third party. If you are not the intended recipient, please delete and destroy all copies in your possession and notify the send that you have received this statement in error. This is not an offer to sell any securities or solicitation to buy any securities. The information being provided is estimated and unaudited. We take complaints seriously and aim to resolve them as quickly as possible. Vasco maintains a dispute resolution process to address complaints. You may utilise this process by contacting us on the details below"

568. The FY22 and FY23 audit file contained an audit working paper titled 'D.20 WP - Underlying Investments.xlsx', which included the following conclusion:

"Vasco Services is a custodian company for holding the underlying investments and is subjectr (sic) to its own audit and regulatory requirements - reasonable enough controls in place. If Vasco was not used, Alpha Fund would need its own responsible entity which comes at significant cost and compliance burden - makes sense not to use"

569. In the FY22 and FY23 audits, Mr O'Shea performed a comparative analysis of the change in investment values to movements in the All Ordinaries and S&P 500 indices.

570. The FY22 audit file contained the audit workpaper titled 'D.20 WP - Underlying Investments.xlsx', included the following analysis:

"Objective: Verify balance of Vasco Investment;

Source: Vasco summary

....

	Funds invested	7306030	(on 22 Dec 2021)
		300000	(on 1 March 2022)
MV @ 30/6/22	6707880		
Movement	-898,150	=	Agreed to negative movements in
financials			
Rate of return: -11.81%	over 6 months (assumed all in at 31 Dec)		

**ASX
Data**

7926.8 04/01/2022

**S&P
500**

4796 03/01/2022

6746.5	30/06/2022	3785.38	30/06/2022
-1180.3	Decline in benchmark	-1010.62	Decline in benchmark
-0.1489	AS a percentage	-0.21072	As a percentage

Whilst fund is not invested solely in All Ords or S&P 500, decline in market value is consistent with general market movements - no reason to believe is wrong

Conclusion

Balances appear reasonably stated based on Vasco Statements and market values"

571. The FY23 file, the audit workpaper titled 'D.20 WP - Underlying Investments.xlsx', included the following analysis:

"Objective Verify balance of Vasco investment

Source Vasco summary

Work Done

Balance per Vasco Statement	6486813.3
Balance per GL	6486813.3

...

Reassessed ratre (sic) of return on investment:

MV @ 30/6/22 6707879

MV @ 30/6/23 6486813.3

Movement -221065.7 - no funds investment or withdrawn due to TMD

Freezing Rate of return: -3.41%

ASX Data

S&P 500

674	30/06/2022	3785.38	
6.5			30/06/
		2022	
740	30/06/2023	4450.38	
1.5			30/06/
		2023	
9.7	AS a percentage	17.57%	
1%			

Conclusion

Balances appear reasonably stated based on Vasco statements and market values."

Admissions

572. When conducting the FY22 and FY23 audits, Mr O'Shea did not obtain sufficient appropriate evidence to support the value of the investment (and the associated losses) in breach of ASA 500 [6] and [7], because:
- (a) The holding statements without further support, were unreliable and not sufficiently relevant, as they did not contain particulars to support the basis for the unit price or the underlying investments of the funds;
 - (b) The holdings statement particulars were 'estimated and unaudited';
 - (c) Mr O'Shea did not obtain supporting evidence about the nature of the underlying assets of the fund and value; and
 - (d) For FY22, the holding statement reflected the value of the investment that predated the balance date of 30 June 2022 and contained a value different to the value reported in the UGAFL's FY22 financial statements.
573. When conducting the FY22 and FY23 audits, Mr O'Shea in breach of ASA 520 [5], did not adequately evaluate the comparability of the indices used in his analyse of the movements in the investment value and did not adequately develop and evaluate expectations (or benchmarks) for the analysis, specially:
- (a) Mr O'Shea did not undertake any further analysis or document any support to explain the rationale of the comparative analysis and how the movement in the relevant indices would correlate to the change in value of UGAFL's investments. This includes that he did not obtain evidence about the nature of the underlying assets in the investment and how they compare to the indices;
 - (b) In performing comparative movement analysis against indices, Mr O'Shea did not set supportable expectations about how the changes in the investment values should correlate to the index movements. An expected benchmark for comparison would be required when performing such substantive analytical review procedures.
 - (c) In the FY22 audit, in performing the comparative indices analysis test Mr O'Shea:
 - i. did not use index movement dates that adequately matched the investment movement dates, including not splitting the analysis based on each of the investment tranches.
 - ii. In considering the results of the analysis, did not seek further explanation and evidence to conclude on how the movement in the investment was supported by movements in the indices given the broad range of differences - they were 3% and 9% points different (i.e. 11.81% from 14.89% and 21%).
 - (d) For FY23, in performing the comparative indices analysis Mr O'Shea did not obtain further and appropriate evidence to explain why the value of the investment decreased when the comparative indices increased, including because in FY22, Mr O'Shea had seen a positive correlation with the market

(the investment and indices both decreased in FY22). A reasonable and competent auditor would determine whether the movement was as could be expected and whether further evidence should be obtained or alternative testing should be performed.

Submissions

574. The parties submitted that by reason of the matters set out in the Background Facts and Admissions above, Mr O'Shea failed to perform the FY22 and FY23 Audits in compliance with the requirements of the Auditing Standards referred to in the Admissions above.

Consideration

575. **As to paragraphs [6] and [7] of ASA 500**, as discussed several times above, paragraph [6] of ASA 500 requires the auditor to design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence.

576. Paragraph [7] of ASA 500 provides:

"Information to Be Used as Audit Evidence

7. When designing and performing audit procedures, the auditor shall consider the relevance and reliability of the information to be used as audit evidence, including information obtained from an external information source. (Ref: Para. A30-A44)".

577. In our view, it is clear, for the reasons set out in paragraphs 572 and 573 above, that in conducting the FY22 and FY23 audits, Mr O'Shea did not obtain sufficient appropriate evidence to support the value of the investment (and the associated losses) as required by ASA 500 [7].

578. In the circumstances, we are satisfied that Mr O'Shea did not undertake the FY22 and FY23 Audits in accordance with the requirements of paragraph [7] of ASA 500.

579. **As to paragraph [5] of ASA 520**, that paragraph provides:

"Requirements

Substantive Analytical Procedures

5. When designing and performing substantive analytical procedures, either alone or in combination with tests of details, as substantive procedures in accordance with ASA 330, the auditor shall: (Ref: Para. A4-A5)

(a) Determine the suitability of particular substantive analytical procedures for given assertions, taking account of the assessed risks of material misstatement and tests of details, if any, for these assertions; (Ref: Para. A6-A11)

(b) Evaluate the reliability of data from which the auditor's expectation of recorded amounts or ratios is developed, taking account of source, comparability, and nature and relevance of information available, and controls over preparation; (Ref: Para. A12-A14)

(c) Develop an expectation of recorded amounts or ratios and evaluate whether the expectation is sufficiently precise to identify a misstatement that, individually or when aggregated with other misstatements, may cause the financial report to be materially misstated; and (Ref: Para. A15)

(d) Determine the amount of any difference of recorded amounts from expected values that is acceptable without further investigation as required by paragraph 7 of this Auditing Standard. (Ref: Para. A16)”

580. We are satisfied, by reason of the matters set out in the above Background Facts and paragraphs 572 and 573 that in conducting the FY22 and FY23 audits, that Mr O’Shea did not adequately evaluate the comparability of the indices used in his analyse of the movements in the investment value and did not adequately develop and evaluate expectations (or benchmarks) for the analysis.
581. In the circumstances, we are satisfied that Mr O’Shea did not undertake the FY22 and FY23 Audits in accordance with the requirements of paragraph [5] of ASA 520.

PART F – CONTENTION 3 – UGC AUDITS CONTRAVENTIONS

Background facts

582. UGC is a proprietary company and was incorporated in Australia on 8 November 2011.
583. UGC operated a financial services business and held Australian Financial Services Licence number 496179 since 18 August 2017. During the relevant financial years, UGC was required under Part 7.8 of the Corporations Act to prepare and lodge an audited annual profit and loss statement and balance sheet.
584. At all material times in FY21 and FY22:
- (a) Joel Hewish was the director of UGC and UGC’s sole shareholder was Hewish Capital Pty Ltd.
 - (b) The director of Hewish Capital Pty Ltd was Joel Hewish.
 - (c) The shareholders of Hewish Capital Pty Ltd were Joel Hewish and his spouse.
585. UGC’s FY21 and FY22 Financial Reports reported the following information:

	30 June 2021	30 June 2022
Total Assets	\$2,611,242	\$2,926,357
Total Liabilities	\$2,464,289	\$2,275,638
Net Assets	\$146,953	\$650,719

586. Note 8 to the financial statements of UGC’s FY21 and FY22 financial reports, disclosed other assets as ‘Short Term Loan to owners’ in the amounts of \$428,393 and \$788,081 respectively, which were recognised as current assets.

587. Based on the financial information above, if the related party loans were not recoverable, UGC total liabilities would have exceeded its total assets.

588. The FY21 audit file contained an audit working paper 'C.40 WP- Loan Related Party.xlsx', which included:

"Issues identified.

1. The opening Balance between the T/B and G/L this year, does not equal that in caseware. Due to true-up journal not processed by accountant and adjustment did not roll forward (sic)
2. There is no documentation attached to support the nature of this loan. Director Related loan - would not expect any other than Division 7A?
3. No agreement found to support terms of the short term loan. Request Division 7A agreement
4. As part of the balance is from last year, should this loan be split between current and none current (sic). Agreed. Need Division 7A agreement

Conclusion

Balances can't be supported at present as to the nature and terms of this short term loan."

589. The FY22 audit file contained an audit working paper 'C.40 WP - Loan Related Party.xlsx' that included:

"Issues identified

1. There is no documentation attached to support the nature of this loan. Director Related loan - would not expect any other than Division 7A?
2. No loan document in place - cannot prove balance - appears to roll from year to year with dividends, etc

Conclusion

Will need confirmation via rep letter as no other means to prove"

590. On 5 July 2024 UGC entered voluntary administration and on 9 August 2024 a resolution was made to wind-up the company and appoint a liquidator

Audit evidence and related parties

591. When conducting the FY21 audit, Mr O'Shea:

- (a) Identified and documented that no evidence or support was provided for the related party loan given in FY21;
- (b) Did not obtain a copy of or reviewed a loan agreement for the related party loan; and
- (c) Did not obtain other evidence, such as representation letters from UGC's management relevant to the nature and terms of the related party loans

592. The FY21 audit file:

- (a) Did not include any other evidence in respect to the nature and terms of the related party loans;
 - (b) Did not include any evidence or assessment as to the recoverability of the related party loans; and
 - (c) Contained unsigned draft or representation letters that did not include any specific reference to or details about the related party loans.
593. When conducting the FY22 audit, Mr O'Shea identified and documented that no evidence or support was provided for the related party loan given in FY22.
594. Mr O'Shea documented in the FY22 audit that he would obtain evidence of the related party loan by representations from management, but he did not obtain these representation letters, and the audit file did not contain any evidence to support if representations letters were requested or whether they had been refused.
595. The FY22 audit file:
- (a) Did not contain any evidence or assessment as to the recoverability of the related party loans; and
 - (b) Contained unsigned draft or representation letters that did not include any specific reference to or details about the related party loans

Admissions

596. Mr O'Shea, by reason of the matters outlined above, in undertaking the FY21 and FY22 audits of UGC:
- (a) Did not obtain signed representation letters from UGC's management in relation to the preparation of the financial report, declaring all relevant information has been given to the auditor and all transactions have been recorded and are reflected in the financial reports, in accordance with paragraphs [9] to [12] of ASA 580;
 - (b) Should have obtained specific representations from UGC's management in relation to the related party loans, in compliance with the requirement in paragraph [26] of ASA 550, in relation to related party transactions;
 - (c) Although identifying the loans to a related party, did not request representation letters or other evidence to support the nature, terms and recoverability of the related party loans to the director of UGC in breach of [6] of ASA 500; and
 - (d) Because the specific representations or other evidence were not provided in relation to the related party loan, should have disclaimed his audit opinion in accordance with paragraph [20] of ASA 580 [20].
597. By reasons of the matters set out above, Mr O'Shea did not comply with ASA 200 [11] as he did not obtain reasonable assurance that the financial statements of UGC for FY21 and FY22 was free from material misstatement in respect of the

loans to a related party. Therefore, Mr O'Shea could not express an opinion that the financial statements was prepared, in all material respects, in accordance with the applicable financial reporting framework.

Submissions

598. The parties submitted that by reason of the facts set out in the Background Facts, Audit Evidence and Related Parties and Admissions, that Mr O'Shea failed to perform the FY21 and FY22 Audits in compliance with the requirements of the Auditing Standards referred to in the Admissions above.

Consideration

599. **As to paragraphs [9] to [12] of ASA 580**, it was accepted by the parties (and admitted by Mr O'Shea) that Mr O'Shea did not obtain signed representation letters from UGC's management in relation to the preparation of the financial report, declaring all relevant information has been given to the auditor and all transactions have been recorded and are reflected in the financial reports, in accordance with paragraphs [9] to [12] of ASA 580.
600. In the circumstances, we are satisfied that Mr O'Shea did not undertake the FY21 and FY22 Audits in accordance with the requirements of paragraphs [9] to [12] of ASA 580.
601. **As to paragraph 26 of ASA 550**, that paragraph requires:

"Written Representations

26. Where the applicable financial reporting framework establishes related party requirements, the auditor shall obtain written representations from management and, where appropriate, those charged with governance that: (Ref: Para. A48-A49)

(a) They have disclosed to the auditor the identity of the entity's related parties and all the related party relationships and transactions of which they are aware; and

(b) They have appropriately accounted for and disclosed such relationships and transactions in accordance with the requirements of the framework."

602. Having regard to the matters admitted by Mr O'Shea in the Admissions section set out above, we are satisfied that Mr O'Shea failed to comply with the paragraph [26].
603. **As to paragraph [6] of ASA 500**, we have considered this paragraph many times above. For convenience, it requires:

"The auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence. (Ref: Para. A5-A29)

604. The parties accept (and Mr O'Shea admits) that:

- (a) Mr O'Shea identified and documented that no evidence or support was provided for the related party loan given in FY21, did not obtain a copy of or reviewed a loan agreement for the related party loan and did not obtain other evidence, such as representation letters from UGC's management relevant to the nature and terms of the related party loans;
 - (b) When conducting the FY22 audit, Mr O'Shea identified and documented that no evidence or support was provided for the related party loan given in FY22; and
 - (c) Mr O'Shea documented in the FY22 audit that he would obtain evidence of the related party loan by representations from management, but he did not obtain these representation letters, and the audit file did not contain any evidence to support if representation letters were requested or whether they had been refused.
605. In the circumstances, we are satisfied that, in failing to request representation letters or other evidence to support the nature, terms and recoverability of the related party loans to the director of UGC, Mr O'Shea failed to carry out the FY21 and FY22 Audits in compliance with the requirements of paragraph [6] of ASA 500.
606. ***As to paragraph [20] of ASA 580***, that paragraph is set out in paragraph 543 above and requires, amongst other things, that the auditor "shall disclaim an opinion on the financial report in accordance with ASA 705 if ... Management does not provide the written representations required by paragraphs 10 and 11 of this Auditing Standard".
607. In our view, although paragraph [20] was not literally applicable to the present situation, (because Mr O'Shea had not requested written representations, so that Management did not fail to provide representations "required by paragraphs 10 and 11", Mr O'Shea was required to disclaim an opinion on the financial report because he had not been provided with the required 'Management Representation Letter' (MRL) as required in ASA 580.
608. ***As to paragraph [11] of ASA 200***, the Board notes the findings previously documented regarding the failure to report in accordance with ASA 580 and ASA 705. Accordingly, the Board finds that Mr. O'Shea failed to meet the requirements in ASA 200, paragraph 11(b) regarding reporting the auditor's findings in accordance with the Australian Auditing Standards.

PART G – RELEVANT PRINCIPLES

Introduction

609. The Application is made under s 1292 of the Corporations Act, and relies upon both limbs of s 1292(1)(d) (ie failure to perform duties etc (first limb) and fit and proper person (second limb)). The Board's jurisdiction depends on the Board being "satisfied" of the grounds relied upon, notwithstanding the agreement of the parties. Accordingly, it is necessary for us to address the principles applicable to both limbs.

610. Section 1292(1) provides (relevantly):

“(1) The Board may, if it is satisfied on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section that, before, at or after the commencement of this section:

...

(d) the person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:

(i) the duties of an auditor; or

...

or is otherwise not a fit and proper person to remain registered as an auditor;

by order, cancel, or suspend for a specified period, the registration of the person as an auditor.”

Principles relating to the First limb (failure to perform duties adequately and properly)

611. The parties made joint submissions as to the principles underlying the Board’s jurisdiction to make orders in the case of an application based upon a failure to perform duties adequately and properly, relying upon the decisions of the Board in *ASIC v Santangelo* (03/NSW23) at [29], *ASIC v Taylor* (17/VIC20) at [71]-[81] and *ASIC v Evett* (17/NSW20) at [20] and the decision of Rofe J in the Federal Court of Australia in *CMW23 v Companies Auditors Disciplinary Board* [2024] FCA 407 at [55].

Consideration

612. We accept the correctness of the parties’ submissions as to jurisdiction.

613. In broad summary, the principles governing the Board’s jurisdiction terms of the First Limb of s 1292 (failure to perform duties), require:

(a) *First*, identifying the “duties of an auditor”; and

(b) *Secondly*, making an evaluative or subjective determination about whether the duties have been carried out or performed “adequately and properly” (cf *CMW23 v Companies Auditors Disciplinary Board* [2024] FCA 407 at [56]).

614. A detailed analysis of the task of the Board under second stage is set out in *ASIC v Taylor* (17/VIC20) at [43]. In substance, the Board noted in that case that the question whether relevant duties have been performed “adequately and properly” requires assessment of the level and standard of performance of duties, judged against a relevant benchmark, being “accepted professional standards”. At its heart, the question is directed to whether duties have been performed with “requisite skill and probity” and the question can be seen as a reasonable surrogate for an enquiry as to the fitness of the person.

615. Mr O'Shea accepts that the Board's jurisdiction has been enlivened under the first limb of s 1292(1)(d), and thereby accepts, that the nature of the conduct, based upon the factual position he admits, amounts not only to a failure to perform duties, but a failure to perform them adequately and properly.
616. The parties accept that notwithstanding their agreement, CADB must be independently satisfied that the grounds for an application are made out and that it has the power to make the orders. However, subject to the caveat expressed in *ASIC v Wessels* 05/QLD13 (**Wessels**) at [23], the Board may proceed to consider a matter by reference to an agreed statement of facts and agreement as to jurisdiction. The caveat in *Wessels* is to the effect that proceeding on the basis of an agreement is easier in the case of straightforward issues of fact than it is in the case of issues of law or mixed fact and law.

Principles relating to the Second Limb (fit and proper person)

617. The parties jointly submitted that the seriousness of Mr O'Shea's conduct and failures establishes that he is not a fit and proper person to remain registered. They submitted that in *Davis v ASIC* (1995) 59 FCR 221 at 234, Hill J held that a failure to adequately and properly carry out the duties of an auditor under s 1292(1)(d) will in the ordinary course mean that a person is not fit and proper to remain registered as an auditor.
618. The parties relied upon the decision of the Board in *ASIC v Williams* (01/QLD17) at [1339]. At [1343] and [1344], the Board described the "fit and proper" test in the following terms:

"The pre-eminent Australian authority on the concept of "fit and proper" is the High Court's decision in *Hughes and Vale*¹³. The expression is employed as a test for capacity to perform an office or role in widely differing contexts. In *Hughes and Vale* it was said that "Fit" (or "idoneus") with respect to an office involves three things, honesty, knowledge and ability. Their Honours acknowledged these concepts are flexible and the relevant assessment will depend on the office involved.

Their Honours in *Hughes and Vale*¹³⁵ noted that the requisite degree of knowledge and ability to satisfy the test of fitness is informed by the nature of the office concerned. With respect to registered auditors there can be no doubt that a high standard of honesty, knowledge and ability applies. The law entrusts registered auditors with important duties and responsibilities. The proper and adequate discharge of those duties and responsibilities is essential to maintaining the integrity, stability and security of Australia's financial system as well as public confidence in that system and the auditing profession. The public depends on and is entitled to expect that a high professional standard will be maintained that is both commensurate with the professional standing enjoyed by auditors and properly reflects the importance of their role in our community. It is this context that informs our views about the degree to which our findings call into question Mr Williams' fitness as a registered auditor."

Consideration

¹³ *Hughes & Vale Pty Ltd v New South Wales [No 2]* (1955) 93 CLR 127

619. We accept the parties' submissions as to the applicability of the above authorities.

620. In dealing with the words of the phrase as a matter of generality, the High Court in *Hughes & Vales* emphasised that the words gave rise to a wide discretion and endorsed the approach in *R v Hyde Justices* [1912] 1 KB 645, at p 664, that it would be unwise to attempt any definition of the matters which may legitimately be inquired into; each case must depend upon its own circumstances. The plurality in *Albarran v Members of CALDB* (2007) 231 CLR 350 (**Albarran**) said, (in relation to the phrase as it appeared in s 1292):

"In *Hughes and Vale Pty Ltd v The State of New South Wales [No 2]*, Dixon CJ, McTiernan and Webb JJ, after saying that the expression "fit and proper person" was familiar as comprising "traditional words" when used with reference to offices and vocations, added that the very purpose of the expression was to give the widest scope for judgment and indeed for rejection; thus, "fit" involved honesty, knowledge and ability."

621. To similar effect, in *Ziem's v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 Kitto J stated, at 297-8:

"... the issue is whether the applicant is shown not to be a fit and proper person ... it is not capable of more precise statement. The answer must depend on one's conception of the minimum standards demanded ..."

622. The position is similar in England. In *R v Crown Court at Warrington, ex p. RBNB* [2002] UKHL 24, Lord Bingham said, at [9]:

"..., some consideration must be given to the expression 'fit and proper' person. This is a portmanteau expression, widely used in many contexts. It does not lend itself to semantic exegesis or paraphrase and takes its colour from the context in which it is used. It is an expression directed to ensuring that an applicant for permission to do something has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do."

623. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Mason CJ said at 380:

"The question whether a person is fit and proper is one of value judgment. In that process the seriousness or otherwise of particular conduct is a matter for evaluation by the decision maker. So too is the weight, if any, to be given to matters favouring the person whose fitness and propriety are under consideration."

624. Toohey and Gaudron JJ said at 380:

"The expression "fit and proper person", standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of "fit and proper" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it

provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question."

625. In the present instance, the phrase "fit and proper" is used in a specific context in s 1292 and the section must be construed in accordance with accepted contemporary principles of statutory interpretation "which emphasise that the beginning and the end of statutory construction is the text of the statute being construed"¹⁴.
626. When employed in s 1292, the phrase appears in the context of the power given to the Board to cancel or suspend registration where the Board is satisfied that "a person who is registered as an auditor ... has failed ... to carry out or perform adequately and properly ... the duties of an auditor... *or is otherwise not a fit and proper person to remain registered as an auditor*" (emphasis added).
627. A number of matters may be noted:
- (a) Section 1292 appears in Part 9.2 of the Corporations Act, entitled "Registration of Auditors", which includes the test for initial registration for an auditor, (which requires ASIC being satisfied "that the applicant is capable of performing the duties of an auditor and *is otherwise a fit and proper person* to be registered as an auditor"): s 1280;
 - (b) The test which the Board applies is very similar, ie making a judgment about whether the person "has failed ... to carry out or perform adequately and properly ... the duties of an auditor... *or is otherwise not a fit and proper person to remain registered as an auditor*"): s 1292
 - (c) It is probable that the phrase "fit and proper" means the same thing in each section; and
 - (d) The introductory words to the phrase ("or is *otherwise*" not a fit and proper person) show that the phrase "fit and proper person" adds to or expands on the preceding phrase, ie, a failure "to carry out or perform adequately and properly ... the duties of an auditor": *Albarran v Members of CALDB* (2007) 231 CLR 350 at [24].
628. There has been a difference of approach to the construction of the words "or is otherwise" in the authorities. In *Davies v Australian Securities Commission* (1995) 59 FCR 221, Justice Hill said:

"Generally speaking it may be said that an auditor who fails to carry out adequately and properly his or her duties or functions as an auditor would not be a fit and proper person to remain registered, even if otherwise that person is a person of good fame and character. Perhaps it was for that reason that s 1292(1)(d) was cast in the way it was". (at page 233) (emphasis added)

And

"If the words "or is otherwise" have any significance at all it is to express a legislative view that a person who does not carry out or perform adequately and

¹⁴ *RD Miller Pty Ltd v Roads and Maritime Services NSW* (2020) 103 NSWLR 234; [2020] NSWCA 241 at [98]

properly the duties or functions referred to in subparas (i) and (ii) **will ordinarily** not be a fit and proper person to remain registered as an auditor.” (at page 234) “(emphasis added)

629. In *Gould v Companies Auditors and Liquidators Disciplinary Board* [2009] FCA 475 at [102] Justice Lindgren said:

“The word “otherwise” shows that the provision **takes it for granted** that a failure of the kind described in (1) **will, without more**, demonstrate that the person is not a fit and proper person to remain registered as a liquidator.” (emphasis added)

630. We are not aware of any authority which has attempted to reconcile the difference in approach. In the absence of such an authority, we consider Justice Hill’s approach is to be preferred. The word “otherwise” can be read as introducing some flexibility into the phrase so that the section does not operate in the binary fashion suggested by Justice Lindgren.
631. In our view, the correct approach is to consider the question whether a person is a fit and proper person to remain registered as an auditor as a fresh question, in accordance with its terms, but bearing in mind that ordinarily, a failure to comply adequately and properly with the duties of an auditor will equate to an absence of fitness and propriety.
632. In the present case, ASIC’s allegation that Mr O’Shea is not a fit and proper person to remain registered relies wholly on the alleged failings to perform duties referred to in Contentions 1 to 3.

Principles relating to Sanctions

633. The parties submitted that the circumstances in the present case justified the Board in exercising its discretion to cancel Mr O’Shea’ registration.
634. They submitted that the Board’s prime concern in exercising its powers under 1292 is protection of the public, including the maintenance of a system under which the public can be confident that the relevant practitioner and all other practitioners will know that breaches of duty will be appropriately dealt with: *ASIC v Walker* (06/VIC07) at [20.7]. They submitted that one of the principal factors relevant to the Board’s consideration of sanctions is the seriousness of the matters that have been found to be established: *ASIC v McVeigh* (10/VIC08) at [13.4], *Re Young and Companies Auditors and Liquidators Disciplinary Board* (2000) 34 ACSR 425 [89]; *ASIC v Walker* (06/VIC07) at [21.4].
635. They submitted:
- (a) Accordingly, in considering the appropriateness of proposed consent orders, the Board must:
 - i. consider whether the orders and undertaking are appropriate to protect the public, including through specific deterrence of the respondent from repeating the contravening conduct and general deterrence of registered company auditors from engaging in similar

conduct, which, if orders are made, will be achieved by the publication of the orders and determination in due course; and

- ii. as part of that process, consider the “gravity” of the failures by the Respondent to comply with their duties and the circumstances in which the failures occurred;
- (b) An auditor’s failure to comply with the duties or functions of a registered company auditor will always be serious because they “perform a vital role in the administration of corporate affairs and ... the financial and wider communities rely on the reports of auditors and are entitled to assume that auditors undertake their statutory functions with adequate skill and care in accordance with applicable Auditing Standards”: *ASIC v Walker* (06/VIC07) at [21.5];
 - (c) A practitioner’s recognition and acceptance of breaches of duty, attitude to compliance generally and willingness to improve are relevant matters in the Board’s exercise of its power to order sanctions: *ASIC v Walker* (06/VIC07) at [21.3]; *ASIC v Fiorentino* (03/NSW13) at [997(f)], [1005];
 - (d) The absence of evidence as to whether any person suffered loss as a result of the auditor’s conduct is not relevant to the Board’s consideration of sanction: *ASIC v McVeigh* (10/VIC08) at [14.8];
 - (e) In determining whether to make proposed consent orders:
 - i. ASIC’s view as the regulator is relevant on the question of sanction, particularly regarding the deterrent effect of the order, but not determinative: *ASIC v Wessels* (05/QLD13) at [49]-[50]; *ASIC v Rich* (2004) 50 ACSR 500 at [80]; and
 - ii. the Board should have regard to the important public policy involved in promoting the predictability of outcomes in matters before the Board: *ASIC v Santangelo* (03/NSW23) at [317]-[318];
 - (f) As observed by the Board in *ASIC v Loke* (16/NSW20) (at [105]):

"ASIC is relevantly a guardian of the public interest, and is in a good position to appraise the practicalities of the matter and what part those practicalities should have among considerations in favour of accepting the agreed outcome."
 - (g) Where the parties have proposed that the Board grant specific relief, it is not bound to do so. If the Board is satisfied its jurisdiction has been engaged, the responsibility for determining whether the sanction proposed by the parties is appropriate rests with the Board, not the parties;
 - (h) In determining whether the sanction proposed is appropriate, the Board need not and should not ask whether it would have arrived at the same sanction in the absence of the parties’ agreement. If the agreed sanction is within a permissible range, it should not be rejected merely because the Board would have been disposed to determine some other sanction:

ASIC v Rich (2004) 50 ACSR 500 at [80]; *ASIC v Santangelo* (03/NSW23) at [316];

- (i) While the Board's task is not limited to simply determining whether a jointly proposed sanction is within the permissible range, this will be a "*highly relevant and perhaps determinative consideration*": *ASIC v Taylor* (17/VIC20) at [550(d)]; and
- (j) Where a proposed sanction is found to be within the permissible range the public policy consideration of predictability of outcome will generally be a "*compelling reason*" for the Board to accept the proposed sanction: *ASIC v Taylor* (17/VIC20) at [550(e)].

Consideration

636. The key principles which govern the exercise of the Board's jurisdiction in relation to sanction, particularly in cases where the parties propose consent orders, were recently summarised by the Board in *ASIC v Taylor* (17/VIC20) at [543]-[555].
637. That summary incorporates a number of the matters raised in the parties' submissions above.
638. For the purposes of the present matter, it is not necessary to go beyond noting that in exercising our jurisdiction:
- (a) The key question is whether we consider that the proposed consent orders are "appropriate", having regard to the fact that the key purpose of the Board's powers is to protect the public, including through specific deterrence of the Respondent from repeating the contravening conduct and general deterrence of registered company auditors from engaging in similar conduct; and
 - (b) Where, as here, the proposed sanction is by consent, the key question for the Board is whether the proposed consent sanction falls within the permissible range; the question is not whether the Board would impose the same sanction, considering the matter for itself.

PART H - APPLICATION OF PRINCIPLES

First limb – Failure to comply

639. As regards the First Limb of s 1292 (failure to perform duties) it is necessary for the Board firstly to identify the relevant "duties of an auditor" and secondly to make an evaluative or subjective determination about whether those duties have been carried out or performed "adequately and properly".
640. In the present case, the parties contend that the relevant duties of an auditor are the duties owed by an auditor pursuant to s 307A(1) and 989CA(1) of the Corporations Act. They submitted, that:
- (a) For the audits and reviews performed for GCPF and UGAFL, s 307A(1) of the Corporations Act relevantly provides that if an individual auditor conducts an audit of the financial report for the financial year or a review

of the financial report for a half-year, the individual must conduct the audit in accordance with the Auditing Standards; and

- (b) For the audits performed for UGC, s 989CA(1) of the Corporations Act relevantly provides that if an individual auditor conducts an audit of a profit and loss statement and balance sheet, the individual auditor must conduct the audit in accordance with the Auditing Standards and include in the audit report on the profit and loss statement, and balance sheet, any statements or disclosure required by the Auditing Standards.
- 641. The parties submitted that the ASAs were Auditing Standards for the purposes of ss 307A and 989CA and were made by the Auditing Assurance Standards Board pursuant to s 336 of the Corporations Act and that the ASAs referred to in their submissions were the versions that applied to the FY21 to FY23 Audits.
 - 642. We accept these submissions. In our view, the obligations imposed upon auditors by sections 307A(1) and 989CA(1) of the Corporations Act are relevant duties of an auditor for the purposes of s 1292 of the Corporations Act.
 - 643. Detailed consideration was given to the question whether the analogous obligation imposed by s 307A(2) was a relevant “duty of an auditor” in the Board’s decision in *ASIC v Taylor* (17/VIC20) at paragraphs [85] to [93]. For the reasons set out in those paragraphs, we make the same finding as regards the obligations imposed by sections 307A(1) and 989CA(1).
 - 644. For the reasons we have set out in detail in Parts D to F above, we are satisfied that Mr O’Shea failed, in numerous respects, and in many important respects, to comply with the requirements of the Auditing Standards in carrying out the audits or reviews. In those circumstances, we are satisfied that Mr O’Shea failed to carry out or perform the duties of an auditor “adequately and properly”. When an auditor fails in an extensive way to perform audits in compliance with Auditing Standards, and fails to do so over a number of audits, it is virtually axiomatic that the Board will be satisfied that the auditor will have failed to perform the duties of an auditor adequately and properly.
 - 645. In the circumstances, we are satisfied (as the parties contended and agreed) that our jurisdiction in respect of Mr O’Shea is enlivened under the First Limb of s 1292 of the Corporations Act.

Second Limb – Fit and Proper Person

- 646. The parties submitted that in addition to Mr O’Shea’s performance demonstrating a failure to comply with the duties of an auditor adequately and properly, Mr O’Shea was otherwise not a fit and proper person to remain registered as an auditor.
- 647. Whether or not the Board is satisfied that this is so depends upon the Board’s judgment as to the circumstances, having regard to the meaning of the term “fit and proper” in the context of s 1292.
- 648. We note that ordinarily, a failure to comply adequately and properly with the duties of an auditor will, of itself, equate to an absence of fitness and propriety. In the present case, the extensive and serious nature of Mr O’Shea’s failure to perform

his obligations as an auditor cause us to be satisfied that Mr O'Shea is not a fit and proper person to remain registered as an auditor. We come to this view, notwithstanding that ASIC does not call in aid any feature of Mr O'Shea's behaviour beyond his failures to comply with Auditing Standards in his performance of the FY21 to FY23 Audits and Reviews. For example, there is no suggestion that Mr O'Shea engaged in any dishonesty or other conscious wrongdoing. However, there is no necessity to show any such additional feature. In our view, the extensive and serious nature of Mr O'Shea's failings establish an absence of fitness and propriety.

649. We note that the parties pointed to aspects of Mr O'Shea's performance, demonstrating the seriousness of his failings, including:
- (a) For the GCPF Audits, in relation to one of the key issues, the related party investments made by GCPF, Mr O'Shea continuously failed, across multiple audits, to undertake sufficient (or any) work to determine that these investments were made on commercial terms, that there was appropriate evidence to support the values of the investments, that the investments were recoverable and that the investments had been adequately disclosed. This is in circumstances where it was clear from the documents that there were potential impairment indicators that had not been investigated, and Mr O'Shea was not corroborating the evidence provided by directors who had a direct financial interest in the investments, and the risk of management bias was significant;
 - (b) In relation to each of the GCPF Audits, and each of the investments (related party and other), Mr O'Shea continuously failed to undertake basic audit work such as recalculating interest and impairment for the investments, conducting audit sampling appropriately and assessing valuation methods, assumptions and disclosures;
 - (c) In relation to the UGAFL Audits, Mr O'Shea failed to obtain sufficient appropriate evidence about the value of the primary investment; and
 - (d) In relation to the UGC Audits, Mr O'Shea failed to obtain any evidence about recoverability of significant related party loans.

650. We accept these submissions and accept that they support our conclusion that Mr O'Shea is not a fit and proper person to remain registered as an auditor.

Sanctions

651. In our view, the proposed consent sanction, of cancellation of Mr O'Shea's registration, is "appropriate", having regard to the protective purpose of the Board's jurisdiction. In any event, we certainly take the view that the sanction of cancellation of Mr O'Shea's registration is within the range of appropriate sanctions.
652. The extent and seriousness of Mr O'Shea's breaches show that Mr O'Shea is not a person who should continue to be registered as an auditor. We can have no confidence that any lesser sanction would be appropriate to protect the public.

653. Mr O'Shea offered no explanation as to how the extensive and serious failures came about nor did Mr Gunatunga, on his behalf, suggest that there was any basis for thinking that Mr O'Shea could appropriately resume practice as a registered auditor after some period of suspension or retraining. Mr Gunatunga's submissions, on Mr O'Shea's behalf, included submissions to the effect that:
- (a) Mr O'Shea had been registered since 2008 and for most of that period, up until 2017, he had reasonably and diligently performed his duties;
 - (b) It was only in more recent times that Mr O'Shea had failed in the performance of his duties;
 - (c) The stresses of the role had adversely affected his mental health; and
 - (d) Having had time to reflect on his priorities, he had determined that he would not take up the role of auditor again, even if the proposed orders were not made.
654. The last two matters mean that, as a practical matter, we simply cannot be comfortable that anything less than cancellation would be appropriate.
655. Mr Gunatunga made submissions concerning the positive aspects of Mr O'Shea's situation (including his acknowledgement of his failures, his expression of remorse and his cooperation with ASIC). However, Mr Gunatunga did not rely upon these matters as a reason why the Board would decline to order the proposed sanctions.
656. In all the circumstances, we consider that it is appropriate to exercise our jurisdiction to make orders in accordance with the parties' proposed consent orders.
657. For the reasons set out above, we have decided to exercise our powers under s 1292 of the Act by making the orders in paragraph 658 below.
658. We make the following orders:
- 1. Pursuant to s 1292(1) of the Corporations Act, the registration of Mr **Ryan William O'SHEA (Mr O'Shea)**, with auditor registration number 332618, as an auditor be cancelled.
 - 2. Pursuant to s 1297(1)(a) of the Corporations Act, the order for cancellation in paragraph 1 will come into effect at the end of the day on which the Board gives Mr O'Shea a notice of the decision in accordance with s 1296(1)(a) of the Corporations Act.

Howard K Insall SC

Panel Chairperson

24 October 2025