



**In the matter of LV Living Limited
2005 ATP 5**

Catchwords:

standing – association –shareholder approval – substantial holding notices – agreement contributing to need to give substantial holding notice – deemed relevant interests – orders –undertakings to Panel

Corporations Act 2001 (Cth), sections 12, 606, 608(3)(a), 608(3)(b), item 7 of section 611

Takeovers Panel Guidance Note 1 – ‘Unacceptable Circumstances’

These are the Panel’s reasons for making a declaration of unacceptable circumstances and final orders, and accepting undertakings, in relation to the affairs of LV Living Limited. The Panel considered that five persons acquired a relevant interest in LV Living shares in breach of section 606 of the Corporations Act, and that the continued holding by those persons and their associates of voting power in LV Living of more than 20% comprised unacceptable circumstances. The Panel made orders and accepted undertakings to freeze the voting power of each of the five shareholders and their associates for up to 12 months from the acquisition of the offending relevant interest. The Panel also considered that a large number of persons had not complied with substantial holding notice requirements in the Corporations Act, and made orders and accepted undertakings requiring corrective disclosure.

THE PROCEEDINGS

1. These reasons relate to an application (the **Application**) to the Panel from Geoff Woodham Financial Services Pty Limited (**GWFS**) on 13 January 2005 in relation to the affairs of LV Living Limited (**LV Living**).

THE PANEL & PROCESS

2. The President of the Panel appointed Marie McDonald (sitting President), Jennifer Seabrook (sitting Deputy President) and Jeremy Schultz as the sitting Panel (the **Panel**) for the proceedings (the **Proceedings**) arising from the Application.
3. The Panel adopted the Panel’s published procedural rules for the purposes of the Proceedings.
4. The Panel consented to the parties being legally represented by their commercial lawyers in the Proceedings.

SUMMARY

The Application

5. The Application related to:
 - (a) a number of issues of shares in LV Living, including to Peridon Management Pty Ltd (**Peridon**), Aged Care Properties Pty Ltd (**ACP**) and Retirement Property Solutions Pty Ltd (**RPS**) following a meeting of LV Living shareholders;

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- (b) a transfer of shares from Peridon to Wesland Investments Pty Ltd (**Wesland**); and
 - (c) a proposed issue of securities in LV Living.
6. After considering the Application, the Panel made a declaration of unacceptable circumstances and final orders and accepted undertakings. The declaration, orders and undertakings related to the issues of shares to Peridon and ACP, and ancillary concerns in relation to the level of substantial holding disclosure in relation to LV Living. The declaration, orders and undertakings are set out in Annexures A, B and C to these reasons.

Unacceptable circumstances

7. The Panel considered that unacceptable circumstances existed in that:
- (a) each of Mr Robert West, Peridon and ACP acquired shares in LV Living in December 2004 in breach of section 606. In each case, the relevant acquisitions resulted from a fresh issue of shares to the relevant parties;
 - (b) two associates of ACP, Lidcombe Banner Pty Ltd (**Lidcombe**) and Mr Anthony Radford, acquired shares in LV Living on-market after the issue of shares to ACP by LV Living in breach of section 606;
 - (c) Peridon and its associates and ACP and its associates continued to hold voting power in LV Living in excess of 20%; and
 - (d) a number of persons had not lodged substantial holding notices as required by, and which complied with the requirements of, Chapter 6C. Those persons are listed in Annexure D to these reasons.
8. The voting power of Mr West, Peridon and ACP immediately after the shares were issued to them and their voting power at the date of the Panel's decision (following subsequent share issues) is summarised in Table 1.

Table 1

	Voting power immediately after the acquisition of shares in breach of section 606	Voting power at the date of the Panel's decision
Mr West	31.47%	22.39%
Peridon	31.47%	22.39%
ACP	26.89%	25.48%

Associate relationships

9. In reaching the above conclusions as to voting power:
- (a) the Panel reached a number of conclusions concerning which persons were associated with Peridon and which persons were associated with ACP. Mr West and Peridon advised the Panel that they were associates; and

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- (b) the Panel considered whether Peridon and its associates (on the one hand) and ACP and its associates (on the other hand) were associates of one another in relation to LV Living (and whether RPS was associated with either of them).
10. In the latter regard, ACP and Peridon were both parties (along with other persons, including RPS) to a Cooperation Agreement dated 29 October 2004. The Panel concluded that the Cooperation Agreement evidenced an ongoing business relationship regarding the conduct of a joint venture involving LV Living, but that it did not evidence an ongoing association between the parties to it with respect to the control of LV Living. There was no evidence of an ongoing agreement concerning the accumulation or exercise of voting power, nor any agreement constraining the disposal of shares in LV Living. However, the Panel did consider that an association had existed at the time of the shareholder meeting to approve the issues of securities to, amongst others, Peridon and ACP.
11. The Panel reached its conclusion with respect to the absence of an ongoing association with some hesitation. If the future conduct of ACP, Peridon and their respective associates evidences an association between the ACP persons and the Peridon persons in relation to the exercise of voting power in LV Living, it will be open to a future Panel to declare that the association constitutes unacceptable circumstances which, given the way in which the associates originally acquired their relevant interests in LV Living shares, justifies that future Panel in making divestment orders to reduce the collective voting power of the associates to 20%.

Inadequacy of shareholder approvals

12. Although LV Living obtained shareholder approvals in relation to the issue of securities to Mr West, Peridon and ACP, those shareholder approvals were not expressed to be for the purpose of item 7 of section 611 and were inadequate to prevent unacceptable circumstances existing. Amongst other things, the Panel noted that:
- (a) none of the resolutions was expressed to apply in relation to the acquisition of a relevant interest in shares (rather the resolutions were expressed to apply in relation to the *issue* of securities). This was of particular concern in the case of the issue to ACP as the relevant resolution was not even related to the issue of *shares*, but rather only the issue of *convertible notes* (which ACP subsequently converted to shares);
- (b) the information provided to shareholders did not indicate the maximum extent of the increases in voting power which might accrue to Peridon and its associates or ACP as a result of the share issues; and
- (c) the information provided to shareholders did not include all information known to LV Living, Peridon and its associates or ACP that was material to shareholders' decisions on how to vote on approval resolutions for the purpose of item 7 of section 611.
13. The Panel had a number of other concerns, including that Peridon and its associates voted on the resolution approving the issue of convertible notes to ACP – notwithstanding that Peridon was associated with ACP at the time of the meeting.

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Orders and undertakings

14. At 22.39%, the voting power of Peridon and its associates was within a single '3% creep' from the 20% threshold in section 606. At 25.48%, the voting power of ACP and its associates was within two '3% creeps' of the 20% threshold.
15. Accordingly, the Panel made orders and accepted undertakings, with the combined effect that:
 - (a) until after 29 June 2005, Peridon and its associates (between them) and ACP and its associates (between them) will not be able to exercise more than 20% of the votes exercisable at a meeting of LV Living; and
 - (b) until after 29 December 2005, ACP and its associates (between them) will not be able to exercise more than 23% of the votes exercisable at a meeting of LV Living.
16. The Panel also made orders and accepted undertakings restricting the use of the '3% creep' exception and disposals of LV Living shares other than in the ordinary course of trading on ASX by:
 - (a) Peridon and its associates until 23 December 2005; and
 - (b) ACP and its associates until 29 June 2006.
17. The Panel would be prepared to vary its orders and waive compliance with the undertakings if shareholders in LV Living ratify the acquisition of all relevant interests consequent on the issue of shares to Peridon or ACP in December or subsequent on-market acquisitions of LV Living shares by Lidcombe or Mr Radford.
18. In addition, the Panel made orders and accepted undertakings requiring complying substantial holding notices to be lodged with ASX and LV Living by 5.00pm on 15 February 2005.

APPLICATION

Background

LV Living

19. Prior to November 2004, LV Living was known as Maxe-tec Australia Limited. The change in name reflects the change in focus of the company's operations towards becoming a property management business specialising in the retirement living market.
20. That change in focus followed a period in the company's history during which it was under financial stress. That period culminated in a proposal (the **Proposal**) announced to shareholders on 29 October 2004. So far as was material for the Panel's purposes, the Proposal involved the following elements:
 - (a) a 1-for-10 consolidation of LV Living's share capital into 52,604,186 shares;
 - (b) an issue of 20,000,000 post-consolidation shares to Peridon at \$0.02 per share in settlement of litigation resulting from joint venture agreements between Peridon and its controller, GDK Financial Solutions Pty Ltd (**GDK**), on the one hand, and LV Living, on the other hand;

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- (c) an issue of 1,200,000 post-consolidation shares to Mr West at \$0.03 per share in consideration of services provided by him to LV Living;
 - (d) an issue of 26,666,666 post-consolidation convertible notes to ACP for consideration of \$800,000; and
 - (e) an issue of 6,666,666 post-consolidation convertible notes to RPS for consideration of \$200,000.
21. Each convertible note was to be convertible into one LV Living share.
22. The Proposal also involved the change in name referred to above and the issue of a further 4,400,000 shares to various persons in settlement of debts.
23. LV Living sought the approval of its shareholders for each of the above issues of shares and convertible notes. All the shareholder approvals sought were obtained at LV Living's AGM on 29 November 2004. Those shareholder approvals were expressed to be variously for the purposes of:
- (a) section 208(1)¹;
 - (b) ASX Listing Rule 10.11; and
 - (c) ASX Listing Rule 7.1.
24. Each approval resolution was also said to be "for all other purposes".
25. None of the approval resolutions was expressed to be for the purpose of item 7 of section 611. None of the approval resolutions was expressed as approving the acquisition by particular people of a relevant interest in shares in LV Living. For instance, the resolutions relating to the convertible notes approved the terms of the convertible notes and the issue of those notes, but did not relate to the acquisition by ACP or RPS of a relevant interest in LV Living shares upon the conversion of those notes.
26. The relevant notice of meeting and accompanying explanatory statement (the **Notice of Meeting**) contained limited information. The Notice of Meeting did not contain:
- (a) any information on the voting power which would be exercisable by the recipients of shares pursuant to the proposed share issues or pursuant to any conversion of the proposed convertible notes;
 - (b) any independent expert's report or director's report on the proposal; or
 - (c) any particulars of how the proposal was examined or evaluated, or the results of that examination or evaluation.
27. Peridon, GDK, their directors and the companies controlled by those directors were excluded from voting, and did not vote, on the resolutions approving the issue of shares to Peridon and Mr West. Those persons were not excluded from voting on the issue of convertible notes to RPS and ACP. Lidcombe and Mr Radford, who were connected with ACP and were holders of LV Living shares at the time of the AGM, were not excluded from voting on any resolutions.

¹ All references to sections are to sections of the *Corporations Act 2001* (Cth), unless otherwise indicated.

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28. In the month prior to 29 October 2004, the closing price of LV Living shares was equivalent to between \$0.03 and \$0.04 per post-consolidation share. Between 30 October 2004 and 28 November 2004 (that is, after the release of the Notice of Meeting and before the AGM), the overwhelming majority of trades in LV Living shares were at prices equivalent to between \$0.10 and \$0.18 per post-consolidation share. Indeed, LV Living shares did not trade below a price equivalent to \$0.10 per share between 3 November 2004 and the AGM.

Issue of shares

29. Although LV Living shareholders gave various approvals in relation to the issue of LV Living shares on 29 November, the relevant shares were not issued until December.
30. LV Living issued the shares contemplated by the Notice of Meeting in the sequence set out in Table 2. Before this sequence of share issues, there were 54,698,208 LV Living shares on issue².

Table 2

	New LV Living shares	Issued to	Total LV Living shares on issue
23 December 2004	20,000,000 1,200,000 6,400,000	Peridon Mr West Others	82,288,208
29 December 2004	26,666,666	ACP pursuant to convertible notes	108,954,874
31 December 2004	6,666,666	RPS pursuant to convertible notes	115,621,540

Subsequent share transfers

31. On 1 January 2005, Peridon transferred 16,250,000 LV Living shares to Wesland. This transfer was pursuant to an arrangement between Peridon and Mr West entered into before 29 October 2004 and which was not disclosed to shareholders in LV Living in the Notice of Meeting. Under that arrangement, Mr West was entitled to direct a transfer of shares issued to Peridon to his nominee. LV Living submitted that the Chairman of LV Living and LV Living's legal advisers were not aware of this arrangement.
32. On 17 January 2005 (after the Panel received the Application), ACP entered into 6 separate share transfers and transferred all but 3 of the 26,666,666 shares issued to it to the persons (the **ACP Transferees**) listed in Table 3.

² After the 1-for-10 consolidation had been implemented.

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Table 3

ACP Transferee	Number of LV Living Shares
JP McDougall Pty Ltd	5,000,000
Graeme McDougall	888,888
Mr Radford	888,888
Lidcombe	6,999,999
Hodibo Pty Ltd	12,000,000
Cornwall Nominees Pty Ltd	888,888

33. At all relevant times, all of the ACP Transferees were connected with the directors of ACP and all but one of the above companies was connected with, and the above individuals were members of, the extended family of Mr Stuart McDougall (the brother of a director of ACP).
34. The transfer forms were each apparently signed by the transferees on (variously) 7 January 2005 and 17 January 2005, and by ACP on 17 January 2005. LV Living shares traded at or above \$0.15 per share between 7 January 2005 and 17 January 2005. All of the transfers were expressed to be for zero consideration, however.
35. ACP and the ACP Transferees indicated that these transfers reflected the fact that the six ACP Transferees had financed the acquisition by ACP of shares on their behalf, so that ACP had effectively been issued LV Living shares as nominee for the ACP Transferees. ACP said that this was because, although ACP had originally intended to acquire the relevant shares in its own right, it had subsequently been unable to secure the necessary finance to do so.

Relationships between the parties

LV Living

36. At all relevant times, the directors of LV Living were Mr David Brown, Mr West and Mr David McLeod.

The Applicant and the GDK/Peridon parties

37. At all relevant times:
- the directors of GDK were Mr West and Mr McLeod;
 - the directors of Peridon were Mr West and Mr McLeod;
 - Peridon held shares in LV Living as trustee for the PGGDK Development Unit Trust. All of the shares in Peridon, and all of the units in the PGGDK Development Unit Trust, were held by GDK as trustee for the GDK Financial Solutions Trust. The GDK Financial Solutions Trust was a discretionary trust, under which there were (in essence) three equal beneficiaries: Yallara Nominees Pty Ltd, Boundup Pty Ltd (**Boundup**) and GWFS;
 - Each of the following held one third of the shares in GDK: Boundup, Lynplan Pty Ltd (**Lynplan**) and GWFS;

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- (e) Boundup was wholly owned by Mr McLeod. Lynplan was wholly owned by Mr McLeod's wife, Ms Lyn Lander. GWFS was owned by Mr Woodham and Ms Natalie Woodham (each held one GWFS share).
- (f) Mr West was a shareholder and director of Wesland and Putuso Pty Ltd (**Putuso**). The other shareholders and directors of both of those companies were relatives of Mr West.

ACP and the ACP Transferees

38. As noted in paragraph 33, all of the ACP transferees were connected with the directors of ACP and all but one of ACP and the ACP Transferees were connected with the extended family of Mr Stuart McDougall. Table 4 summarises the relationships.

Table 4

ACP/ACP Transferee	Directors in ACP/the ACP Transferee	Shareholders in ACP/the ACP Transferee
ACP	Mr Radford (<i>Mr Stuart McDougall's nephew</i>) Mr John Patrick Connolly Mr Graeme McDougall (<i>Mr Stuart McDougall's brother</i>)	Via Goreann Investments Pty Ltd (45%), 3 daughters of Mr Gordon Campbell (<i>Mr Stuart McDougall's brother-in-law</i>) Via Super Q Pty Ltd (55%), Mr Radford, Mr Connolly and Mr Graeme McDougall
JP McDougall Pty Ltd	Mr Stuart McDougall and his wife	Mr Stuart McDougall and his wife
Mr Graeme McDougall	N/A	N/A
Mr Radford	N/A	N/A
Lidcombe	Mr Stuart McDougall	Stuart McDougall's wife and two daughters
Hodibo Pty Ltd	Mr Campbell and his wife	Mr Campbell and his wife
Cornwall Nominees Pty Ltd	Mr Connolly and his wife	Mr Connolly and his wife

Other interests in LV Living shares

39. In addition to interests pursuant to the share issues and transfers referred to in paragraphs 30 to 32, the persons listed in Table 5 have additional holdings of LV Living shares.

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Table 5

Shareholder	Additional shares	Time acquired
Peridon	4,000,000	Before 29 November 2004
Putuso	162,000	In 2001
Boundup	533,334	In 2001
Lidcombe	2,083,392	30 November 2004
	300,000	Between 1 November 2004 and 28 November 2004
	200,600	Between 30 November and 28 December 2004
	20,000	29 December 2004
	94,108	Between 6 January 2005 and 20 January 2005
Mr Radford	90,060	Between 1 November 2004 and 14 February 2005

40. Mr Radford owned 50,060 LV Living shares before the date of the AGM, owned 30,060 LV Living shares on 29 December 2004, and purchased 60,000 LV Living shares on-market between 30 December 2004 and 4 February 2005 (inclusive) (12,500 of them on 31 December 2004). Mr Radford also sold shares during November and December 2004.

Summary of interests in LV Living shares

41. Accordingly, Table 6 summarises the number of LV Living shares held directly by various persons on a series of key dates. This translates to the percentage shareholdings set out in Table 7.

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Table 6

	22/12/04	23/12/04	29/12/04	31/12/04	2/1/05
Mr West	0	1,200,000	1,200,000	1,200,000	1,200,000
Wesland	0	0	0	0	16,250,000
Putuso	162,000	162,000	162,000	162,000	162,000
Boundup	533,334	533,334	533,334	533,334	533,334
Peridon	4,000,000	24,000,000	24,000,000	24,000,000	7,750,000
ACP	0	0	26,666,666	26,666,666	26,666,666
RPS	0	0	0	6,666,666	6,666,666
Lidcombe	2,583,992	2,583,992	2,603,992	2,603,992	2,603,992
Total LV Living Shares	54,698,208	82,288,208	108,954,874	115,621,540	115,621,540

Table 7

	22/12/04	23/12/04	29/12/04	31/12/04	2/1/05
Mr West	0%	1.46%	1.10%	1.04%	1.04%
Wesland	0%	0%	0%	0%	14.05%
Putuso	0.30%	0.20%	0.15%	0.14%	0.14%
Boundup	0.98%	0.65%	0.49%	0.46%	0.46%
Peridon	7.31%	29.17%	22.03%	20.76%	6.70%
ACP	0%	0%	24.47%	23.06%	23.06%
RPS	0%	0%	0%	5.77%	5.77%
Lidcombe	4.72%	3.14%	2.39%	2.25%	2.25%

42. None of GWFS, Mr McLeod and GDK held LV Living shares directly on any of the dates set out in Tables 6 and 7.
43. As noted, since 17 January 2005, the ACP holding has been dispersed amongst 7 shareholders, so that ACP and the ACP Transferees had the interests set out in Table 8 as at 5 February 2005.

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Table 8

ACP/ACP Transferee	Number of LV Living Shares	Percentage Holding
ACP	3	0.00%
JP McDougall Pty Ltd	5,000,000	4.32%
Graeme McDougall	888,888	0.77%
Mr Radford	978,948	0.85%
Lidcombe	9,698,549	8.39%
Hodibo Pty Ltd	12,000,000	10.38%
Cornwall Nominees Pty Ltd	888,888	0.77%

Cooperation Agreements and Heads of Agreement

44. On 29 October 2004, LV Living, RPS, ACP, GDK, Peridon and The Nexxt Group Pty Ltd entered into a Cooperation Agreement under which they agreed to establish a joint venture (the **Joint Venture**) for 5 to 6 years to undertake and complete the construction of new and existing retirement villages, and to operate and manage those villages.
45. LV Living also entered into a number of separate Heads of Agreement on 29 October 2004, including one with ACP, one with RPS and one with GDK and Peridon. It had originally been anticipated that the Cooperation Agreement would be entered into pursuant to the Heads of Agreement, although the course of negotiations meant that the various Heads of Agreement and the Cooperation Agreement were executed contemporaneously. Accordingly, the content of each Heads of Agreement was largely replicated in the Cooperation Agreement.
46. So far as relevant for present purposes, the key features of the Cooperation Agreement were that:
- (a) Each ‘venturer’ agreed to cooperate reasonably and act in good faith towards the other ‘venturers’ in performing the Joint Venture and their respective obligations under the Cooperation Agreement. Although not clear, the better view is that each party to the Cooperation Agreement was a ‘venturer’, including LV Living.
 - (b) Subject to obtaining all required approvals from LV Living shareholders, LV Living would:
 - (i) Change its name to LV Living;
 - (ii) Undertake a 1-for-10 consolidation of its share capital;
 - (iii) Issue 20,000,000 shares to GDK/Peridon;
 - (iv) Issue 26,666,666 Convertible Notes to ACP;

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- (v) Issue 5,600,000 shares to four other parties (including Mr West) in respect of debts owed by LV Living; and
 - (vi) Issue 6,666,666 Convertible Notes to RPS,
as soon as possible after entering into the Cooperation Agreement.
 - (c) Upon ACP being issued Convertible Notes in LV Living, ACP would be entitled to appoint 2 directors to the board of LV Living, with LV Living doing all things necessary to facilitate their appointment.
47. The Notice of Meeting included a resolution to ratify the appointment of 2 ACP nominees. Those directors were not appointed and the ratification resolution was withdrawn. No explanation was given to the meeting for that resolution being withdrawn.
48. Although ACP was issued its convertible notes on 29 December 2004, as at the date of the Panel’s decision, no ACP nominees had subsequently been appointed to the board of LV Living.
49. Each Heads of Agreement also contained a provision purporting to restrict LV Living’s right to issue further shares for three years to 20% of its existing issued capital (subject to a capital raising ‘agreed with board of directors’). That provision was not reflected in the Cooperation Agreement.

Declaration and orders sought in the Application

50. The Applicant sought:
- (a) a declaration of unacceptable circumstances under section 657A of the Corporations Act;
 - (b) interim orders restraining Peridon, Mr West, Mr McLeod, ACP and RPS from voting, acquiring or disposing of shares in LV Living until the conclusion of Panel proceedings and restraining LV Living from issuing securities until the conclusion of Panel proceedings; and
 - (c) a range of final orders, including orders to restrict Peridon, ACP and RPS from voting, acquiring or disposing of shares in LV Living without appropriately informed shareholder approval; orders requiring the divestment of shares held by Peridon, ACP and RPS, and orders restraining LV Living from issuing convertible notes without appropriately informed shareholder approval.

DISCUSSION

Standing

51. Before commencing proceedings, the Panel needed to be satisfied that GWFS had standing to bring the Application. Accordingly, the Panel needed to be satisfied that GWFS was a ‘person whose interests are affected by the [alleged unacceptable] circumstances’ as contemplated by section 657C(2)(d).
52. The combination of the following factors was sufficient for the Panel to be satisfied that GWFS was such a person and that, accordingly, GWFS had standing with respect to each aspect of its Application.

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- (a) GWFS had an economic interest in the shares in LV Living held by Peridon and therefore had an interest which was affected by the acquisition by ACP of a substantial interest in LV Living.
- (b) If the share issue to Peridon was made in breach of section 606, there would be ongoing uncertainty concerning the shares held by Peridon, in which GWFS has an economic interest. Although that uncertainty would not relate to whether the share issue to Peridon was invalid (since section 607 states that a transaction is not invalid merely because it involves a contravention of section 606), there would be uncertainty arising from the prospect of a future Panel or Court order.
- (c) GWFS had a relevant interest in Peridon's LV Living shares. This arose because:
 - (i) Peridon was the holder of LV Living shares. Therefore Peridon had a relevant interest in those LV Living shares under section 608(1)(a).
 - (ii) GDK had the same relevant interest in LV Living as Peridon because GDK controlled Peridon (see section 608(3)(b)).
 - (iii) GWFS had the same relevant interest in LV Living as GDK because it had voting power of above 20% in GDK (see section 608(3)(a)).

The PGGDK Development Unit Trust and GDK Financial Solutions Trust were not bare trusts and were therefore irrelevant to the above analysis.

- (d) GWFS had a reputational interest in not being publicly associated with (including, for instance, by being required to make substantial holding disclosure) a share issue which had been made in breach of Chapter 6.

53. Given that it was unnecessary for it to do so, the Panel reached no conclusion as to whether any of the above factors by itself would have been sufficient to support a finding that GWFS had standing in this matter.
54. The Panel also considered the question of whether a person's interests needs to be negatively affected by allegedly unacceptable circumstances in order to have standing to bring an application. For instance, it was arguable that GWFS' interests had only been affected positively by any acquisition by Peridon of shares in breach of the 20% limit in section 606. GWFS submitted that section 657C(2)(d) had been deliberately expressed broadly such that it was irrelevant whether the circumstances had a positive or negative effect on a person's interests, provided that they had an effect. The Panel was inclined to agree with these submissions. However, the Panel did not reach a concluded view on the question, as it was not of the view that GWFS's interests had only been affected positively by the alleged unacceptable circumstances (as is apparent from the list of interests identified in paragraph 52).

Abuse of Panel processes

55. The Panel was conscious that the Application had been made in the context of an ongoing dispute between GWFS and others, including interests associated with Mr McLeod, in relation to the GDK Financial Solutions Trust.
56. The Panel was particularly concerned at the prospect that its processes might be used tactically in the context of that wider dispute.

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57. Nevertheless, the Panel decided to commence proceedings given the Panel's conclusion as to the applicant's standing and the Panel's serious concerns that the material presented in the Application and in response to its preliminary inquiries suggested that multiple breaches of section 606 had occurred.

Interim orders and undertakings

58. The Panel did not consider that there was sufficient information in the Application to warrant interim orders. However, after commencing its inquiry, the Panel became concerned about the possible breadth of associate relationships involved in the Proceedings. Given that web of associate relationships, the Panel was concerned that parties might have disposed of shares to associated parties. Any such disposal might have complicated the Panel's inquiry and disguised any continuing voting power blocs. The Panel therefore thought that it was appropriate that parties should not be able to dispose of their LV Living shares:
- (a) off-market; or
 - (b) on-market, except with 24 hours' prior written notice,
- until the conclusion of Panel proceedings.
59. The 24 hour period would permit the Panel to assess whether it was appropriate to make a further interim order restraining the proposed trade (for instance, because the proposed terms of the on-market transfer were such as to be likely to result in a transfer to a connected party of the transferor).
60. Accordingly, the Panel accepted undertakings and made interim orders, the combined effect of which was that, until the conclusion of the Proceedings, GDK, Peridon, Mr West, Wesland, Mr McLeod, Boundup, ACP and the ACP Transferees would not dispose of any shares in LV Living off-market or, except with 24 hours' prior written notice to the Panel, on-market.
61. RPS simply undertook not to dispose of any shares in LV Living until the conclusion of the Proceedings.
62. The Panel did not consider that interim orders (or undertakings) with respect to the voting of shares were necessary given that no meetings of LV Living shareholders had been convened, or were convened, during the currency of the Proceedings. Further, the Panel considered that the prohibitions in the Corporations Act meant that it was unnecessary to make interim orders (or seek undertakings) with respect to further issues of shares by LV Living or acquisitions of shares in LV Living.

Relationship between Peridon, GDK, Wesland, Putuso, Boundup and Messrs West and McLeod

63. In submissions, Peridon, GDK, Mr West and Mr McLeod conceded that they were associates in relation to LV Living.
64. In addition, Mr West conceded that, in a practical sense, he controlled Wesland.
65. The sole shareholders and directors of Putuso were Mr West and his wife and the sole shareholder and sole director of Boundup was Mr McLeod.

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66. In the circumstances, the Panel considered that it was entitled to infer, and did infer, that all of the following parties (the **Peridon Parties**) were associates of one another: Peridon, GDK, Mr West, Mr McLeod, Boundup, Wesland and Putuso.
67. The Panel did not find it necessary to determine whether Lynplan was associated with the Peridon Parties.

Relationship between ACP and the ACP Transferees

Acquisition by ACP as bare trustee

68. ACP and the ACP Transferees submitted that it was arguable that ACP had been issued LV Living shares as bare trustee for the ACP Transferees and that, accordingly, ACP had not breached section 606(1) because ACP would not have a relevant interest in the LV Living shares because of section 609(2).
69. The Panel was not presented with sufficient evidence to support a finding that a bare trust had existed. The Panel was mindful that:
 - (a) ACP and the ACP Transferees submitted that Mr Stuart McDougall (as opposed to, for instance, the ACP Transferees) made the decision to convert ACP's convertible notes into shares and then advised the ACP Transferees that they would be receiving shares not convertible notes.
 - (b) Any arrangement concerning the acquisition of shares by ACP on behalf of the ACP Transferees was not formally documented.
 - (c) The ACP Transferees each apparently signed transfer forms to acquire shares from ACP on 7 January 2005 or 17 January 2005 (after the Application was made) - some time after the shares were issued to ACP.
 - (d) Although some transfer forms to the ACP Transferees were dated 7 January 2005 by the ACP Transferees, the relevant transfer forms were not executed by ACP until 17 January 2005 - after the Application had been made.
 - (e) The Notice of Meeting did not disclose, and no supplementary information was sent to shareholders disclosing, that ACP was acquiring shares on behalf of the ACP Transferees. In fact, the reverse was the case: the shareholders of LV Living were expressly told that ACP was taking a strategic financial stake and that its shareholding would be equal to that of Peridon.
 - (f) The transfer forms were expressed to be for nil consideration.
 - (g) None of the persons to whom ACP chose to transfer the relevant shares fell outside the family groups of the directors of ACP.
 - (h) The obligations under the Cooperation Agreement and the Heads of Agreement pertaining to ACP were specific to ACP and did not relate to the ACP Transferees directly.

Were ACP and the ACP Transferees associates?

70. The Panel recognised that persons are not associates in relation to a body merely because they are members of (or controlled by a members of) the one family. Nevertheless, the various facts outlined in paragraphs 69(a) to (h), combined with the fact that all of the ACP Transferees were in some way connected with the directors or

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shareholders of ACP, meant that the Panel considered that it was entitled to infer, and did infer, that ACP and the ACP Transferees were at all relevant times associates with respect to LV Living.

71. ACP and the ACP Transferees did not provide the Panel with sufficient evidence to rebut that inference.
72. The Panel also noted that, in light of its finding that the ACP Transferees were associates, even if ACP had acted as bare trustee, the ACP Transferees would have breached section 606(1) and ACP would have breached section 606(2).

Relationship between the Peridon Parties, ACP and RPS

73. The Applicant submitted that all of the Peridon Parties, ACP and RPS were associates in relation to LV Living, and (along with the ACP Transferees) continue to be associates in relation to LV Living.
74. The Applicant pointed, in particular, to the Cooperation Agreement.
75. So far as relevant, the Corporations Act defines a second person to be an associate of the first person in relation to a designated body if:
 - ‘the second person is a person with whom the primary person has, or proposes to enter into, a relevant agreement for the purpose of controlling or influencing the composition of the designated body’s board or the conduct of the designated body’s affairs; or
 - the second person is a person with whom the primary person is acting, or proposing to act, in concert in relation to the designated body’s affairs.’³
76. Both under the ordinary meaning of ‘affairs’ and the extended meaning conferred under regulation 1.0.18 of the Corporations Regulations and section 53, the affairs of a body corporate include its business operations. The Cooperation Agreement clearly reflected an agreement for the purpose of influencing the business operations of LV Living. For instance, the parties must agree on a business plan and LV Living must implement it.
77. However, the policy of Chapter 6 is concerned with the accumulation of, and exercise of, voting power in bodies. The definition of ‘associate’ casts the net widely because an association with respect to the business of a body will frequently indicate a wider association with respect to the control of that body. Nevertheless, the fundamental policy concern is the accumulation and exercise of voting power.
78. While acknowledging that the Cooperation Agreement (and, indeed, the Heads of Agreement) might have evidenced a technical association within the broad definitions in the Corporations Act, the Panel was not convinced that the Cooperation Agreement or the Heads of Agreement evidenced an ongoing association with respect to the control of LV Living or the accumulation or exercise of voting power in LV Living (although that may be the case with respect to the AGM). The Panel was mindful of the following factors:

³ See sections 12(2)(b) and (c).

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- (a) Except in relation to the establishment of the Joint Venture, the Cooperation Agreement and Heads of Agreement did not evidence any sort of common purpose or plan with respect to the control of LV Living, but merely an agreement to ‘cooperate reasonably’ with each other in the performance of the joint venture contemplated by the Cooperation Agreement.
 - (b) The fact that each of the parties had a right to approve the business plan was equally indicative of parties protecting their own separate and potentially divergent interests, as of parties looking to forward their separate interests jointly.
 - (c) The fact that each of ACP, RPS, GDK and Peridon may have had the right to constrain LV Living’s right to issue further shares above 20% of its issued capital within 3 years was also potentially indicative of those individual parties seeking legitimately to protect the relativity of their individual investments in LV Living.
 - (d) Neither the Cooperation Agreement nor the Heads of Agreement overtly constrained the parties in relation to the voting or disposal of their shares on an ongoing basis. In particular, there were no constraints on any party’s ability to sell or transfer some or all of their shares in LV Living.
 - (e) It was not a necessary incident of the business relationship contemplated by the Cooperation Agreement or the Heads of Agreement that the parties should maintain their voting power by retaining shares or exercise it collectively.
79. The question arose, however, as to whether an association existed prior to or at the time of the December share issues.
80. In particular, the Cooperation Agreement evidenced a common plan with respect to the establishment of the Joint Venture. Two key elements were that LV Living would conduct all of the transactions contemplated by the Proposal and appoint two representatives of ACP to the board of LV Living. If it was not express, it was implicit that each party to the Cooperation Agreement would support those elements. The Panel was not prepared to infer that this was evidence of a concerted plan to ensure that the control of LV Living was shared among all or some of the parties to receive shares under the Proposal, however. Mutual support for the Proposal was equally indicative of the parties seeking to protect their own commercial interests and the value of the investment contemplated by each of them by ensuring that:
- (a) LV Living was adequately capitalised; and
 - (b) LV Living had discharged significant debts.
81. Importantly, the Panel did not consider that there was sufficient evidence for it to infer that the common plan with respect to the above two elements extended beyond the resolutions which were contemplated to be passed at the AGM. For instance, once the approval resolutions with respect to the issues of securities were approved, no party to the Cooperation Agreement other than LV Living and the subscriber for the relevant shares could ‘cooperate’ in any meaningful way in relation to those issues. Further, although (as matters eventuated) the appointments of the 2 ACP directors did not take place at or before the AGM (and, indeed, did not take place at

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all), the Cooperation Agreement clearly contemplated that they would and the Cooperation Agreement did not contain any ongoing obligations with respect to the appointment of representatives of ACP to the LV Living board.

82. The Panel considered, however, that an association existed at the time of the AGM.
83. The overall consequences of the above analysis were that:
- (a) in assessing increases in voting power when the shares were issued, approximately one month after the AGM, the relevant interests of each person listed in a column of Table 9 should be aggregated with those of each other person listed in the same column, but should not be aggregated with those of any person listed in another column; and
 - (b) if a shareholder approval was required in order that there would be no breach of section 606 because of the acquisition by a person listed in Table 9 of a relevant interest, the votes of any person listed in any row or column of Table 9 should have been disregarded.

Table 9

Peridon Parties	ACP/ACP Transferees	RPS
Peridon	ACP	RPS
GDK	JP McDougall Pty Ltd	
Wesland	Graeme McDougall	
Mr West	Mr Radford	
Boundup	Lidcombe	
Mr McLeod	Hodibo Pty Ltd	
Putuso	Cornwall Nominees Pty Ltd	

84. The Panel reached the above conclusions with respect to the association between the parties with some hesitation.
85. If the Panel had concluded that there was an ongoing association, the orders which the Panel made may have involved the divestment by the Peridon Parties, ACP, the ACP Transferees and RPS of sufficient shares that they, collectively, ceased to hold more than 20% voting power in LV Living.
86. It may be that future conduct by persons in different columns in Table 9 evidences an association between them in relation to the exercise of voting power in LV Living. If that is the case, it will be open to a future Panel to declare that the association constitutes unacceptable circumstances which, given the way in which the associates originally acquired their relevant interests in LV Living shares, justifies that future Panel in making divestment orders to reduce the collective voting power of the associates to 20%.

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Breach of section 606

Movements in voting power

87. Table 10 sets out the aggregate voting power of each of the three groups of shareholders referred to in Table 9 on a series of key dates.

Table 10

	Peridon Parties	ACP/ACP Transferees	RPS
22 December 2004	8.58%	4.78%	0%
23 December 2004	31.47%	3.18%	0%
29 December 2004	23.77%	26.89%	0%
31 December 2004	22.39%	25.35%	5.77%
5 February 2005	22.39%	25.48%	5.77%

Acquisitions of relevant interests - Mr West, Peridon, ACP, Lidcombe and Mr Radford

88. It was obvious that Mr West and Peridon acquired a relevant interest in LV Living shares through a transaction entered into by them on 23 December 2004. Given the Panel's conclusion that ACP was not acting as a bare trustee, it was also clear that ACP acquired a relevant interest in LV Living shares through a transaction entered into by it on 23 December 2004. Finally, it was clear that each of Lidcombe and Mr Radford acquired a relevant interest in those LV Living shares which it or he acquired on-market through a transaction entered into by it or him.

89. Accordingly, the Panel concluded that:

- (a) Mr West and Peridon breached section 606 on 23 December 2004;
- (b) ACP breached section 606 on 29 December 2004; and
- (c) Lidcombe and Mr Radford breached section 606 on each day after 29 December on which they acquired shares on-market.

90. It is implicit in the above conclusion that the Panel determined that item 7 of section 611 did not apply to exempt the acquisitions of relevant interests brought about by the share issues on 23 December 2004 and 29 December 2004. That is discussed in paragraphs 102 to 103.

Consequential relevant interests held by ACP Transferees

91. Given the submissions from ACP to the effect that ACP acquired shares on behalf of the ACP Transferees with money supplied by the ACP Transferees, the Panel concluded that, immediately on the issue of LV Living shares to ACP, each of the ACP Transferees had the power to control the disposal of some of the shares issued to ACP and, therefore, a relevant interest in some of the shares held by ACP.
92. Accordingly, the Panel concluded that each of the ACP Transferees breached section 606 on 29 December 2004.

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93. Again, it is implicit in the above conclusion that the Panel determined that item 7 of section 611 did not apply to exempt the acquisitions of relevant interests brought about by the share issue on 29 December 2004. That is discussed in paragraphs 102 to 103.
94. The Panel did not make sufficient inquiries to determine whether ACP continued to have a relevant interest in the shares held by the ACP Transferees following the transfer of the shares to the ACP Transferees, or whether the ACP Transferees had relevant interests in the shares held by one another.
95. Given its findings as to the various associate relationships in this matter, the Panel did not feel that it needed to make such inquiries.

Consequential relevant interests held by other persons

96. Peridon’s breach of section 606 also resulted in the persons set out in Table 11 having at least the relevant interests in voting shares in LV Living set out in Table 11.

Table 11

Person	Relevant interest	Reason
GDK	24,000,000	Because GDK controlled Peridon, GDK had the same relevant interest as Peridon ⁴ . Peridon had a relevant interest in all of the shares held by it (24,000,000 as at 23 December 2004).
Bound-up	24,533,334	Because Bound-up had voting power of more than 20% in GDK, it had the same relevant interest as GDK ⁵ . Bound-up also held a relevant interest in all of the 533,334 LV Living shares held directly by it.
Mr McLeod	24,533,334	Because Mr McLeod controlled Bound-up, Mr McLeod had the same relevant interest as Bound-up ⁴ .
Lynplan	24,000,000	Because Lynplan had voting power of more than 20% in GDK, it had the same relevant interest as GDK ⁵ .
Ms Lander	24,000,000	Because Ms Lander controlled Lynplan, Ms Lander had the same relevant interest as Lynplan ⁴ .
GWFS	24,000,000	Because GWFS had voting power of more than 20% in GDK, it had the same relevant interest as GDK ⁵ .

97. The Panel did not make sufficient inquiries to determine whether any of the above parties also had a relevant interest in the shares held by Mr West, Wesland or Putuso from time to time.
98. Given its findings as to the various associate relationships in this matter, the Panel did not feel that it needed to make such inquiries. Because of those relationships, the

⁴ See section 608(3)(b).

⁵ See section 608(3)(a).

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acquisitions of shares by Peridon and Mr West resulted in the persons named in the first column of Table 9 having the voting power set out in the first column of Table 10 on the dates set out in Table 10.

99. In addition, the Panel noted that Lynplan, Ms Lander and GWFS had voting power of at least the following on each of the following dates:

Table 12

Date	Voting Power
23 December	> 29.17%
29 December	> 22.03%
31 December	> 20.76%
2 January	> 6.70%

100. The Panel did not make specific inquiries as to whether Mr Woodham or Ms Woodham controlled GWFS such that they had the same relevant interest (and consequently, in the circumstances, the same voting power) as GWFS. It was not necessary for present purposes for the Panel to reach any conclusion on this question and the Panel did not do so.
101. Notwithstanding that Lynplan, Ms Lander, GWFS and some of the persons named in the first column of Table 9 had a relevant interest in LV Living shares after 23 December 2004 which they did not previously have, and notwithstanding that their voting power increased above 20% on 23 December 2004, it did not follow that those persons breached section 606. Each of them would only have breached section 606 if they could be said to have 'acquired' the relevant interest in question and if it could be said that Peridon subscribed for shares in LV Living on behalf of them. It was not necessary for the Panel to reach a conclusion on either of those questions with respect to any of the relevant people. The Panel did not reach any such conclusions.

Item 7 of section 611

102. The only relevant exception was item 7 of section 611. However, the Panel did not consider that any of the shareholder approvals given on 29 November 2004 were sufficient for item 7 of section 611 to apply because:
- none of the resolutions was expressed to apply for the purpose of item 7 of section 611. In this regard, the reference in each resolution to the relevant approval applying 'for all other purposes' was inadequate;
 - none of the resolutions was expressed to apply in relation to the acquisition of a relevant interest in shares (rather the resolutions were expressed to apply in relation to the issue of securities). This was of particular concern in the case of the issue to ACP as the relevant resolution was not even related to the issue of shares, but rather only the issue of convertible notes;
 - the information provided to shareholders did not indicate the maximum extent of the increases in voting power which might accrue to the Peridon Parties or

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ACP as a result of the share issues proposed to be made to them or their associates (directly or pursuant to convertible notes), nor the voting power which those persons would have as a result of the share issues to them; and

- (d) the information provided to shareholders did not include all information known to LV Living, the Peridon Parties or ACP that was material to shareholders' decisions on how to vote on approval resolutions for the purpose of item 7 of section 611. In particular:
- (i) the Notice of Meeting did not indicate that the convertible notes would convert shortly after the AGM (or not convert at all). Rather the Notice of Meeting implied that the convertible notes might be converted at any time over their 2 year term;
 - (ii) shareholders were not told that ACP intended to convert its convertible notes into shares soon after the AGM; and
 - (iii) shareholders were not told that ACP intended to transfer all but 3 of the shares to be issued pursuant to the convertible notes to the ACP transferees, and that Mr West intended that Peridon would transfer the majority of its shareholding to Wesland. In contrast, the shareholders of LV Living were expressly told that ACP was taking a strategic financial stake and that its shareholding would be equal to that of Peridon.

103. In addition to the above concerns, the Panel was concerned that:

- (a) LV Living had not drawn to the attention of shareholders that, following the publication of the Notice of Meeting, the price of LV Living shares increased substantially (so that during the period between the Notice of Meeting and AGM, LV Living shares were generally trading at between 3 and 5 times the price at which they were trading before the Notice of Meeting). The consequence of the increase was that the shares to be issued to ACP and the Peridon Parties were to be issued at a considerable discount to the trading price of LV Living shares at the time of the AGM. The Notice of Meeting did not highlight to shareholders that there might be such a change in the share price and that shareholders should monitor the performance of LV Living shares. This was notwithstanding the fact that the Notice of Meeting contained considerable detail concerning the trading history of LV Living shares before the Notice of Meeting, all of which showed a deterioration in LV Living's share price. In light of the 3- to 5-fold increase in LV Living's share price, it would have been appropriate for LV Living to send a letter to shareholders alerting them to the developments in LV Living's share price;
- (b) Notwithstanding that two of the directors of LV Living were also directors of Peridon, LV Living had not commissioned an independent expert's report (and therefore had not included such a report in the information sent to LV Living shareholders). The Panel notes that this may have been inconsistent with ASIC Policy Statement 74 - 'Acquisitions agreed to by shareholders', although the Panel also recognises that in this 'turn-around' situation it may be that the interests of the LV Living shareholders not associated with Peridon may have

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been materially damaged by the delay or expense involved in obtaining an independent expert's report; and

- (c) The Peridon Parties were not excluded from voting on the issue of convertible notes to ACP. Nor were Lidcombe or Mr Radford excluded from voting on that resolution and the resolutions approving the issue of shares to Peridon Parties. Given the conclusion of the Panel as to the association of ACP, the Peridon Parties and RPS at the time of the AGM, those persons should have been excluded in order to comply with the technical requirements of item 7 of section 611. Indeed, regardless of whether they were technically associates, GDK, Peridon, ACP and RPS had reached an agreement as to the restructuring of the company which assumed that the restructure took place, and had a mutual interest in the restructure being approved. That interest was not shared by all holders of ordinary shares in LV Living. Accordingly, because of the participation of the Peridon Parties (and any participation by Lidcombe and Mr Radford) in the electorate for the ACP approval resolution, that shareholder approval resolution could not properly be considered to have been determined by a vote of disinterested shareholders which would excuse the breach of the equality of opportunity principle set out in section 602(c). A similar analysis applies in relation to the inclusion of Lidcombe and Mr Radford in the electorate for the approval resolutions with respect to the issue of shares to Peridon and Mr West.

104. Although it is not the Panel's role to enforce the ASX Listing Rules, the Panel was also concerned that it may not have been appropriate for the Peridon Parties to vote on the resolution to approve the issue of securities to ACP and RPS for the purposes of ASX Listing Rule 7.1. A voting exclusion statement in relation to an ASX Listing Rule 7.1 approval must name, and the issuing company must disregard votes cast by, each 'person who might obtain a benefit, except a benefit solely in the capacity of a holder of ordinary securities' if the approval resolution is passed. The fact that the Joint Venture would proceed if, and only if, the approval resolutions were passed would seem to be such a benefit.

Accidental and inadvertent breach

105. In determining whether unacceptable circumstances existed by reason of the breaches of section 606 referred to above, the Panel was conscious of the statement in Guidance Note 1 – 'Unacceptable Circumstances' that 'it is usually the case that a contravention of the central prohibition in section 606 will be unacceptable, although there may be cases where an honest and accidental contravention of this prohibition will not be unacceptable, if it has not had any relevant adverse effect'.
106. LV Living, ACP and the ACP Transferees argued that any breaches were accidental and inadvertent. ACP and the ACP Transferees argued that they relied on LV Living to obtain advice that the transactions were lawful.
107. The Panel determined that the circumstances were such as to warrant a declaration, regardless of whether the breaches were accidental or inadvertent. In this regard:
- (a) Ignorance of the law is not an excuse, and will only mitigate against a declaration of unacceptable circumstances in the most extraordinary of cases.

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This was not such a case. For instance, unlike some cases which it is possible to imagine, the relevant interests acquired here were obvious – in ACP's case, arising through a direct acquisition, and in the ACP Transferees' case arising through clear control over the shares issued to ACP.

- (b) Each of ACP, Mr West and Peridon was aware of the relevant facts.
- (c) This was not a case where there would be no relevant adverse effect (as for instance, where a single shareholder had been issued 20.1% of the capital by accident, rather than 19.9%). The result of the infringing share acquisitions in this case was that a significant proportion of LV Living's shares were held by two blocs who would not have held them if there had not been a breach of section 606. The effect of those two blocs holding those extra shares was that those two blocs could – if they determined that it was in their respective interests to do so – determine the outcome of ordinary resolutions with near certainty, irrespective of the attitude adopted by other shareholders.
- (d) It is insufficient for companies making large investments in listed public companies to attempt to abdicate responsibility for their actions by not obtaining independent legal advice.
- (e) The Panel was entitled to infer that two of LV Living's directors (Mr West and Mr McLeod) were put on notice *before the AGM* of the existence of section 606. This was because GWFS wrote to solicitors for GDK and Peridon (of whom Mr West and Mr McLeod were directors) advising those companies of an anticipated breach of section 606.

Substantial holding notices

108. The Panel was extremely concerned that, when it checked to see what substantial holding notices had been lodged with ASX shortly after receiving the Application, none of the Peridon Parties, ACP and RPS had lodged notices in relation to the post-AGM share issues. Subsequently, on 14 January, the following three substantial holding notices were lodged in relation to LV Living:
- (a) A 'Notice of change of interests of substantial holder' by Peridon (following the issue of 20,000,000 shares to it);
 - (b) A 'Notice of initial substantial holder' by Wesland (following the acquisition of 16,250,000 shares from Peridon); and
 - (c) A 'Notice of change of interests of substantial holder' by Peridon (following the sale of 16,250,000 shares to Wesland).
109. Each of the above notices was deficient (see Annexure D to these reasons).
110. On 21 January 2005, the Panel accepted undertakings from various parties to make complying substantial holding disclosures by 5.00 pm on 24 January 2005.
111. By the time trading began on 25 January 2005, the following additional substantial holding notices had been lodged in relation to LV Living:
- (a) A 'Notice of initial substantial holder' by RPS (following the issue of 6,666,666 shares to it);

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- (b) A 'Notice of initial substantial holder' by Hodibo Pty Ltd (following the acquisition of 12,000,000 shares by it);
 - (c) A 'Notice of initial substantial holder' by JP McDougall Pty Ltd (following the acquisition of 5,000,000 shares by it); and
 - (d) A 'Notice of initial substantial holder' by Lidcombe (following the acquisition of 9,698,549 shares by it).
112. Each of the above notices was deficient (see Annexure D).
113. The Panel made additional inquiries into the substantial holding notices on 28 January 2004. Those inquiries canvassed who was obliged to give substantial holding notices and whether all required information (including annexed documents) had been given. No corrective disclosure was made to ASX following those inquiries.
114. The Panel noted the deficiencies set out in Annexure D in relation to the substantial holding disclosures by the parties to the Proceedings. The Panel also noted that a number of additional substantial holding notices should have been lodged in relation to LV Living. The material missing substantial holding notices are also listed in Annexure D.
115. The Panel ordered the relevant persons to, or accepted undertakings that the relevant persons would, make corrective disclosure to address the deficiencies set out in Annexure D.
116. The Panel was particularly concerned that the various parties to the Proceedings who undertook to make complying disclosures did not do so. The Panel acknowledges that, in the case of the ACP Transferees, this was a consequence of a different interpretation as to whether ACP and the ACP Transferees were associates. The other parties to the Proceedings did not have such an excuse. It is incumbent on persons who take substantial holdings in listed public companies to obtain proper advice concerning the attendant obligations.
117. The Panel did not make exhaustive inquiries into whether other persons might have had substantial holdings in LV Living. In particular, the Panel did not inquire whether any third person had a relevant interest in the shares held by RPS or any of the ACP Transferees, or whether Mr Woodham or Ms Woodham had a relevant interest in the shares held by Peridon. The Panel wrote to RPS and the ACP Transferees raising the prospect that there might be upstream holders of relevant interests or associates who need to make substantial holding disclosures and have not done so. The Panel will be extremely concerned if such upstream holders or associates do not make any necessary disclosures.

Proposed issue of securities

118. GWFS also alleged that a proposed issue of convertible notes by LV Living without first seeking shareholder approval or disclosing the identities of the subscribers for those notes comprised unacceptable circumstances.
119. Given that the issue was capable of being undertaken without giving rise to unacceptable circumstances, and that full details of how the transaction would be

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undertaken had not been released by LV Living at the time of the Panel's decision, the Panel did not commence proceedings with respect to this allegation.

Time of the Application

120. ACP and the ACP Transferees argued that any unacceptable circumstances occurred on 29 October 2004 when the Notice of Meeting was published and that, under section 657B, the Panel was therefore barred from making a declaration by section 657B.
121. The Panel disagreed. The Panel considered that unacceptable circumstances had occurred on the date on which the relevant share issues occurred and on which the relevant share transfers were agreed: for example, on 23 December 2004 when the shares were issued to the Peridon Parties and on 29 December 2004 when shares were issued to ACP.

Further information available only after the conclusion of the Proceedings

122. After the conclusion of the Proceedings, LV Living published its half-year financial report for the 6 months ended 31 December 2004. That report disclosed that the 2,083,392 shares issued to Lidcombe on 30 November 2004 were issued as consideration for the repayment of a \$250,000 liability by LV Living (an issue price of \$0.12 per share, compared to the issue prices of \$0.02 and \$0.03 per share approved by shareholders at the AGM). It also disclosed that the \$250,000 debt had been assigned to Lidcombe by GDK.
123. During the Proceedings, the Panel had been made aware that Lidcombe had been issued those shares in consideration for the repayment of a debt and of the issue price of those shares. It had not been informed that the debt had been assigned to Lidcombe by GDK (although the Panel had not specifically inquired as to the origin of the debt).
124. Given that the Proceedings had concluded when the Panel became aware of this additional information, the Panel did not seek submissions in relation to it and did not take it into account in reaching its decision.
125. On its face, it is unlikely that the additional information would have resulted in the Panel reaching a different decision: it appears merely to reinforce that the Peridon Parties and ACP and the ACP Transferees were associates at the time of the AGM, but does not appear to evidence an ongoing association between them.
126. Nevertheless, the Panel is extremely concerned that this information was not presented to it during the course of Proceedings. It was clearly relevant to the questions being examined by the Panel. The Panel expects parties to be forthright and open in their dealings with the Panel, and to respond to its questions in the spirit in which those questions are asked – erring on the side of more disclosure of salient facts rather than responding purely on the basis of a narrow reading of the Panel's questions.
127. The Panel is considering whether it will pursue action against the relevant parties in relation to the failure to bring the above information to the Panel's attention during the Proceedings.

DECISION

Declaration of unacceptable circumstances

128. The Panel concluded that the following matters constituted unacceptable circumstances in relation to the affairs of LV Living:
- (a) the acquisition of shares in LV Living by each of Mr West, Peridon and ACP in breach of section 606;
 - (b) the on-market acquisitions of shares by Lidcombe and Mr Radford after 29 December 2004 in breach of section 606;
 - (c) in light of the acquisitions referred to in paragraphs (a) and (b), the continued holding by the Peridon Parties, ACP and the ACP Transferees of voting power in LV Living in excess of 20%; and
 - (d) the failure by the persons listed in Annexure D to lodge substantial holding notices which complied with the requirements of Chapter 6C.
129. Accordingly, the Panel made the declaration of unacceptable circumstances set out in Annexure A to these reasons.

Final orders and undertakings

130. The Panel considered what orders and undertakings would be appropriate to address the unacceptable circumstances.

Ongoing holdings in excess of 20%

131. The Panel noted that no occasions had arisen between 23 December and 31 December for the parties to exercise their voting power. Therefore, in considering the effect of the unacceptable circumstances, the Panel considered the voting power of, respectively, the Peridon Parties and ACP/the ACP Transferees as it stood after 31 December 2004 and as it stands today.
132. The Panel considered ordering that the issues of LV Living shares to Peridon, Mr West and ACP be unwound to the extent that they resulted in the Peridon Parties and ACP/the ACP Transferees holding voting power in LV Living of more than 20%. However, that would have resulted in an outflow of funds from LV Living and, therefore, in LV Living being financially stressed (potentially beyond its capacity to pay while still remaining a going concern), just as it was in the process of conducting a 'turn around'.
133. The Panel also considered ordering that a proportion of the shares held by the Peridon Parties, ACP and the ACP Transferees be vested in ASIC for sale, such that – after that vesting – the Peridon Parties and ACP/the ACP Transferees respectively would only hold voting power in LV Living of 20%. The Panel noted that this approach would result in an overhang in the market given that 7.87% of LV Living's shares would be vested in ASIC for sale, likely resulting in significant downward pressure on LV Living's share price.
134. The Panel noted that, at 22.39%, the Peridon Parties' voting power was within a single '3% creep' from the 20% threshold in section 606. The Panel also noted that, at

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25.48%, the voting power of ACP and the ACP Transferees was within two '3% creeps' of the 20% threshold.

135. That is, it would have been possible to structure the Proposal (for instance, by issuing appropriately structured convertible notes) so that:
- (a) all shares issued pursuant to the AGM were issued in three tranches, at six month intervals;
 - (b) all the shares issued in the first tranche were issued on the one day and so that, following the issue of those shares:
 - (i) ACP held 20% of the shares in LV Living;
 - (ii) RPS held 5.77% of the shares in LV Living; and
 - (iii) the Peridon Parties' voting power in LV Living was 20%; and
 - (c) all the shares issued in the second tranche were issued six months after the first tranche and so that, following the issue of those shares:
 - (i) ACP (or by then ACP in conjunction with the ACP Transferees) held 23% of the shares in LV Living;
 - (ii) RPS held 5.77% of the shares in LV Living; and
 - (iii) the Peridon Parties' voting power in LV Living was 22.39%; and
 - (d) all the shares issued in the third tranche were issued twelve months after the first tranche and so that, following the issue of those shares:
 - (i) ACP (or by then ACP in conjunction with the ACP Transferees) held 25.48% of the shares in LV Living;
 - (ii) RPS held 5.77% of the shares in LV Living; and
 - (iii) the Peridon Parties' voting power in LV Living was 22.39%.
136. Properly structured, the above approach would likely have complied with Chapter 6, with the only disadvantage being that ACP, RPS and the Peridon Parties would not have been able to realize all of their respective investments from day one.
137. Accordingly, the Panel made orders and accepted undertakings with the combined effect that:
- (a) until after 29 June 2005, the Peridon Parties (between them), on the one hand, and ACP and the ACP Transferees (between them), on the other hand, would respectively not be able to exercise more than 20% of the votes exercisable at a meeting of LV Living; and
 - (b) until after 29 December 2005, ACP and the ACP Transferees (between them) would not be able to exercise more than 23% of the votes exercisable at a meeting of LV Living.
138. Given that the shares in LV Living held by the Peridon Parties (on the one hand) and ACP and the ACP Transferees (on the other hand) were held by different persons, the shares which had voting rights frozen were allocated pro-rata across the various associates' holdings.

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Reasons for Decision – LV Living Limited

139. The Panel also made orders and accepted undertakings with the combined effect that:
- (a) none of the Peridon Parties would acquire a relevant interest in reliance on item 9 of section 611 until after 23 December 2005 (except to the extent of an acquisition resulting in an increase of voting power of no more than 0.61%);
 - (b) none of ACP and the ACP Transferees would acquire a relevant interest in reliance on item 9 of section 611 until after 29 June 2006 (except to the extent of an acquisition resulting in an increase of voting power of no more than 0.52% made after 29 December 2005);
 - (c) none of the Peridon Parties would dispose of any shares in LV Living other than in the ordinary course of trading on ASX until after 23 December 2005; and
 - (d) none of ACP and the ACP Transferees would dispose of any shares in LV Living other than in the ordinary course of trading on ASX until after 29 June 2006.
140. The Panel indicated to the parties that it would be prepared to vary its orders, or waive compliance with the undertakings, if shareholders in LV Living ratify the acquisition of all relevant interests consequent on the issue of shares to Peridon or ACP in December or the subsequent on-market acquisitions of LV Living shares by Lidcombe and Mr Radford. The Panel would require that none of the following vote or are voted on any such ratification resolution:
- (a) the Peridon Parties, ACP, the ACP Transferees, RPS and their respective associates; and
 - (b) the shares issued pursuant to the approvals given at the AGM.
141. After the conclusion of the Proceedings, Peridon, Boundup and Wesland each sought the Panel's consent to dispose of shares in LV Living to a stockbroker not associated with it. That stockbroker would in turn dispose of the shares to third parties who were not associated with the Peridon Parties. The Panel considered these requests and, given that the relevant disposals would result in the dissipation of the Peridon Parties' voting power and would not result in any disposals to any of their associates, consented to the relevant disposals.

Substantial holding notices

142. The Panel also made orders and accepted undertakings requiring the persons listed in Annexure D to lodge complying substantial holding notices with LV Living and ASX by 5pm on 15 February 2005.

Costs

143. The Panel did not receive any application for an award of costs, and made no order for costs.

Copies of orders and undertakings

144. Copies of the final orders made by the Panel and the undertakings accepted by the Panel are attached as Annexures B and C.

Takeovers Panel

Reasons for Decision - LV Living Limited

Marie McDonald
President of the Sitting Panel
Decision dated 15 February 2005
Reasons published 17 March 2005

Takeovers Panel

Reasons for Decision – LV Living Limited

Annexure A - Declaration of unacceptable circumstances

In the matter of LV Living Limited

WHEREAS

- A. On 23 December 2004, LV Living Limited (**LV Living**) issued 20,000,000 shares to Peridon Management Pty Ltd (**Peridon**) (out of 82,288,208 shares then on issue).
- B. On 23 December 2004, LV Living issued 1,200,000 shares to Mr Robert West.
- C. Before the issues of shares referred to in Recitals A and B:
 - (1) Peridon held 4,000,000 shares in LV Living;
 - (2) Putuso Pty Ltd (**Putuso**) held 162,000 shares in LV Living; and
 - (3) Boundup Pty Ltd (**Boundup**) held 533,334 shares in LV Living.
- D. The Panel considers that Peridon, Mr West, Putuso and Boundup are, and were on 23 December 2004, associates of one another and of GDK Financial Solutions Pty Ltd, Wesland Investments Pty Ltd and Mr David McLeod.
- E. On 29 December 2004, LV Living issued 26,666,666 shares to Aged Care Properties Pty Ltd (**ACP**) (out of 108,954,874 LV Living shares then on issue).
- F. On 17 January 2005, ACP transferred a total of 26,666,663 LV Living shares to JP McDougall Pty Ltd, Mr Graeme McDougall, Mr Anthony Radford, Lidcombe Banner Pty Ltd (**Lidcombe**), Hodibo Pty Ltd and Cornwall Nominees Pty Ltd (collectively, the **ACP Transferees**).
- G. The Panel considers that ACP and the ACP Transferees are all associates of one another.
- H. There are currently 115,621,540 LV Living shares on issue.
- I. On 29 December 2004, Lidcombe acquired a relevant interest in 6,999,999 of the LV Living shares issued to ACP and Mr Radford acquired a relevant interest in 888,888 of the LV Living shares issued to ACP.
- J. Lidcombe acquired 500,600 LV Living shares (net of sales of shares) on-market between 1 November 2004 and 29 December 2004, 20,000 LV Living shares on-market on 29 December 2004 and 94,108 LV Living shares on-market between 6 January 2005 and 20 January 2005. Lidcombe was issued 2,083,392 shares in LV Living on 30 November 2004.
- K. As at 29 December 2004, Mr Radford owned 30,060 LV Living shares which he had acquired on-market. Between 30 December 2004 and 5 February 2005, Mr Radford acquired 60,000 LV Living shares on-market.
- L. Inadequate substantial holding notices have been provided to LV Living and Australian Stock Exchange Limited (**ASX**) in relation to substantial holdings in LV Living by Wesland Investments Pty Ltd, Peridon, JP McDougall Pty Ltd, Lidcombe and Hodibo Pty Ltd.
- M. No substantial holding notices have been provided to LVL and ASX in relation to substantial holdings in LV Living by Mr West, Putuso, Mr McLeod, Boundup,

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Ms Lyn Lander, Lynplan Pty Ltd, Geoff Woodham Financial Services Pty Ltd, ACP, Mr Graeme McDougall, Mr Radford and Cornwall Nominees Pty Ltd.

Under section 657A of the Corporations Act, the Takeovers Panel declares that the following circumstances constitute unacceptable circumstances in relation to the affairs of LV Living:

- (a) the acquisition of shares in LV Living by each of Mr West, Peridon and ACP in breach of section 606 of the Corporations Act;
- (b) the acquisition on-market of shares by Lidcombe and Mr Radford after 29 December 2004 in breach of section 606 of the Corporations Act;
- (c) in light of the acquisitions referred to in paragraphs (a) and (b), the continued holding by the persons listed in Recital D, ACP and the ACP Transferees of voting power in LV Living in excess of 20%; and
- (d) the failure by the persons listed in Recitals L and M to lodge substantial holding notices which complied with the requirements of Chapter 6C of the Corporations Act.

Marie McDonald
President of the Sitting Panel
Dated 15 February 2005

Takeovers Panel

Reasons for Decision – LV Living Limited

Annexure B - Orders

In the matter of LV Living Limited

Pursuant to:

- (a) section 657D of the *Corporations Act 2001* (Cth) (the **Act**); and
- (b) a declaration of unacceptable circumstances in relation to the affairs of **LV Living Limited (LV Living)** made by the President of the Sitting Panel on **15 February 2005**,

the Takeovers Panel HEREBY ORDERS:

- (i) Until after 29 June 2005, each ACP Party must exercise no more than the following number of votes at any meeting of LV Living shareholders:

ACP Party Votes	x	1	X	(Total Votes - Total ACP Votes - Total Peridon Votes)
Total ACP Votes		3		

- (ii) Between 30 June 2005 and 29 December 2005 (both inclusive), each ACP Party must exercise no more than the following number of votes at any meeting of LV Living shareholders:

ACP Party Votes	x	23 x (Total Votes - Total ACP Votes)
Total ACP Votes		77

- (iii) Each ACP Party must not acquire a relevant interest in reliance on item 9 of section 611 of the Act until after 29 June 2006 (except to the extent of an acquisition made after 29 December 2005 resulting in an increase of that ACP Party's voting power of no more than 0.52%);
- (iv) Each ACP Party must not dispose of any share in LV Living other than in the ordinary course of trading on ASX until after 29 June 2006; and
- (v) Each ACP Party, Ms Lyn Lander, Lynplan Pty Ltd and Geoff Woodham Financial Services Pty Ltd must lodge by 5 pm (AEDT) on 15 February 2005 a substantial holding notice in relation to LV Living with LV Living and Australian Stock Exchange Limited. The content of and annexures to each such substantial holding notice must comply with Chapter 6C of the Act. In the case of each ACP Party, the substantial holding notice must be prepared on the basis that the ACP Parties are associates of one another. In the case of Ms Lander and Lynplan Pty Ltd, the substantial holding notice must be prepared on the basis that the Peridon Parties are associates of one another.

In these Orders, the following defined terms have the following meanings:

ACP Party means any of Aged Care Properties Pty Ltd, JP McDougall Pty Ltd, Mr Graeme Whitehouse McDougall, Mr Anthony James Radford, Lidcombe Banner Pty Ltd, Hodibo Pty Ltd and Cornwall Nominees Pty Ltd.

ACP Party Votes are the total number of votes which (but for these Orders and any applicable voting exclusion) could be cast at the relevant meeting of LV Living shareholders by the particular ACP Party in question.

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Peridon Party means any of Peridon Management Pty Ltd, GDK Financial Solutions Pty Ltd, Mr Robert Clive West, Mr David John McLeod, Boundup Pty Ltd, Putuso Pty Ltd and Wesland Investments Pty Ltd.

Total ACP Votes are the total number of votes which (but for these Orders and any applicable voting exclusion) could be cast by all ACP Parties at the relevant meeting of LV Living shareholders.

Total Peridon Votes are the total number of votes which (but for these Orders and any applicable voting exclusion) could be cast by all Peridon Parties at the relevant meeting of LV Living shareholders.

Total Votes are the total number of votes which (but for these Orders and any applicable voting exclusion) could be cast at the relevant meeting of LV Living shareholders.

Marie McDonald

President of the Sitting Panel

Dated 15 February 2005

Takeovers Panel

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Annexure C - Undertakings

UNDERTAKING TO TAKEOVERS PANEL FROM LV LIVING LIMITED

The Company undertakes:

1. to disregard any votes exercised by a Peridon Party or an ACP Party in contravention of orders made by, or undertakings accepted by, the Panel on or about the date of this undertaking, and
2. to provide, on request, sufficient information to each Peridon Party and each ACP Party, to enable them to determine in relation to any meeting of shareholders of the Company how many votes they must not exercise pursuant to orders made by, or undertakings accepted by, the Panel on or about the date of this undertaking.

In this undertaking:

ACP Party means any of Aged Care Properties Pty Ltd, JP McDougall Pty Ltd, Mr Graeme Whitehouse McDougall, Mr Anthony James Radford, Lidcombe Banner Pty Ltd, Hodibo Pty Ltd and Cornwall Nominees Pty Ltd.

Peridon Party means any of Peridon Management Pty Ltd, GDK Financial Solutions Pty Ltd, Mr Robert Clive West, Mr David John McLeod, Boundup Pty Ltd, Putuso Pty Ltd and Wesland Investments Pty Ltd.

UNDERTAKING TO TAKEOVERS PANEL FROM PERIDON PARTIES

The undersigned parties give the following undertakings in favour of the Takeovers Panel:

1. That until after 29 June 2005, each Peridon Party undertakes to exercise no more than the following number of votes at any meeting of LV Living shareholders:-
$$\left(\frac{\text{Peridon Party Votes}}{\text{Total Peridon Votes}}\right) \times \left(\frac{1}{3}\right) \times (\text{Total Votes} - \text{Total ACP Votes} - \text{Total Peridon Votes})$$
2. Each Peridon Party undertakes, except with the prior written consent of the Takeovers Panel, not to acquire a relevant interest in reliance on item 9 of section 611 of the *Corporations Act 2001* (Cth) (the **Act**) until after 29 December 2005 (except to the extent of an acquisition resulting in an increase of that Peridon Party's voting power of no more than 0.61%).
3. Each Peridon Party undertakes, except with the prior written consent of the Takeovers Panel, not to dispose of any shares in LV Living other than in the ordinary course of trading on ASX until after 23 December 2005.
4. Each Peridon Party undertakes to lodge by 5 pm (AEDT) on 15 February 2005 a substantial holding notice in relation to LV Living with LV Living and Australian Stock Exchange Limited. The content and annexures to each such substantial holding notice will comply with Chapter 6C of the Act. Each substantial holding notice will be prepared on the basis that the Peridon Parties are associates of one another.

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5. For the purposes of these undertakings:

ACP Party means any of Aged Care Properties Pty Ltd, JP McDougall Pty Ltd, Mr Graeme Whitehouse McDougall, Mr Anthony James Radford, Lidcombe Banner Pty Ltd, Hodibo Pty Ltd and Cornwall Nominees Pty Ltd.

Peridon Party means any of Peridon Management Pty Ltd, GDK Financial Solutions Pty Ltd, Mr Robert Clive West, Mr David John McLeod, Boundup Pty Ltd, Putuso Pty Ltd and Wesland Investments Pty Ltd.

Peridon Party Votes are the total number of votes which (but for these undertakings and any applicable voting exclusion) could be cast at the relevant meeting of LV Living shareholders by the particular Peridon Party in question.

Total ACP Votes are the total number of votes which (but for the orders of the Takeovers Panel dated on or about the date of these undertakings and any applicable voting exclusion) could be cast by all ACP Parties at the relevant meeting of LV Living shareholders.

Total Peridon Votes are the total number of votes which (but for these undertakings and any applicable voting exclusion) could be cast by all Peridon Parties at the relevant meeting of LV Living shareholders.

Total Votes are the total number of votes which (but for these undertakings, the orders of the Takeovers Panel dated on or about the date of these undertakings and any applicable voting exclusion) could be cast at the relevant meeting of LV Living shareholders.

Peridon Management Pty Ltd

GDK Financial Solutions Pty Ltd

Robert Clive West

David McLeod

Boundup Pty Ltd

Putuso Pty Ltd

Wesland Investment Pty Ltd

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Annexure D - Deficiencies in relation to substantial holding notices

Substantial holder	Deficiency in notice	Notice(s) was/were due within 2 business days after ...
Mr West	No notice	23 December, 29 December, 31 December
Wesland	<p>Does not annex a copy of, or otherwise annex a statement giving full and accurate details of, the arrangement pursuant to which Wesland acquired the 16,250,000 shares from Peridon</p> <p>Does not disclose or recognise:</p> <ul style="list-style-type: none"> - the names of Wesland’s associates who have a relevant interest in LV Living (eg. the Peridon Parties); - the nature of Wesland’s relationship with the associates; <p>or</p> <ul style="list-style-type: none"> - the relevant interests of those associates. <p>The above deficiencies mean that the stated voting power (which is not recorded in percentage terms) is wrong.</p>	23 December, 29 December, 31 December
GDK	No notice	23 December, 29 December, 31 December
Peridon	<p>Does not annex a copy of the agreement pursuant to which Wesland acquired the 16,250,000 shares from Peridon</p> <p>Does not disclose:</p> <ul style="list-style-type: none"> - the names of Peridon’s associates who have a relevant interest in LV Living (eg. the Peridon Parties); - the nature of Peridon’s relationship with the associates; <p>or</p> <ul style="list-style-type: none"> - the relevant interests of those 	23 December, 29 December, 31 December

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Substantial holder	Deficiency in notice	Notice(s) was/were due within 2 business days after ...
	<p>associates.</p> <p>The above deficiencies mean that the stated voting power (which is not recorded in percentage terms) is wrong.</p>	
Putuso	No notice	23 December, 29 December, 31 December
Mr McLeod	No notice	23 December, 29 December, 31 December
Boundup	No notice	23 December, 29 December, 31 December
Ms Lander	No notice	Ms Lander became aware of the share issues on 23 December, 29 December and 31 December
Lynplan	No notice	Lynplan became aware of the share issues on 23 December, 29 December and 31 December
GWFS	No notice	GWFS became aware of the share issues on 23 December, 29 December and 31 December
RPS	Does not annex the Convertible Note Subscription Agreement (that is, the relevant agreement giving rise to the need for RPS to make the disclosure)	31 December
ACP	No notice (such a notice is required because ACP and all of the ACP Transferees are associates)	29 December and any subsequent date on which an on-market acquisition by Lidcombe or Mr Radford resulted in a 1% movement in ACP's voting power
JP McDougall Pty Ltd	Does not recognise that ACP and all of the ACP Transferees are associates. Accordingly, the stated voting power is wrong and	29 December and any subsequent date on which an on-market acquisition by Lidcombe or Mr

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Substantial holder	Deficiency in notice	Notice(s) was/were due within 2 business days after ...
	<p>the required disclosures with respect to the associates are missing</p> <p>In addition, it understates the number of shares acquired on-market by Lidcombe between 1 November 2004 and 20 January 2005.</p>	<p>Radford resulted in a 1% movement in ACP's voting power</p>
Graeme McDougall	<p>No notice (such a notice is required because ACP and all of the ACP Transferees are associates)</p>	<p>29 December and any subsequent date on which an on-market acquisition by Lidcombe or Mr Radford resulted in a 1% movement in ACP's voting power</p>
Anthony Radford	<p>No notice (such a notice is required because ACP and all of the ACP Transferees are associates)</p>	<p>29 December and any subsequent date on which an on-market acquisition by Lidcombe or Mr Radford resulted in a 1% movement in ACP's voting power</p>
Lidcombe	<p>As for JP McDougall P/L</p>	<p>29 December and any subsequent date on which an on-market acquisition by Lidcombe or Mr Radford resulted in a 1% movement in ACP's voting power</p>
Hodibo Pty Ltd	<p>Does not recognise that ACP and all of the ACP Transferees are associates. Accordingly, the stated voting power is wrong and the required disclosures with respect to the associates are missing</p>	<p>29 December and any subsequent date on which an on-market acquisition by Lidcombe or Mr Radford resulted in a 1% movement in ACP's voting power</p>
Cornwall Nominees Pty Ltd	<p>No notice (such a notice is required because ACP and all of the ACP Transferees are associates)</p>	<p>29 December and any subsequent date on which an on-market acquisition by Lidcombe or Mr Radford resulted in a 1%</p>

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Substantial holder	Deficiency in notice	Notice(s) was/were due within 2 business days after ...
		movement in ACP's voting power