



ANGAS SECURITIES LIMITED ABN 50 091 942 728  
AUSTRALIAN FINANCIAL SERVICES LICENCE NO. 232 479

# Debenture Holder Run-Off Update

**24<sup>TH</sup> APRIL 2018**

## **1. INTRODUCTION**

I am sorry that this bulletin is being distributed to you so long after the end of the March quarter. I know that investors expect punctual guidance as to the steps being taken by the directors and management of Angas Securities to redeem the debenture fund which continues in Run-Off. As a consolation, I can report that the events which have consumed my attention have been primarily of a positive nature as you will read in this bulletin. The debenture fund comprises loan assets (principal and accrued interest & fees), collateral security, direct property investments, two outstanding court actions, several judgments held against guarantors which are being met, sundry receivables and, if required, the potential sale of the Managed Funds businesses. Market forces drive the pace and size of asset realisations. Sale prices achieved by Angas to date have been broadly in line with book value. Each transaction has exceeded the valuation obtained by The Trust Company Limited ("Trustco") where applicable.

## **2. THE CURRENT STATUS OF THE LOAN PORTFOLIO**

The hoped for pick up in the Western Australian property market seems to have begun. This has seen real competition amongst potential buyers for a number of properties controlled by Angas. Consequently, there have been several sales contracts entered into. If these settle, then significant funds will flow to investors. The final property held by Angas in Queensland has sold and settled. There continues to be strong interest in the Fernhill Estate assets in Western Sydney with the NSW Minister of Planning exchanging contracts to buy the central homestead precinct following the NSW Minister for Cemeteries blocking the sale to Rookwood General Cemetery Reserve Trust late last year.

**2.1** The Eco Village Lot 12 at the Currumbin Valley was the last loan asset held by Angas in Queensland. You might recall that Angas had hoped to achieve a sale price that was double Trustco's valuation. By obtaining planning consent for residential use from Gold Coast City Council, Angas enhanced the sale price to 180% of Trustco's valuation. This is one of several instances where persistence and enterprise by Angas has delivered a better outcome for investors.

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- 2.2** An inner city Perth property has been sold on cash, unconditional terms for \$5.0 million with the approval of the Loans Realisation Committee (“LRC”). It is booked to settle late next month. Trustco’s valuation was \$4.5 million. There were other encouraging features of this transaction which bode well for the Run Off. The purchaser was one of three interested parties. Angas agreed to accept the offer because of certainty. It was a cash offer. According to the selling agent, both of the other parties had been under bidders on other properties. This suggests that the Perth commercial property market is tightening, prices are increasing as is demand.
- 2.3** One of the parties looking at the inner city Perth site had also expressed interest in acquiring a beachfront development property from Angas. A conditional contract for \$6.5M has now been signed with this party following consultation with the LRC. The purchaser must now undertake due diligence. Angas understands that the proposed residential development will include a tavern as now mandated for the site by the City of Rockingham.
- 2.4** A retail development site in metropolitan Perth is likewise under conditional contract at a price of \$6.0M with deposit paid. The purchaser is a long established Perth developer which has commenced due diligence. Angas understands that the take up of new housing in the vicinity is ahead of demographic projections. This is supportive for a supermarket, pharmacy, medical centre all of which are approved uses for this site by the City of Swan.
- 2.5** A major residential development site south of Perth continues to attract interest from credible parties. One developer was willing to pay \$7.2M for the site so long as he could acquire two adjacent properties. One neighbour would sell but the other wouldn’t so the deal stalled. The bidder is persistently pursuing Angas with a lower offer. Meanwhile, Angas has finished scientific testing at the site which abuts residual agricultural uses. The results give Angas a proper basis for having an odour buffer on the site extinguished or greatly reduced. This would permit more intensive housing development on site which will increase the underlying land value substantially and encourage buyers.

### **3. SALE OF FERNHILL CENTRAL**

On 29 June 2012, Angas advanced debenture funds to acquire the first mortgage over Fernhill Estate from a Melbourne based financier. The security comprised four (4) precincts:-

- Central Precinct being the site of the historic homestead on 384 hectares. It formerly included standalone land parcels known as Henry Cox Drive and Woodend respectively which Angas has since sold as mortgagee;
- Eastern Precinct which is a large site with residential development potential adjacent to the Mulgoa Village. It remains intact;
- Western Precinct which adjoins the Blue Mountains National Park. It formerly comprised Lot 1 and Lot 31. The former site of 110 hectares is in the process of being subdivided. The latter was sold by Angas as mortgagee during the Run Off; and
- Mayfair Precinct comprised five residential land parcels on Mayfair Drive. All have been sold.

In 2013 Angas freed up debenture capital by re-financing portion of the loan into a first mortgage facility over Fernhill Central only utilising funds from a syndicate managed through Angas Contributory Mortgage Fund (“ACMF”). This cash enabled Angas to execute the “Re-Awakening of

Fernhill” program to revitalize and restore Fernhill Central, undertake bio banking across several precincts and pursue residential development processes which are continuing.

Angas has realised over \$9.0M from sale of the eight discrete land parcels described within the total holdings at Fernhill Estate together with a further \$22M having been realised from bio banking sales in line with prior advice to the market. The NSW Minister for Planning has entered into a contract to purchase the Fernhill Central precinct from the ACMF Syndicate. The Minister has paid a deposit of 10% of the sale price and settlement will take place in June subject to release of a charge by Trust Company (Nominees) Limited (“Trustco”). The purchase price is \$27.25M. The sale proceeds will discharge the ACMF loan with the balance available for distribution to debenture investors. Settlement is expected to take place prior to the date of the next scheduled distribution.

Trustco was requested to provide a partial release of its charge insofar as it relates to shares held by Angas in its capacity as mortgage manager for the ACMF Mortgagees in Mayfair Bio Management Pty Ltd (**Mayfair Company**). Various parcels of land at Fernhill including Fernhill Central form part of the ‘biobank site’ under a Biobanking Agreement No. 112 (**BA #112**) entered into between Angas and the Office of Environment and Heritage (**OEH**). In order for Angas to sell separate lots within that biobank site to different purchasers, the OEH required a variation of BA # 112 and a system to be put in place whereby there was one management company appointed to manage the various landowners’ biobanking obligations under BA # 112. These sales settled last year and the proceeds have been distributed to you and the other debenture investors.

The Mayfair Company does not trade for a profit. It was set up for the sole purpose of each landowner (or its representative) holding shares in the Mayfair Company to receive annual payments from OEH for biobanking maintenance and then directing that Mayfair Company to carry out the biobanking obligations such as eradicating vermin and noxious weeds on site. Each landowner holds a proportionate amount of shares in the Mayfair Company and cannot purchase or on sell the relevant lot without the corresponding transfer of shares in the Mayfair Company occurring.

Angas as mortgage manager for the ACMF Mortgagees holds some of the shares in the Mayfair Company which must be transferred to the purchaser of Fernhill Central. The proposed consideration for the sale of such shares is nominal being \$10.00. Angas will be prevented from settling the sale contract unless it transfers the shares on an unencumbered basis. If an original signed partial release is not provided by Trustco prior to settlement, this will effectively delay a sale of Fernhill Central which may result in Angas losing the sale. Trustco has written to me setting out a series of questions. I am collating a response to those questions. Trustco has not yet provided any indication whether it proposes to permit the sale of Fernhill Central to the Minister or not. The requirement for the partial release of the charge over the shares in the Mayfair Company has been discussed at the LRC.

#### **4. RESTRUCTURE OF THE MANAGED INVESTMENT SCHEMES**

In October 2016, an application was lodged with ASIC by Angas Mortgage Management Limited ('AMML') for an Australian financial services licence ('AFSL') in order to facilitate sale of the two Managed Investment Schemes, if required, as part of the Run Off. ASIC expressed concern that the proposed form of guarantee that AMML may be required to provide (in connection with the debentures issued by Angas (the '**AMML Guarantee**') would result in AMML failing to meet the financial requirements of its proposed AFSL. AMML set out below its views provided to ASIC as to why the AMML Guarantee does not result in AMML failing to meet the financial requirements under its proposed AFSL.

The form of AMML Guarantee is consistent with the requirements of the Angas Debenture Trust Deed, including amendments specifically approved by debenture holders at the August 2017 debenture holder meeting. Justice Beach on 1 September 2017 gave a direction that Trustco is justified in proceeding on the basis that the making of the amendments to the Trust Deed approved by the Extraordinary Resolution of Debenture Holders accords with its duties at law. If AMML is not granted an AFSL, it may be harder to implement the restructure approved by debenture holders which could make you worse off.

ASIC advised Angas that it does not accept the limitation on the AMML Guarantee approved by investors sufficiently addresses the view it has taken. ASIC has declined a request to meet Angas. ASIC has declined to seek Federal Court guidance. Angas is reviewing the reasons given by ASIC on 18 April 2018 but is likely to challenge the ASIC ruling as it would be in your best interests to proceed with the re-structure. Nothing arising from the ASIC ruling impacts on the present ability of Angas to conduct the funds management business to generate revenue to support the Run Off.

#### **5. UPDATE ON OUTSTANDING RECOVERY PROCEEDINGS**

Angas has brought several legal actions to recover funds for investors in the course of the Run-Off. Most have now been resolved. Two are still underway and a further action is being contemplated.

##### **5.1 Duncan & Powell v Verco Insurance Federal Court of Australia No SAD 439 of 2015**

This Claim was commenced on 20 December 2015 by Stephen Duncan and Christopher Powell as Receivers and Managers of Quinnco Pty Ltd and seeks indemnity under an insurance policy for property damage the claim is for a sum in excess of \$6.0 million. An independent loss adjuster was appointed under the policy to adjudicate the merits of the claim. Unlike Angas, Vero did not accept his recommendation. Vero denied indemnity under the policy. Mediation did not lead to settlement. Justice Derrington has been appointed as Trial Judge. Additional expert evidence as to loss has now been obtained by Angas supporting the amount of the claim.

Angas contends that the claim for loss of market value should be assessed by reference to the reinstatement cost. Vero is obtaining an expert report to determine loss (whilst denying liability) by first assessing what the "as if complete" value was at the date of the vandalism and then assessing the market value at its actual stage of completion at that date and then deduct from that figure the diminution in value by reason of the vandalism. Vero is required to provide its expert evidence by 25 May 2018. The proceedings return before Justice Derrington for directions on 22 June 2018.

## **5.2 Angas Securities Limited v SCV Manager District Court of South Australia No 681 of 2017**

Angas took control as mortgagee of two residential estates at Hackham & Christies Beach SA in October 2012. 90 units were leased to tenants and have been progressively sold down over the last five (5) years with 26 units remaining on the market for sale. The defendant was appointed to manage the units. Angas contends that the defendant has overcharged for fees to which it is not entitled and has failed to actively manage the two Estates to the detriment of Angas and its investors. A formulated claim has been submitted to the defendant along with two lever arch folders of supporting documents. The matter is listed before Master Rice for directions on 8 May 2018.

## **6. SETTLEMENT OF BANKSIA PROCEEDINGS AGAINST TRUSTCO**

In the Investor Update of 31 March 2017, I referred to the legal proceedings brought by Trustco to enforce its claim for additional remuneration under its Debenture Trust Deed with Banksia Securities Limited ("Banksia"). Trustco put Banksia into receivership on 25 October 2012. I concluded by observing that the liquidators of Banksia were pursuing a claim for damages in the Supreme Court of Victoria on behalf of Banksia debenture holders against Trustco.

A \$64 million settlement proposal offered to Banksia by Trustco was approved by the Supreme Court of Victoria on 30 January 2018. Trustco pitched the offer as representing all of its own financial resources and all of its remaining insurance cover. Justice Croft published his reasons on 16 February 2018. In the course of a wide ranging judgement, His Honour addressed the proposition that now that Banksia had been made aware of Trustco's true insurance and financial position and the unwillingness of Perpetual Limited to support its subsidiary (Trustco) then steps could possibly have been taken to join an upstream Trustco/Perpetual entity to the proceedings that does have significant available assets (based on a review of the most recently filed statutory accounts) in order to contribute to any larger settlement sum. In particular, it was postulated that Banksia could have taken steps to join Trustco's parent, Trust Company Limited, to the proceedings under s283F(1)(b) of the Corporations Act on the basis that it was involved in the alleged contraventions by Trustco of sections 283AC and 283BD(f) of the Act.

His Honour observed that this course would appear reasonably open in circumstances where Trustco at all relevant times was controlled by Trust Company Limited, the relevant individuals were employed by the Trust Company Limited and reported to other senior offices of Trust Company Limited and the interactions with Banksia were largely through the face of Trust Company Limited. On balance, Justice Croft felt it appropriate for Banksia to accept the \$64 million settlement proposed by Trustco as it was a substantial sum which brought the litigation to an end without further cost and delay. However, the judgement does illustrate a path for any future litigant which may wish to pursue a claim against Trust Company Limited based on any alleged misconduct by its subsidiary, Trustco.

## 7. OTHER RECENT DEVELOPMENTS

Two other matters of interest to investors ought be noted.

- 7.1** On 29 March 2018 Angas received an unexpected claim for legal costs allegedly incurred by Trustco dating back to 2014. Invoices had been raised without itemisation. Some invoices were for amounts Angas had already paid. Other invoices were for disputed cost claims still before the Federal Court awaiting adjudication. Two of the invoices were truly bizarre. One was for Trustco's costs in pursuing a Federal Court appeal which it lost with costs ordered against it. Another invoice for \$400,000 was simply described as miscellaneous. The Federal Court has made it quite clear that it will only approve debenture holder funds to be used to pay Trustco's fees incurred for the benefit of debenture holders.
- 7.2** Angas lodged Half Year Financial Statements on 15 April 2018 prepared in accordance with AASB but not subject to external review by the auditor. On 28 February 2018, Angas applied to ASIC for relief under section 340 of the Corporations Act 2001 (Cth) (the Act) to dispense with these requirements as this would avoid the significant cost to debenture holders of an external review as well as the significant distraction to Angas management associated with the auditor review process. The principal users of the Angas financial reports are debenture holders whose needs are focused on the current and anticipated returns of your principal and the progress Angas is making towards the realisation of its assets in order to pay those returns. Angas contends that Financial Statements prepared under AASB 139 are of minimal utility to debenture holders compared to the monthly reports by Angas to the LRC which contain cash projections (updated monthly) which are the real test of Angas' trading capacity. ASIC has declined this request. Angas proposes to have this administrative decision reviewed. Next month, Angas will commence liaising with Deloitte Touche Tohmatsu to prepare for the annual audit.

Yours faithfully

**Angas Securities Limited**



**Andrew Luckhurst-Smith**  
*Executive Chairman*