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Contact: John Reynolds

28 March 2012

**By Email**

**Minter Ellison**  
Allendale Square  
77 St Georges Terrace  
Perth 6000

**Attention: Leith Ayres, Richard Johnson & Jon Karolczak**

Dear Sirs

### **National Hotel, Fremantle (Hotel)**

Thank you for your letter of 23 March 2012 responding to our letter of 8 March 2012. We understand the letter was provided in your capacity as legal advisers to Mr Francis and Mr Engleburt of Taylor Wooding, acting as receivers and managers of the Hotel (**Receivers and Managers**). You nevertheless also continue to act for their appointor, the Bank of Western Australia Limited (**Bankwest**).

Our clients have also passed us a copy of a letter dated 26 March 2012 from the Receivers and Managers.

Our response to both letters, insofar as they relate to the National Hotel, is set out below:

### **Letter from Minter Ellison of 23 March 2012**

1. Your letter states in paragraph 2 that your clients are appointed as joint and several Receivers and Managers of National Hotel Property Pty Ltd. That is simply not correct as you appear to acknowledge in subparagraph 4(iv) of your letter<sup>1</sup>. The Receivers and Managers were only ever appointed over part of the land and fixtures which are subject to a mortgage to Bankwest (registered number K327826).

To assert that your client has been appointed as receivers and managers of National Hotel Property Pty Ltd could mislead other parties into thinking that the Receivers and Managers are in a position to exercise rights and control assets (other than the land and fixtures) in fact belonging to National Hotel Property Pty Ltd (as trustee) or the National Hotel Partnership. Our clients reserve all of their rights in that regard.

2. In our letter of 8 March 2012, we noted that there were a number of assets (in addition to the land and the fixtures the subject of the mortgage) relevant to the Hotel which are

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<sup>1</sup> We note similar erroneous assertions are made in your letters of 18 August 2011 and 18 January 2012 and in the draft agreement provided to Mr Butler by the Receivers and Managers.

owned by National Hotel Property Pty Ltd (as trustee) or the National Hotel Partnership<sup>2</sup>. In your letter of 23 March 2012, you do not appear to dispute that proposition. Please ensure that each of these assets (including plant, materials & equipment, licences, building plans, building and management agreements, accounts, receipts and business equipment), currently held by your clients are returned to our clients immediately.

Your assertion that "*the majority of the documents to which you refer are ... property of Butler Constructions*" is not correct. Butler Constructions was a contractor to National Hotel Partnership and National Hotel Property Pty Limited and as such the relevant material was owned by these entities (beneficially or on trust).

You will appreciate our clients were restricted in their dealings with the Receivers and Managers (including during the sale process) by being unable to access material owned by National Hotel Property Pty Ltd (as trustee) or National Hotel Partnership which had been taken by the Receivers and Managers.

We also note that your clients have utilised information (e.g. plans, licences and cost estimates) owned by National Hotel Property Pty Ltd (as trustee) or the National Hotel Partnership in conducting the sale process.

Our clients reserve all of their rights in relation to the taking and use of assets belonging to National Hotel Property Pty Ltd (as trustee) or the National Hotel Partnership, including in relation to the sale process.

3. You will be aware that on or about 14 December 2011, National Hotel Property Pty Ltd lodged an Expression of Interest to purchase the Hotel for \$4.5 million. The Receivers and Managers advised by email dated 16 December 2011 that no offer could be lodged by National Hotel Property Pty Ltd because the company was in receivership. That was not correct.
4. Subsequently, our clients were told by your clients' sales agent that there was no point in submitting any offer for the Hotel under \$5 million. Our client accepted that statement as accurate. We note your clients now purport to have entered a binding sale agreement for \$3.6 million.

Our clients reserve all of their rights in relation to the statements about the sale process made to him by your clients and their agents, and in relation to the sale not being for the best available price.

5. In paragraph 6(b) of your letter you allege that a range of actions were taken by the Receivers and Managers with the consent of Mr Benari. Given Mr Benari's fiduciary duties as a partner of National Hotel Partnership we at this stage assume Mr Benari understood that the Receivers and Managers were appointed over all of the land and other assets owned by National Hotel Property Pty Ltd (i.e. Mr Benari's partner in the National Hotel Partnership). In this respect we refer to our comments at point 1 above.
6. In addition to the flaws in the receivership outlined above, we are instructed that the failure to obtain updated builders' costs to complete, the failure to progress the development application for the rooftop bar and the unnecessarily hasty sale process has adversely affected the offers received for the property.

We note that your clients' own sales agents stated it would be a "*complete and utter waste of time and money to commence marketing the National Hotel prior to receiving the builders (sic) written quotations for completion of the building.*" Notwithstanding this advice, your clients apparently chose to proceed with a sale without obtaining this information. Despite repeated requests from our client, your clients have refused to

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<sup>2</sup> See paragraphs 1.3 and 1.4 of our letter of 8 March 2012.

provide any explanation of their approach to the sale process or their failure to obtain a builder's cost to complete. Our clients reserve all of their rights in relation to the shortcomings in the sale process.

7. In light of the range of issues outlined above, our clients do not accept that the costs and disbursements incurred during the receiverships relevant to the Hotel have been reasonably or properly incurred.
8. If the Hotel is now sold for an amount less than \$4.5 million, our clients will claim the amount of any shortfall from your clients.

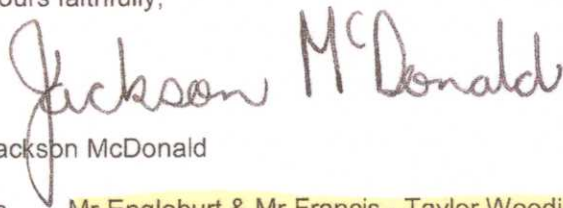
**Letter from Taylor Wooding of 26 March 2012**

9. We note that the Receivers and Managers assert they have been appointed as "receivers and managers of the company". For the reasons set out above it would be more accurate to state that they were appointed as Receivers and Managers over certain assets of the company.
10. Your clients' statement that they are "grateful" for the "assistance" provided by our client seems disingenuous given they have refused to respond to our clients' repeated offers of assistance and your firm has complained that our client has "interfered" or "acted adversely to the interests of the receivership" and "failed to provide information"<sup>3</sup>.

Even at this late stage our clients' preference is to avoid the publicity, time and expense of legal proceedings. To that end we are willing to meet with you and your clients at short notice to provide further clarification of any of the matters set out above and/or to investigate an amicable resolution. Please let us know your availability.

In the meantime please contact John Reynolds of this office to arrange the return of the material identified in paragraph 2 above.

Yours faithfully,



Jackson McDonald

cc Mr Engleburt & Mr Francis - Taylor Wooding  
Mr Gilbert - Bankwest  
Philip Pullinger - Allion Legal

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<sup>3</sup> See your letter of 18 August 2011 and the Fair Work Australia Form F3. See also the emails from Mr Butler to the Receivers and Managers dated 26 and 29 November 2011. For the record our clients deny those allegations.

<sup>4</sup> We understand a similar letter was sent to Mr Benari.