

INVESTOR UPDATE - OUTCOME OF JUDICIAL ADVICE APPLICATION

1 November 2024

CPF Diversified Property Fund - termination of Investment Management Agreement with Capital Property Funds Limited and outcome of Judicial Advice Application

- 1 One Managed Investment Funds Limited (**OMIFL**) as the responsible entity of the CPF Diversified Property Fund ARSN 610 941 654 (**Fund**) filed an Application (**Advice Application**) in the Supreme Court of New South Wales (**Court**) for judicial advice in relation to the defence of proceedings brought by Raptis Properties Pty Ltd (**Raptis**), the vendor of the 63 Pirie Street, Adelaide property (**SASC Proceeding**). The Application was heard by His Honour Justice Lindsay AM on 31 October 2024.
- 2 Justice Lindsay made directions largely in the terms sought by OMIFL. A copy of the Court's order has been uploaded to the investor portal, but in summary, the Court has found OMIFL is justified in:
 - (a) defending the SASC Proceeding by filing and prosecuting a defence substantially in the form provided by OMIFL to Justice Lindsay;
 - (b) commencing and maintaining in the SASC Proceeding cross claims against the following persons/entities, substantially in the form provided by OMIFL to Justice Lindsay:
 - (i) Capital Property Funds Pty Ltd;
 - (ii) Mr Andrew Kerr;
 - (iii) HFW Lawyers.
- 3 Importantly, as requested by OMIFL, any decision in relation to its ability to be indemnified for any damages or costs in relation to the SASC Proceedings has been deferred until after the SASC Proceeding has been determined, or further order of the Court. OMIFL **did not** seek any orders which would have allowed it to use the Fund's resources in relation to the SASC Proceeding because it recognises this is best determined once that proceeding has been resolved or determined by the Court or as part of any settlement of the dispute with Raptis.
- 4 OMIFL has also personally paid all costs associated with the Advice Application and will not pay them from the Fund's resources unless and until it receives an order for the Court that it can do so.
- 5 OMIFL has provided undertakings to the Court that it will conduct the SASC Proceedings:



- (a) with all due dispatch
- (b) without recourse to assets of the Fund or to Unitholders for the payment of costs of the SASC proceedings, subject to its right to seek indemnification at a later point in time
- (c) without attributing any responsibility for particular steps taken in the conduct of the SASC Proceeding to Unitholders without their prior written consent or the leave of the Court; and
- (d) at its own risk as to costs, subject to its right to seek indemnification at a later point in time.

6 The Court also made various orders designed to preserve the confidentiality of the information provided to the Court, and any claims of legal professional privilege. For this reason, OMIFL needs to continue to be careful about what information it provides to Unitholders.

Next steps

7 The next step in the SASC Proceedings is for OMIFL to file and serve the defence and cross-claims upon the relevant parties. This will occur in the near future.

8 Once these documents have been served OMIFL will issue a further update to Unitholders.

If you have any queries, please contact capital@oneinvestment.com.au.....

SUPREME COURT OF NEW SOUTH WALES
ASSOCIATE'S RECORD OF PROCEEDINGS

FILE NUMBER: 2023/00465663

NAME OF MATTER: Application of One Managed Investment Funds Limited ACN 117
400 987 as responsible entity of the CPF Diversified Property Fund
ARSN 610 941 654

DATE: 31 October 2024

CORAM: Lindsay J

APPEARANCES: Plaintiff: Mr Ross Foreman SC and Ms Leanne Rich instructed
by Ms S Nutley and Ms M Scott, solicitors of Hall and
Wilcox Solicitors

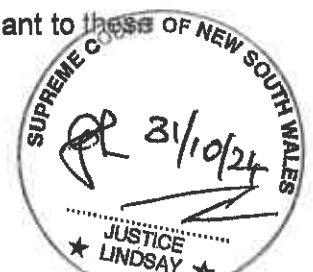
Interested party (Mr Bede Webster)
(by leave): Self represented

Exhibit CB1: Volume One of Court Book, including an Index to Exhibits CB1 and CB2.
Exhibit CB2: Volume Two of Court Book.
Exhibit CB3: Volume of Confidential Documents, including an Index to Exhibit CB3.
Exhibit CB4: A supplementary Court Book including index.
Exhibit CB5: A supplementary Confidential Court Book containing a redacted form of the plaintiff's "written submissions in reply" provided to Bede Webster.

VERDICT, ORDER OR DIRECTION:

On the application of the plaintiff and after allowing Bede Webster (by leave earlier granted) to be heard, Lindsay J makes the following notations and orders:

- 1 ORDER that the plaintiff be granted leave to file in court and rely upon:
 - (a) the Further Amended Summons dated 23 October 2024; and
 - (b) the Amended Supplementary Statement of Facts dated 23 October 2024.
- 2 NOTE that these proceedings were commenced by a summons filed on 22 December 2023, amended on 28 June 2024 and further amended pursuant to the orders.



3 NOTE the amended supplementary statement of facts dated 23 October 2024, incorporating by reference a Supplementary Statement of Facts dated 18 July 2024 and a Further Amended Statement of Facts dated 19 July 2024 (both filed on 5 August 2024).

4 NOTE the evidence adduced in support of the further amended summons reproduced in Exhibits CB1, CB2, CB3, CB4 and CB5.

5 NOTE the following confidential memoranda of opinions of Nicholas Floreani KC reproduced in Exhibit CB3:

(a) A "First Opinion" dated 29 November 2023;

(b) A "Second Opinion" dated 13 March 2024;

(c) A "Third Opinion" dated 20 June 2024; and

(d) A "Fourth Opinion" dated 16 July 2024,

particularly the Third and Fourth Opinions.



6 NOTE the written submissions dated 19 July 2024 prepared by Ross Foreman SC, Leanne Rich and Jordan Smith as counsel for the plaintiff in support of the further amended summons, reproduced in Exhibit CB1.

7 NOTE the written submissions dated 31 July 2024 of Bede Webster (a unitholder) as an interested person (reproduced in Exhibit CB1) and a bundle of documents (included in Exhibit CB4) produced by him in aid of his submissions.

8 NOTE the written submissions dated 24 October 2024 prepared by Ross Foreman SC, Leanne Rich and Jordan Smith "in reply", accompanied by a Chronology of the same date, reproduced in Exhibit CB1.

9 NOTE that nothing in these orders is intended to interfere with management by the Supreme Court of South Australia of the proceedings brought by Raptis Properties Pty Ltd against the plaintiff in that Court, bearing Case Number CIV-23-002352 ("the SASC Proceedings").

- 10 NOTE that the law governing the contract dated 25 November 2022 which is the subject of the SASC proceedings is, by clause 70.1 of the Contract, the law of South Australia.
- 11 NOTE that, by clause 26.15 of the Constitution of the Fund of which the plaintiff is trustee, the Constitution is governed by the law of NSW.
- 12 UPON the plaintiff giving to the Court an undertaking that it will conduct the SASC proceedings:
- (a) with all due dispatch;
 - (b) without recourse to assets of the Fund or to Unitholders for the payment of costs of the SASC proceedings as and when incurred, reserving such, if any, rights it may have to be indemnified from assets of the Fund or Unitholders after a determination of the SASC proceedings or further order of the Court;
 - (c) without attributing any responsibility for particular steps taken, or to be taken, in the conduct of the SASC proceedings to Unitholders without their prior written consent or the leave of the Court; and
 - (d) at its own risk as to costs, reserving such, if any, rights it may have to be indemnified from assets of the Fund or Unitholders after a determination of the SASC proceedings or further order of the Court.

ORDER, subject to further order, that it would be justified, in:

- (e) defending the SASC proceedings by filing and prosecuting a defence substantially in the form reproduced behind Tab 23 in Exhibit CB3 or (in accordance with an opinion or advice of counsel to which clause 20.4(a) of the Constitution applies) on such other basis as may be advised by counsel from time to time;
- (f) commencing and maintaining, within the SASC proceedings, cross claims against Capital Property Funds Pty Ltd ACN 162 323 506,



Andrew Kerr and HFW Lawyers by filing and prosecuting cross claims substantially in the form reproduced behind Tabs 17 and 18 in Exhibit CB3 or (in accordance with an opinion or advice of counsel to which clause 20.4(a) of the Constitution applies) on such other basis as may be advised by counsel from time to time.

- 13 ORDER, subject to further order, that (subject to her leaving in the custody of the Court a copy of the Indices to Exhibits CB1-CB5 inclusive) Exhibits CB1 to CB5 (inclusive). be returned to the solicitor for the plaintiff for safekeeping upon her undertaking to the Court that she will return the exhibits to the Court if, and as may be, ordered or as directed by the Court during the pendency of these proceedings, the SASC proceedings or any claim made by the plaintiff for an indemnity from the Fund arising from the SASC proceedings.
- 14 ORDER that no party other than the plaintiff have access to the Court file unless a judge otherwise orders.
- 15 NOTE that nothing in these orders, or the provision of materials to the Court in the Court Books (exhibits CB1-CB5 inclusive), is intended by the plaintiff, or found by the Court, to effect a waiver of any legal professional privilege which might otherwise attach to those materials.
- 16 ORDER, subject to the reservation of rights referred to in paragraph 12(b) of these orders, that the plaintiff pay its own costs of these proceedings in the first instance without recourse to the assets of the Fund or the Unitholders.
- 17 RESERVE to the plaintiff or (with the leave of the Court) any interested person liberty to apply on 7 days' notice or such other time as a judge might allow.
- 18 ORDER that these orders be entered forthwith.



