

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**BUILDING AND PROPERTY LIST**

VCAT REFERENCE NO. BP350/2016

**CATCHWORDS**

EVIDENCE – application for late filing of expert report – principles to be applied – effect on expert witness conclave – application refused.

**APPLICANTS**

Owners Corporation No.1 of PS613436T (and others according to the schedule on the tribunal file entitled “Schedule of Parties as at 8 August 2018”)

**RESPONDENTS**

L.U. Simon Builders Pty Ltd (ACN 006 137 220) (and others according to the schedule on the tribunal file entitled “Schedule of Parties as at 8 August 2018”)

**WHERE HELD**

Melbourne

**BEFORE**

His Honour Judge Woodward, Vice President

**HEARING TYPE**

Hearing

**DATE OF HEARING**

13 September 2018

**DATE OF ORDER**

18 September 2018

**CITATION**

Owners Corporation No.1 of PS613436T v L.U. Simon Builders Pty Ltd & Ors (No 3) (Building and Property) [2018] VCAT 1448

**ORDER**

Leave to the second and third respondents to file and serve a supplementary expert report of Benjamin Hughes-Brown dated 31 August 2018 is refused.

Judge Woodward  
**Vice President**

**APPEARANCES:**

For the Applicants:	Mr D Curtain QC with Mr W Thomas of counsel
For the First Respondent:	Mr P Murdoch QC with Mr R Andrew of counsel
For the Second and Third Respondents	Mr J L Evans QC with Ms V Blidman of counsel
For the Fourth Respondent	Mr J Twigg QC with Mr J M Forrest
For the Fifth Respondent	Mr T Margetts QC with Mr J B Waters of counsel
For the Sixth Respondent	No appearance
For the Seventh Respondent	No appearance
For the Eighth Respondent	No appearance

## REASONS

- 1 The second and third respondents (“Gardner Group”) seek leave to file and serve a supplementary expert report of Benjamin Hughes-Brown dated 31 August 2018 (“Supplementary Report”). The Supplementary Report was served on all parties on Friday, 31 August 2018, the last working day before the commencement of the hearing on 3 September 2018. It was received by the solicitors for the first respondent (“LU Simon”) at 5.14pm that Friday.
- 2 The application for leave was supported by an affidavit of Mr Thangarajah of DLA Piper (Gardner Group’s solicitors) sworn 5 September 2018 and written submissions dated 7 September 2018. Mr Saw of Colin Biggers & Paisley (LU Simon’s solicitors) affirmed an affidavit in opposition on 12 September 2018 and LU Simon’s written submissions (largely repeating Mr Saw’s affidavit) are dated 13 September 2018. I heard oral submissions following the conclusion of the evidence that day. These were made primarily by counsel for the Gardner Group and LU Simon, with counsel for each of the fourth and fifth respondent also making brief submissions.
- 3 I informed the parties at the conclusion of oral submissions that I would announce my decision on the application before the evidence resumed on the following Monday 17 September 2018 and deliver reasons at the same time or as soon as possible thereafter. I duly informed the parties at 10.00am on 17 September that the application for leave was refused. I said my reasons were not yet complete, but that I hoped to deliver them within the next few days. These are those reasons.

### Background to the Supplementary Report

- 4 Points of claim against the second and third respondents were first filed by LU Simon on 7 April 2017. The Gardner Group filed a defence to the points of claim dated 2 June 2017. The defence declined to make any substantive response to the allegations on the basis of penalty privilege. The claim for privilege relied on an inquiry by the Building Practitioners Board into Mr Galanos (the second respondent (among others)). On 14 May 2018 the Board advised the Gardner Group’s solicitors DLA Piper that its inquiry into Mr Galanos (originally set for 4 June 2018), would be adjourned until after other inquiries were finalised. A new date for the inquiry is still to be set by the Board. Thus there has been no material change in the status of the Board’s inquiry into Mr Galanos since 14 May 2018.
- 5 The 3 September 2018 hearing date for the proceeding had been fixed since October 2017. On 29 May 2018, the tribunal made orders (among others) to the effect that by 18 June 2018, the Gardner Group must advise the tribunal and the other parties in writing whether they intended to continue to rely on penalty privilege and, if not, to serve a particularised defence, witness statements and expert reports by that date. In his affidavit in support of this application, Mr Thangarajah deposed that he received instructions to proceed with preparation of a

particularised defence which did not rely upon a claim of penalty privilege and evidence for the hearing “in early June 2018”.

- 6 Notwithstanding the 29 May orders, Gardner Group did not on or before 18 June 2018 (or at all), notify the tribunal and the other parties in writing that it no longer intended to rely on penalty privilege. Instead, they filed and served their particularised defence on 6 July 2018 (over three weeks after it was due), thereby waiving any claim to penalty privilege. They also failed to meet the 18 June deadline for witness statements and experts reports. The orders for these were refreshed by further orders made 26 July 2018, when the Gardner Group were effectively given until 3 August 2018 to file and serve lay witness statements and until 10 August 2018 to file and serve any further expert reports. The order in respect of the expert witness reports applied to all parties, and provided that parties would not be permitted to file and serve any further expert reports after that date except with leave of the tribunal.
- 7 The Gardner Group failed to meet these deadlines as well. Their single lay witness statement (of Mr Galanos) was filed and served on 6 August 2018 and their experts report by fire engineer Mr Hughes-Brown, was filed and served on 13 August 2018. The Gardner Group was nevertheless given leave to rely on Mr Hughes-Brown’s report, and he was able to participate in the fire engineer witness conclave referred to below.
- 8 The issue of a conclave of experts in advance of the hearing was first discussed at the directions hearing on 24 July 2018. I indicated at that time my strong desire for a conclave or conclaves to occur, but accepted it was difficult to make firm orders until all the experts reports were filed and served. I therefore foreshadowed making orders for a conclave to occur at the latest in the week commencing 20 August, and left the parties to progress arrangements pending the next directions hearing scheduled for 14 August.
- 9 In part because of difficulties with the arrangements for what was by then proposed to be a single conclave of expert fire engineers (including in relation to the form of questions to be put to the experts), I scheduled a directions hearing at short notice for 7 August 2018. Due largely to the commendable co-operation between the parties up to that time and on the day of the directions hearing, I was able to make orders formally implementing a procedure for the conclave of expert fire engineers to be chaired by Richard Manly QC, and settled the questions to be considered during the conclave and dealt with in a joint report.
- 10 Those orders provided for any expert fire engineer engaged by the Gardner Group “who has provided an expert report by 4pm on 10 August 2018” to participate in the conclave. The identity of that expert was not disclosed at the hearing, although it appears DLA Piper had sent a letter of instruction to Mr Hughes-Brown on 19 July 2018. It is likely (and understandable) that Gardner Group were waiting until they had Mr Hughes-Brown’s report before revealing his identity. Counsel for the Gardner Group were nevertheless actively involved in

the debate over the conclave orders and questions, both at the 7 August directions hearing and the next scheduled hearing on 14 August discussed below. The 7 August order also prohibited any communication between those involved in the proceeding and the experts, from the commencement of the conclave until the issue of the joint report.

- 11 By the time of the hearing on 14 August, some further issues had arisen in relation to the form of questions for the expert fire engineers settled following the 7 August hearing — in particular in relation to question 10, which read: “What were the factors that contributed to the spread of the fire?” After giving the parties the opportunity to agree amendments, I settled the final form of the questions by orders made on 16 August, which provided (among other things) that question 10 be amended by adding to the existing question:

“Without in any way limiting the factors the experts may wish to identify in answering this question, they are invited to consider the possible contribution of:

...

- d. the method of the fixing of the aluminium composite panels on the exterior walls (including the balcony walls) of the Lacrosse building.”

- 12 The conclave was subsequently arranged to take place on Friday 24 and Monday 27 August. A joint report drafted by Mr Manly with the assistance of the five expert fire engineers, was completed and sent to the parties and the tribunal at the conclusion of the second day of the conclave. Again, given the number of parties and experts involved, they (and Mr Manly), are to be commended for arranging, participating in and completing the conclave process within such a compressed time frame.

- 13 Further, as is apparent from the joint report, the expert fire engineers were able to reach common ground on most issues, with the exception of dissent on some questions from Dr Clancy, the expert engaged by the fifth respondent. In particular (for present purposes), all of the experts (including Mr Hughes-Brown) agreed that the method of the fixing of the aluminium composite panels (“ACPs”) on the exterior walls (including the balcony walls) of the Lacrosse building did not contribute to the spread of fire.

- 14 In the meantime, on 6 July 2018 DLA Piper had written to Wotton Kearney, the applicants’ solicitors, seeking to arrange an inspection at the Lacrosse tower, including by removing one of the Alucobest ACPs in order to review its installation. Correspondence between DLA Piper and Wotton Kearney about the extent and logistics of inspection continued during the second half of July and the first half of August 2018. According to Mr Thangarajah, there were delays associated with locating a suitable contractor to assist in the destructive inspection of an Alucobest ACP. The inspection eventually took place on 17 August 2018. It appears that, apart from the applicants, no other party was forewarned of the

inspection. Certainly LU Simon was not, and the fact that the inspection was being arranged and for what reason, was not mentioned during any of the directions hearings dealing with the proposed conclave.

- 15 On 21 August 2018, DLA Piper emailed the other parties stating that they had conducted an inspection at the Lacrosse tower the previous Friday 17 August and noting that they would be forwarding a link with copies of photographs that were taken during the inspection. There was no reference in the letter to any intention on the part of the Gardner Group to send that material to Mr Hughes-Brown with instructions to provide a supplementary expert report. Those instructions were in fact sent to Mr Hughes-Brown on 22 August 2018, two days before the expert conclave commenced on 24 August 2018.
- 16 Those instructions included questions concerning:
  - a the extent to which the installation of the Alucobest ACPs met the architectural specifications and drawings for the Lacrosse building, accorded with the Alucobond technical material and “created an undue risk of fire spread”;
  - b the likely cause of the Alucobest ACPs igniting; and
  - c whether “proper installation” of the Alucobest ACPs in accordance with the architectural specifications and drawings and in accordance with the Alucobond installation methods, would have “made any difference to the behaviour of the spread of the fire”.
- 17 Thus the instructions to Mr Hughes-Brown sent on 22 August raised a series of specific questions directly informing one of the issues for consideration at the conclave two days later; namely, question 10 set out above. The Supplementary Report is Mr Hughes-Brown’s response to those instructions. I have read the Supplementary Report.
- 18 Against that background, it is clear to me that the Gardner Group had the opportunity (notwithstanding the already compressed timeframe) to bring to the attention of the other respondents any or all of:
  - a their intention and arrangements to conduct the destructive inspection;
  - b their plans to instruct Mr Hughes-Brown to consider the results of the inspection and provide a further report dealing with (among other things) effects on fire spread; and
  - c the fact of the giving of those instructions up to two days before the first day of the conclave at which the issue of fire spread was to be discussed and opined on.
- 19 The fact that they did not to do any of those things was no doubt a legitimate forensic decision. It enabled the Gardner Group, first, to retain control of the process of securing the inspection results and second, to ensure that their expert’s

opinion was favourable to their case, before revealing the outcome to the opposing parties. However, it was a decision with consequences. In particular:

- a it meant that none of the other respondents had an opportunity to participate directly in the inspection to ensure that all matters they considered relevant were assessed; and
- b it denied the opportunity to the group of five fire engineers to consider, discuss and formulate views in conclave and without the involvement of the parties or their legal advisers, on the significance of the inspection results.

### **Written submissions**

20 The Gardner Group contends that the tribunal has been asked to make a finding of fact as to the manner in which the Alucobest ACPs on the balcony of apartment 805 ignited. They say that the MFB Post Incident Analysis Report (“MFB Report”) does not squarely address this question, and Mr Badrock who co-ordinated the preparation of the MFB Report on behalf of the MFB, was unable to take the matter any further. They submit that Mr Cousins’ expert report makes no comment as to how the fire spread from the timber table and ultimately came to ignite the Alucobest ACPs. However, they expect that he will be able to give evidence relevant to this issue when called.

21 The Gardner Group later contends that:

“Further, the expert fire engineers were asked to comment on the potential causes of the spread of fire as part of the experts’ conclave, including whether the method of fixing the panels was a factor. However, from the various letters of instruction to those expert fire engineers, it does not appear that any fire engineer expert (with the exception of Mr Hughes- Brown by reason of the instructions provided in respect of the Supplementary Report), was asked to consider how the Alucobest panels were actually installed, by reference to detailed photos or an inspection of any apartment in the Lacrosse building, which was undamaged by the fire. The answer given by the experts to question 10, therefore must be premised upon some form of assumption made by each expert as to how the panels were fixed on the Lacrosse building. The nature of the assumption made by each expert in this regard is unclear and can (and will) be tested during the concurrent hearing.”

22 Against this background, the Gardner Group submit that two matters of particular relevance arose from the destructive inspection on 17 August 2018. First, that the photographs demonstrate that there were unprotected service connections which penetrated through the Alucobest ACPs. They add that the existence of these unprotected penetrations had not been identified in any expert report or in the MFB Report. Second, that the inspection confirmed the exact manner of installation of the Alucobest ACPs, which they allege was inconsistent with the manner of installation recommended by Alucobond for its ACPs. They submit that this is a different issue to the fixing issue identified in the MFB Report, being

that mechanical fixing was preferable to tape fixing due to decreased risk of delamination. The Gardner Group submits that the Supplementary Report provides evidence as to the likely cause of the ignition of the Alucobest ACPs and compares the methods of installation nominated by Alucobond with the manner of installation used for the Alucobest ACPs.

- 23 On the question of the timing of the destructive inspection, the Gardner Group submit that “from the time Mr Thangarajah became aware of the need to inspect the apartment balcony in June 2018, he acted without delay to make arrangements for this to occur at the earliest possible time”. They further submit that the “timing” is explained by the numerous other substantial tasks which faced DLA Piper at this time.
- 24 In reply, LU Simon submit that the issue of the method of installation and fixing of the Alucobest ACPs is not a new issue in these proceedings. It suggests that the issue was probably first raised in the MFB Report, which has been available since in or about April 2015. It also points to references to the issue in the fourth respondent’s points of defence dated 19 May 2017 (which were picked up by the Gardner Group in June 2017 as part of its proportionate liability defence) and in the witness statement of Jim Moschoyiannis, which was served on the parties on 18 May 2018.
- 25 In his affidavit in opposition to the application for leave, Mr Saw of Colin Biggers & Paisley (LU Simon’s solicitors), deposes that if he had received prior notice of this destructive testing of the Alucobest ACPs, he would have arranged for LU Simon's expert Mr Kip to attend and observe the testing and take his own photographs and samples of materials if required. He would also have arranged for appropriate questions regarding fixing of the panels to be included in the list of questions for experts at the conclave and this issue would then have been addressed by the experts in the conclave. Mr Saw’s affidavit also identifies pleading amendments that he asserts LU Simon would need to make if an order were made granting leave to the Gardner Group to rely on the Supplementary Report.
- 26 Finally, Mr Saw’s affidavit explains that LU Simon's expert in the fields of building surveying and fire safety engineering, Mr Stephen Kip, has been overseas in Europe since 28 August 2018 and does not return to Australia until 28 September 2018. He adds that the parties were informed of this on 21 August 2018 as part of making the arrangements for the conclave. He deposes that as matters presently stand: “it is not known when LU Simon will be in a position to obtain an expert report from an appropriate expert to respond to the matters raised by Mr Hughes-Brown before the hearing of the expert evidence”.

## **Analysis**

- 27 It was not in dispute that the tribunal has a broad discretion as to the admission of expert evidence, as conferred by s94 and schedule 3 of the *Victorian Civil and Administrative Act 1998* (Vic) (“VCAT Act”). In particular, schedule 3 (which is concerned with expert evidence) specifically references s80 of the VCAT Act, the

directions power. This provides that “the tribunal may give directions at any time in a proceeding and do whatever is necessary for the expeditious or *fair* hearing and determination of a proceeding” (emphasis added). I agree with the Gardner Group submission that the power must be exercised also by reference to ss97, 98 and 102 of the VCAT Act and that: “Relevantly, the tribunal is not bound by the rules of evidence and may inform itself of any matter as it sees fit”.

- 28 It is now well established by a number of recent decisions (notably of J Forrest J of the Supreme Court of Victoria in the course of the bushfire litigation) that the principles for late amendment to a pleading are, in a general sense, also applicable to the late service of an expert report.<sup>1</sup> In *Thomas v Powercor Australia Limited (Ruling No 3)* [2011] VSC 391 (“*Thomas*”), J Forrest J confirmed that those principles (derived from the decision of the High Court in *Aon Risk Services Australia Limited v Australian National University*<sup>2</sup>) were as follows:

“Aon demonstrates that there are a number of factors relevant to an application such as this. For instance:

- (a) whether there will be a substantial delay caused by the amendment;
- (b) the extent of any wasted costs;
- (c) whether there is an irreparable element of unfair prejudice caused by the amendment;
- (d) concerns of case management arising from the stage in the proceeding when the amendment is sought;
- (e) whether the grant of the amendment will lessen public confidence in the judicial system; and
- (f) whether a satisfactory explanation has been given for seeking the amendment at the stage when it is sought.

It is, however, to be remembered that the primary question still remains: What do the interests of justice dictate? Aon reminds us that the prism through which these interests are viewed is wider than just that of the moving party.”

- 29 The decision in *Thomas* has in my view particular relevance to the present case, because of His Honour’s identification of the potential effect of a late served expert report on a forthcoming conclave of experts. In this regard, His Honour held:<sup>3</sup>

“Third, the introduction of Dr Price's evidence at this point of time has the risk of derailing the conclave of experts fixed for 10 October 2011. Dr Price did not participate in the preparation of the joint expert report and I think it would be wrong to permit him to now intervene.

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<sup>1</sup> *Thomas v Powercor Australia Limited (Ruling No 3)* [2011] VSC 391, cited with approval by the Victorian Court of Appeal in *Northern Health v Kuipers* [2015] VSCA 172 at [28] and [29], see also *Matthews v SPI (Ruling No 20)* [2013] VSC 197 and *Matthews v SPI Electricity & Ors. (Ruling No 37)* [2014] VSC 97.

<sup>2</sup> (2009) 239 CLR 175.

<sup>3</sup> *Thomas* at [20]-[21].

Finally, I accept that no demonstrable prejudice has been demonstrated by Powercor. However, that is not the determinative factor. The orders of the court in relation to the service of expert witness statements were designed with a purpose -- to facilitate a joint expert report and the giving of concurrent evidence. To permit a further expert to join that debate simply because Mr Thomas' lawyers last week thought it was a good idea is not good enough."

- 30 The circumstances in *Thomas* were not on all fours with the present case. Unlike in *Thomas*, Mr Hughes-Brown did participate in the conclave of experts and has signed the joint report (notably for present purposes, agreeing with the other four expert fire engineers to the effect that the fixing of the ACPs did not contribute to the spread of the fire). However, in my view, to permit the Gardner Group now to rely on the Supplementary Report will have an equivalent undermining effect on the conclave process. Indeed, its effect could be even more adverse than the late addition of a further expert.
- 31 As in *Thomas*, the timing and content of the orders of the tribunal in relation to the filing and service of experts reports in this proceeding were designed to facilitate a conclave of experts and a joint report. The importance of that process for distilling and narrowing the issues between the experts and thus the issues required to be ventilated in the hearing, cannot be overstated. That importance is dramatically heightened when the number of separate experts involved is as many as five.
- 32 Further, in my view, the success of the conclave depends on each of the experts entering the process on a level footing in respect of the information and instructions available to them. Subject to this, a conclave conducted in the absence of the controlling influence of the lawyers for the parties, enables the participants as peers to weigh and debate the views of others and work cooperatively to a common position, or at least to one where the areas of dispute are narrowed and more clearly defined.
- 33 The vice in introducing the Supplementary Report after the conclave and the joint report (and when there is no realistic prospect of a further conclave), is that Mr Hughes-Brown's findings in that report will not be subjected to the benefits of the peer debating and weighing process described. Instead, his findings will be presented to each of the experts during the concurrent evidence. Thus their consideration of the findings will occur under the harsh scrutiny of a public adversarial hearing. And the articulation of their observations will be closely directed and controlled by respective counsel for the parties.
- 34 It is also likely that the process described will be one in which the Supplementary Report becomes the benchmark for the consideration of the issues discussed in the report, with each of the other expert fire engineers (and other witnesses) being asked to give their evidence by reference to Mr Hughes-Brown's findings. In my view, this would work to the advantage of the Gardner Group and (in effect) thus reward them, both for entering the process late and for making the forensic decision to play their cards close in respect of both the inspection and report, until they knew the result was favourable.

- 35 Returning to the principles listed in *Thomas*, for the reasons stated, to my mind the late filing of the Supplementary Report gives rise to an unfair prejudice at least to LU Simon and probably also the fourth respondent. That unfairness also invokes the operation of s80 of the VCAT Act. Further, I am satisfied that the prejudice is “irreparable”, in the sense that it is no longer practicable (without risking an adjournment or other significant delay), to reconvene the conclave.
- 36 The extent of prejudice might be diminished by allowing LU Simon and the fourth respondent additional time to consult their own witnesses, seek instructions and make any adjustments to their pleading as they may be advised, but it would not be entirely eliminated. Further, allowing that time would likely lead to delay, which is another of the principles referred to in *Thomas*. Except in the context of delay, wasted costs and confidence in the system of justice are not significant considerations in the present circumstances,
- 37 It is self-evident that the application for leave raises concerns of case management arising from the stage in the proceeding when the leave was sought. The Gardner Group had missed numerous deadlines imposed by the tribunal, including in relation to expert evidence. And they failed to take the opportunity to ameliorate the effect of this latest missed deadline by alerting the other parties to their intentions in relation to the inspection and report at the earliest opportunity. I also accept LU Simon’s submission that at least the issue of the installation of the Alucobest ACPs has been a live issue in the proceeding for some months, if not years.
- 38 In relation to whether a satisfactory explanation has been given for seeking the amendment at the stage when it is sought, in my view, the pressures on the Gardner Group referred to in Mr Thangarajah’s affidavit as an explanation for the “timing”, were largely self-inflicted. As explained above, they stemmed primarily from their decision to claim privilege against self-incrimination and then unilaterally resile from that decision (without notifying the parties or the tribunal), some two to three weeks after being notified that the Board had adjourned its inquiry to an unspecified future date.
- 39 I turn finally to the primary question identified in *Thomas*: what do the interests of justice dictate? There is no doubt that the issues raised by the Supplementary Report are important in the overall consideration of the spread of the fire and therefore the outcome of this proceeding. I also accept that the issue of penetrations through the Alucobest ACP and its installation had already been put to one witness (Mr Moschoyiannis) at the time I made my order refusing leave to rely on the Supplementary Report. And senior counsel for the Gardner Group has made clear his intention to put these issues to other witnesses, including the expert fire engineers during the conclave. Senior counsel for LU Simon has conceded (correctly in my view) that there is no prohibition to this occurring.
- 40 In *Redzepovic v Western Health*<sup>4</sup> the Victorian Court of Appeal held that:

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<sup>4</sup> [2016] VSCA 251.

“Further, the additional reports of Professor Serpell, and the additional report of Professor Sizeland, in substance amounted to no more than an elaboration by them of matters that were the subject of their earlier reports. In the circumstances, it would have been somewhat artificial for the judge not to have permitted the respondent to rely on the contents of those reports. When each of the two medical experts gave viva voce evidence, it was highly likely that the matters referred to in those additional reports would become the subject of their evidence, whether in evidence in chief, or in response to questions in cross-examination. In that respect, this case is quite different, and distinct, from the circumstances in *Thomas v Powercor Australia Ltd*,<sup>29</sup> in which J Forrest J excluded an expert report that was not served in accordance with the rules.”

- 41 Thus it is open to find that it is similarly artificial in this case to exclude the report when the issues canvassed in it will be examined during the course of the evidence, including by the relevant experts. However, in my view, the evidence in the Supplementary Report is much more than an elaboration of matters that were the subject of earlier reports. In particular, on one view, it contradicts the conclusion on question 10 in the joint report. I am also mindful of my remarks above concerning the potential for the Supplementary Report to serve as the benchmark for the examination of these issues during the hearing.
- 42 In all the circumstances, I consider that the interests of justice are best served in this case by refusing leave to the Gardner Group to rely on the Supplementary Report, but allowing the issues to be developed by each of the parties in the course of the evidence as they see fit. I hasten to say that this should not be viewed as an invitation to any party to, in effect, re-create the evidence comprised in the Supplementary Report in the course of the concurrent evidence. Any objections to particular matters being put to the expert fire engineers (or other witnesses) will be dealt with on a case by case basis. However, by disallowing the Supplementary Report, such evidence as is adduced on these issues will emerge organically in the evidence of each witness from a roughly equivalent starting point.

Judge Woodward  
**Vice President**

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
CIVIL DIVISION  
BUILDING AND PROPERTY LIST  
AT MELBOURNE**

**VCAT Reference No: BP 350/2016**

BETWEEN

**OWNERS CORPORATION NO. 1 PS613436T** (and others according to the schedule on the Tribunal file entitled "Schedule of Parties as at 8 August 2018") Applicants

and

**L.U. SIMON BUILDERS PTY LTD (ACN 006 137 220)** (and others according to the schedule on the Tribunal file entitled "Schedule of Parties as at 8 August 2018")

Respondents

**SCHEDULE OF PARTIES AS AT 8 AUGUST 2018**

**APPLICANTS**

<b>Applicant No.</b>	<b>Name of owner(s)</b>
1.	Owners Corporation 1 PS613436T
2.	Owners Corporation 2 PS613436T
3.	Owners Corporation 4 PS613436T
4.	Sammy Yip and Nancy Chen
5.	Nie Fong Lie, Hans Roderico Lianto and Owen Ricardo Lianto
6.	Sam Loncar and Anita Renata Loncar
7.	Kevin John Marsh and Christine Marsh
8.	Patricia Frances Miller
9.	Sarah Shu
10.	Biplab Kumer Roy and Shahana Roy
11.	Simon Philip Tannard and Suzanne Jacqueline Tannard
12.	Wai Leung Raymond Cheung
13.	Khoon Lim Chuah
14.	Daniel Patrick Loughnan

<b>Applicant No.</b>	<b>Name of owner(s)</b>
15.	Huynh Le Vo and Elizabeth Rachel Van Den Aakster
16.	Hartono Kuswanto, Meily Kuswanto Kam and Kho Eng Eng
17.	Man Chi Chung and Tuyet Chung
18.	Interimpex Pty Ltd (ACN 097 734 622)
19.	Limin Zhou
20.	Chong Lok Ho and Sau Ling Wong
21.	I-Mei Li
22.	Dayong Jin and Zhihong Li
23.	Zhao Min Xue and Wei Ming Yao
24.	Xingyang Wang
25.	Cheng Chang Wang
26.	Cherrie Ann Ramos MacAhilig
27.	Mandy Yee Fung
28.	Robert Kevin Peter Campbell and Julie Susan Edge
29.	Lee Foo Keong Lee and Wong Huey Shyan
30.	Xiao Ling Huang
31.	Lan Zhao
32.	Gary Michael De Bruyn
33.	Hong Wang and Jiaping Xie
34.	Rebecca Lee Pig Hah, Farah Binti Gulamoydeen and Sarah Binti Gulamoydeen
35.	Lai You Kim
36.	Liza Jane Hammersley and Sonya Margarete Szymanski
37.	Rosendo Baltazar and Elvira Baltazar
38.	Viet Cuong Nguyen
39.	Junwei Zhu

<b>Applicant No.</b>	<b>Name of owner(s)</b>
40.	Bi Yong Zhang and Ren Wang
41.	Jinsheng Gao and Rongqing Gu
42.	Wai Yee Wong
43.	Hoang Long Vu
44.	Marlowe De Chavez Ricamora
45.	Chei How Ng and Lai Fong Low
46.	Hon Kong Liew
47.	Simon Cee and Karen Wang
48.	George Angel
49.	Rishi Shatrughan Singh
50.	Mathew Alexander
51.	Johanes Kwistianus
52.	George Stamatakis
53.	Tan Swee Seong
54.	Low Ping Lin and Cheow Wai Yee
55.	Nonato De Chavez and Maria Jesusa De Chavez
56.	Adam James Gawne, Peter Thomas Gawne and Julie Elizabeth Gawne
57.	Joseph Gerard Philip
58.	Bary Besfari
59.	Woo Wai Lek and Suzanna Tan Ren Tsyr
60.	Sook Yin Hon
61.	Steven Wayne Roberson and Leonie Christine Roberson
62.	Beng Lee Tan and Dee Jun Ong
63.	Suparman Edhie Wahidin
64.	Lim Cheng Seng and Tai Yuet Ying

<b>Applicant No.</b>	<b>Name of owner(s)</b>
65.	Jun Li
66.	Yanzhuo Li
67.	Michael Hon Lien
68.	John Joseph Mottolini and Tammy Lee Mottolini
69.	John Andrew Kus and Kelli Jean Kus
70.	Jie Yun Huang
71.	Ngoc Tan Mai
72.	Rohan Paul Cherry
73.	Annakkarage Uthpala Kanchana Peiris
74.	D & K Blowes Pty Ltd (ACN 154 473 042)
75.	Ulric Otto Walter Meffert
76.	Zahar Mohd Hashim Bin Zainuddin and Shafinaz Binti Shaukat
77.	Hogun Lee
78.	Nykes General Trading Pty Ltd (ACN 101 535 540)
79.	Ai Hue Truong
80.	Xiao Min Mo and Kwong Leung William Chung
81.	Helen Monika Campbell
82.	Qingzhi Liu and Qiqi Wang
83.	Peter Martin Kennedy and Debra Jane Kennedy
84.	Andrew James Millward and Bernadette Millward
85.	Frank Gaston Hedley Bhujoharry and Marie Paquerette Maryse Clair Bhujoharry
86.	Peter Joseph Irvine
87.	Xiao Wei Quan and Jia Xin Liu
88.	John James McKinlay
89.	Ameer Adnan Alaraji and Sahira Alaraji

<b>Applicant No.</b>	<b>Name of owner(s)</b>
90.	Steven Mark Angus and Geraldine Frances Angus
91.	Shireen Bangah
92.	Huat Beng Cheong and Mee Chin Lo
93.	Kevin James Cann and Made Seneng Cann
94.	Qing Zhao
95.	Chow Shung Chee
96.	Nor Shahidah Binti Khairullah
97.	De Lima Custodian Pty Ltd (ACN 157 968 593)
98.	Ho Eun Jang
99.	Lim Sook Luan
100.	Kolap Hang
101.	Glenn Robert Attenborough and Glenys Ann Attenborough
102.	Julie Krista Howes
103.	Lillis Mario Abraham and Ann Abraham
104.	Ping Shi and Xiaowan Bao
105.	Ayu Trisana and Surya Tirtana The
106.	Eddy Siu Tim Ng and May Mei Ling Wong
107.	Lingjuan Jiang
108.	Rhymney Pty Ltd (ACN 008 537 568)
109.	Hin Chiong Tiong and Peak Tin Teo
110.	Mark Campbell Brown and Christine Burke
111.	Thi Hue Hoang
112.	Chien-Jen Huang, Hsinag-Meng Liu, Lei Huang and Yen Huang
113.	Xuan Loc Nguyen and Thi Thanh Sang Nguyen
114.	Shuai Pei
115.	Yuxuan Li

<b>Applicant No.</b>	<b>Name of owner(s)</b>
116.	Chui Ngik Hwong
117.	Sohail Ashraf
118.	Kamil Akkurt and Nalan Akkurt
119.	Terry Bahat
120.	Soon Chai Lim
121.	Romulo Sevilla Dacaya and Arlene Canicula Dacaya
122.	Yan Wang
123.	Stephen Noel Whyte and Leesa Gaye Ryrrie
124.	Gang Fei
125.	Yew Fong Lai and Choi Wah Kok
126.	Julian Lee Hou Law and Bee Siew Chua
127.	Weng Shin Leong and Kui Yoon Chong
128.	Scott Stephen Crawford
129.	Li-Yu Tu
130.	Yvonne Khanh Phung Chau
131.	Thi Tuyet Co Tran
132.	Anthony Vincent Sammut
133.	Mei Qing Herbst and Andreas Michael Helmut Karl Herbst
134.	Ethan Tony Chien
135.	Janisha Pty Ltd (ACN 401 733 379)
136.	Phillip John Marriott and Carolyn Patricia Marriott
137.	Sukumar Banala and Bianca Virginia Vaguez
138.	Zalewski Property Investments Pty Ltd (ACN 156 576 831)
139.	Beng Kit Lim
140.	Robelat Nominees Pty Ltd
141.	Noel Emmanuel Saliba and Cathryn Melissa Saliba

<b>Applicant No.</b>	<b>Name of owner(s)</b>
142.	Jianju Chen
143.	Aaron Del Rosario Trajano and Antonia Del Rosario
144.	Cinhold Australia Pty Ltd
145.	Hai Quang Nguyen
146.	Martinus Widjaja
147.	Chuc Anh Thu Phan
148.	Xiao Ling Hao
149.	Mylles Bates
150.	Steven Wall
151.	Ting Ting Wang
152.	Mehran Shirvani
153.	Geoffrey Scott
154.	Richard Rault and Fiona Rault
155.	Eric Little and Debra Little
156.	Kim Soon Yap and Sau Har Foon
157.	Angus Michael Ballantyne
158.	Li Na Nheu
159.	Kok Hong The and Suet Yue Mah
160.	Yi Theng Wong
161.	Kay Yeow Lim and Siew Kim Ng
162.	Yong Qin Zhou
163.	Goh Swee Heng and Chan Beng Huat
164.	Xiaolin Hu
165.	675 La Trobe Street Pty Ltd
166.	Chong Yoke Lai
167.	Kit and Karine Holdings Pty Ltd

<b>Applicant No.</b>	<b>Name of owner(s)</b>
168.	Loh Tah Min, Yeo Peck Gate, and Loh Kai Jun
169.	Jole Batterham
170.	Terry Weng and Ya-Lee Chen
171.	Chua Li Li and Gan Yeong Shuoh
172.	Christopher James Coughlan and Kerry Anne Bourke
173.	Neil Richard Wilson
174.	Steve Halikidis and Dariya Sagatova
175.	Chun Fang Wu and Jieming Chen
176.	Jin Liu
177.	Ian Gregory Taylor and Christine Margaret Taylor
178.	Alfredo Bilfuco
179.	Koh Teck Kim and Fan Wang Yiang
180.	Rabindra Basnet
181.	Chia Kee Kwei
182.	Matthias Francis De Natris and Johanna Monique De Natris
183.	Jun Lu and Hongyan Gao
184.	Steven Inghock Lau and Eftichia Kerdemelidis Lau
185.	Zhongzheng Qiu
186.	Rashikendra Pal
187.	Yunita and Rudy Gomdedi
188.	Boon Nee Jong and Mook Sem Chung
189.	Gregory Ross North and Susan Maree North
190.	Kunaseelan Senathirajah, Pathmaseelan Senathirajah and Sathiaseelan Senathirajah
191.	Tony Morton Nicholson and Alison Ruth Nicholson
192.	Aristidis Ganas and Tanya Ganas

<b>Applicant No.</b>	<b>Name of owner(s)</b>
193.	Lintar Pty Ltd
194.	Edmund Jun Kong Pui and Lai Yoong Wong
195.	Ameer Adnan Alaraji and Sahira Alaraji
196.	Nesp Docklands Pty Ltd
197.	John Vincent O'Driscoll and Elizabeth Margaret O'Driscoll
198.	Michael Gerard McMahon and Elizabeth Nicola McMahon
199.	Geoffrey Rothwell King and Noelene Elizabeth King
200.	Mark John Jones and Tracy Ann Jones
201.	Kim Swee Tay and Lai To Tham
202.	Lake Custodian (WA) Pty Ltd
203.	Alexander Dela Rosa Villalon and Anna Lisa Villalon
204.	James Ross Taylor and Rebecca Taylor
205.	Ian Paul Scrivener and Jennifer Lynne Scrivener
206.	Patricia Frances Miller
207.	Robert James Adams and Phyllis Maree Duff
208.	Abdhul Hak Bin Md Amin and Hamidah Binti Omar
209.	Wai Ling Liew and Wai Choy Chan
210.	Leela Madhavi Kalagara and Nageswara Rao Uppalapati
211.	Bin Li, Yongsheng Wang and Jingmei Chen

## RESPONDENTS

<b>Respondent No.</b>	<b>Name</b>
1.	L.U. Simon Builders Pty Ltd (ACN 006 137 220)
2.	Anastasios Galanos
3.	Gardner Group Pty Ltd (ACN 056 178 262)
4.	Elenberg Fraser Pty Ltd (ACN 081 961 855)

<b>Respondent No.</b>	<b>Name</b>
5.	Tanah Merah Vic Pty Ltd (ACN 098 935 490)
6.	Gyeyoung Kim
7.	Jean-Francois Gubitta
8.	Property Development Solutions (Aust) Pty Ltd (ACN 103 876 311)