

## **Form 2      Originating process**

(rules 2.2 and 15A.3)

Federal Court of Australia

No.                      of 2024

District Registry: Sydney

Division: Commercial & Corporations (Corporations and Corporate Insolvency)

IN THE MATTER OF LINDAK INVESTMENT HOLDINGS PTY LTD ACN 622 461 483  
& ORS

**NEIL ROBERT CUSSEN, ANTHONY PHILLIP WRIGHT, and KATHERINE ELIZABETH BARNET** in their capacity as receivers of the ISG Private Access Fund ARSN 618 548 333 and the ISG Real Estate Equity Fund ARSN 618 548 780 and liquidators of the second plaintiff

### **First Plaintiffs**

**ACN 114 733 569 Limited ACN 114 733 569 (formerly known as ISG Financial Services Limited) (In Liquidation) (Receivers Appointed)**

### **Second Plaintiff**

**Lindak Investment Holdings Pty Ltd ACN 622 461 483** and others named in the schedule  
**Defendants**

### **A.            DETAILS OF APPLICATION**

This application is made under ss 237, 461(1)(k) and 472(2) of the *Corporations Act 2001* (Cth), r 1.10 of the *Federal Court (Corporations) Rules 2000 (FCCR)* and s 37AF of the *Federal Court of Australia Act 1976* (Cth).

This application seeks that the first to fifteenth defendants be wound up on the just and equitable ground under section 461(1)(k) of the *Corporations Act 2001* (Cth).

On the facts stated in the supporting affidavit/s, the plaintiffs seek the following orders:

### **Interlocutory relief**

1. The application be listed for urgent hearing.
2. The first plaintiffs be granted leave, now for then, to proceed on behalf of the Defendants listed in Column A of Annexure A to these orders (**Column A Defendants**)

upon an order being made for the winding up of the Column A Defendants, against the corresponding defendant identified in Column B of Annexure A to these orders (**Column B Defendants**).

3. The second plaintiff be granted leave, pursuant to section 237 of the *Corporations Act 2001* (Cth) (**Corporations Act**), to proceed on behalf of the twenty-eighth defendant, NIVA Investment Holdings Pty Ltd (subject to DOCA) against the seventeenth defendant, NIVA Group Pty Ltd ACN 640 026 222.
4. Pursuant to r 1.10 of the *Federal Court (Corporations) Rules 2000* (**FCCR**), any period of time fixed under the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (Cth) or the FCCR in relation to the filing of an originating process seeking the winding up of the Column B Defendants be abridged so as to run by reference to the time of filing of the Originating Process or the final hearing of the relief sought in the Originating Process, as applicable.

#### **Final relief**

5. Pursuant to section 461(1)(k) of the Corporations Act:
  - a. each of the first to twenty-seventh defendants be wound up; and
  - b. the first plaintiffs, Neil Robert Cussen, Anthony Phillip Wright and Katherine Elizabeth Barnet of Olvera Advisors Pty Ltd, Level 6, 9 Barrack Street, Sydney NSW 2000, be appointed as joint and several liquidators of each of the first to twenty-seventh defendants.
6. In the alternative to order 5 (to the extent that order 5 relates to the defendants identified in this order), pursuant to section 472(2) of the Corporations Act:
  - a. the first plaintiffs Neil Robert Cussen, Anthony Phillip Wright and Katherine Elizabeth Barnet of Olvera Advisors Pty Ltd, Level 6, 9 Barrack Street, Sydney NSW 2000 be appointed as provisional liquidators of the first to twenty-sixth defendants;
  - b. the first plaintiffs as provisional liquidators be granted all of the powers of a liquidator appointed pursuant to section 461 of the Corporations Act; and
  - c. the first plaintiffs be appointed as provisional liquidators of the first to twenty-sixth defendants until such time as the Court finally determines the claims for relief sought in paragraph 6 of this Originating Process as against those defendants.

7. Pursuant to section 37AF of the *Federal Court of Australia Act 1976*, Exhibit NRC-2 to the affidavit of Neil Robert Cussen filed on or about 20 December 2024 be placed in a sealed envelope on the court file and the information contained therein not be made available to the public.
8. The first to twenty-seventh defendants shall pay the plaintiffs' costs of the proceeding.

Date: 20 December 2024



.....  
*Signature of plaintiff or  
 plaintiff's legal practitioner*

This application will be heard by ..... at Federal Court of Australia, 184 Phillip Street, SYDNEY NSW 2000 at. .... \*am/\*pm on .....

#### **B. NOTICE TO DEFENDANTS**

TO:	<b>Defendant</b>	<b>Registered Address</b>
	The first defendant, Lindak Investment Holdings Pty Ltd ACN 622 461 483	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The second defendant, Lindak 2 Pty Ltd ACN 630 008 632	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The third defendant, Kappa Investment Holdings Pty Ltd ACN 623 580 076	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The fourth defendant, The Mills Parkview Estate Investment Holdings Pty Ltd 655 550 682	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The fifth defendant, The Mills Nominees Parkview Estate Pty Ltd ACN 655 549 607	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The sixth defendant, New Norfolk Commercial Precinct Investment Holdings Pty Ltd ACN 648 097 705	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The seventh defendant, The Mills Retirement Village Investment Holdings Pty Ltd ACN 650 887 237	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The eighth defendant, The Mills	Cornwalls (For ISG Group) '21' 300

	Nominees Retirement Village Pty Ltd ACN 642 328 701	Queen Street, BRISBANE QLD 4000
	The ninth defendant, New Norfolk MPA Nominees Pty Ltd (Controllers Appointed) ACN 636 839 239	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The tenth defendant, The Mills Norfolk Views Investment Holdings Pty Ltd ACN 654 507 463	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The eleventh defendant, The Mills Nominees Norfolk Views Pty Ltd ACN 654 522 219	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The twelfth defendant, The Mills Stage 6 Pty Ltd ACN 641 979 964	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The thirteenth defendant, Noble Retirement Holdings Pty Ltd ACN 613 718 648	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The fourteenth defendant, 1202 Creek Road TDG Pty Ltd ACN 613 999 107	Fabsolutions 49 Torquay Road, PIALBA QLD 4655
	The fifteenth defendant, Gateway Investment Holdings Pty Ltd ACN 635 643 186	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The sixteenth defendant, Gateway Estate Nominees Pty Ltd (controller appointed) ACN 632 231 479	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The seventeenth defendant, NIVA Group Pty Ltd ACN 640 026 222	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The eighteenth defendant, ISG NIVA Pty Ltd ACN 643 041 043	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The nineteenth defendant, Noble NIVA Pty Ltd ACN 639 738 588	Irene Lowe, 18 Lewellyn Street, RHODES NSW 2138
	The twentieth defendant, Succession Management Partners Limited ACN 626 672 259	Unit 1, 52 Neumann Road, CAPALABA QLD 4157
	The twenty-first defendant, ISG SCC Investments Pty Ltd ACN 645 345 348	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The twenty-second defendant, A.C.N 657 160 186 Pty Ltd ACN 657 160 186	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The twenty-third defendant, ISG Capital Pty Ltd ACN 167 460 924	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000

	The twenty-fourth defendant, ISG Securities Pty Ltd ACN 613 718 193	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The twenty-fifth defendant, HMS Partners Nominees Pty Ltd ACN 603 992 052	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The twenty-sixth defendant, ISG Investment Holdings Pty Ltd ACN 612 514 235	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The twenty-seventh defendant, Capital Provider Nominees Pty Ltd ACN 654 507 221	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000
	The twenty-eighth defendant, NIVA Investment Holdings Pty Ltd (subject to DOCA) ACN 644 343 279	Cornwalls (For ISG Group) '21' 300 Queen Street, BRISBANE QLD 4000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

### C. FILING

Date of filing:

.....  
Registrar

This originating process is filed by Jonathan Edward O'Loughlin for the plaintiff.

### D. SERVICE

The plaintiff's address for service is Jonathan Edward O'Loughlin c/- O'Loughlin Westhoff Lawyers, Suite 6.03, Level 6, 31 Market Street, SYDNEY NSW 2000.

It is intended to serve a copy of this originating process on each defendant and on any person listed below:

1. The Australian Securities and Investments Commission.

**Schedule**

Federal Court of Australia

No.

of 2024

District Registry: Sydney

Division: Commercial &amp; Corporations (Corporations and Corporate Insolvency)

IN THE MATTER OF LINDAK INVESTMENT HOLDINGS PTY LTD ACN 622 461 483  
& ORS

**Defendants**

First Defendant:	Lindak Investment Holdings Pty Ltd ACN 622 461 483
Second Defendant:	Lindak 2 Pty Ltd ACN 630 008 632
Third Defendant:	Kappa Investment Holdings Pty Ltd ACN 623 580 076
Fourth Defendant:	The Mills Parkview Estate Investment Holdings Pty Ltd 655 550 682
Fifth Defendant:	The Mills Nominees Parkview Estate Pty Ltd ACN 655 549 607
Sixth Defendant:	New Norfolk Commercial Precinct Investment Holdings Pty Ltd ACN 648 097 705
Seventh Defendant:	The Mills Retirement Village Investment Holdings Pty Ltd ACN 650 887 237
Eighth Defendant:	The Mills Nominees Retirement Village Pty Ltd ACN 642 328 701
Ninth Defendant:	New Norfolk MPA Nominees Pty Ltd (Controllers Appointed) ACN 636 839 239
Tenth Defendant:	The Mills Norfolk Views Investment Holdings Pty Ltd ACN 654 507 463
Eleventh Defendant:	The Mills Nominees Norfolk Views Pty Ltd ACN 654 522 219
Twelfth Defendant:	The Mills Stage 6 Pty Ltd ACN 641 979 964
Thirteenth Defendant:	Noble Retirement Holdings Pty Ltd ACN 613 718 648
Fourteenth Defendant:	1202 Creek Road TDG Pty Ltd ACN 613 999 107
Fifteenth Defendant:	Gateway Investment Holdings Pty Ltd ACN 635 643 186
Sixteenth Defendant:	Gateway Estate Nominees Pty Ltd (Controllers Appointed) ACN 632 231 479
Seventeenth Defendant:	NIVA Group Pty Ltd ACN 640 026 222
Eighteenth Defendant:	ISG NIVA Pty Ltd ACN 643 041 043
Nineteenth Defendant:	Noble NIVA Pty Ltd ACN 639 738 588
Twentieth Defendant:	Succession Management Partners Limited ACN 626 672 259
Twenty-First Defendant:	ISG SCC Investments Pty Ltd ACN 645 345 348
Twenty-Second Defendant:	A.C.N 657 160 186 Pty Ltd ACN 657 160 186
Twenty-Third Defendant:	ISG Capital Pty Ltd ACN 167 460 924

Twenty-Fourth Defendant: ISG Securities Pty Ltd ACN 613 718 193  
Twenty-Fifth Defendant: HMS Partners Nominees Pty Ltd ACN 603 992 052  
Twenty-Sixth Defendant: ISG Investment Holdings Pty Ltd ACN 612 514 235  
Twenty-Seventh Defendant: Capital Provider Nominees Pty Ltd ACN 654 507 221  
Twenty-Eighth Defendant: NIVA Investment Holdings Pty Ltd (subject to DOCA) ACN  
644 343 279

## ANNEXURE A

LEAVE SOUGHT TO PROCEED ON BEHALF OF COLUMN A DEFENDANTS AGAINST  
COLUMN B DEFENDANTS

<b>Leave sought, now for then to proceed with winding up application</b>	
<b>Column A</b>	<b>Column B</b>
Leave sought, now for then, on behalf of:	to proceed with winding up application as a creditor of and against (the <b>Column B Defendants</b> ):
The fourth defendant, The Mills Parkview Estate Investment Holdings Pty Ltd	The twenty-seventh defendant, Capital Provider Nominees Pty Ltd ACN 654 507 221
The twenty-seventh defendant, Capital Provider Nominees Pty Ltd ACN 654 507 221	The fifth defendant, The Mills Nominees Parkview Estate Pty Ltd
The sixth defendant, New Norfolk Commercial Precinct Investment Holdings Pty Ltd	The ninth defendant, New Norfolk MPA Nominees Pty Ltd (Controllers Appointed)
The seventh defendant, The Mills Retirement Village Investment Holdings Pty Ltd	The eighth defendant, The Mills Nominees Retirement Village Pty Ltd and the ninth defendant New Norfolk MPA Nominees Pty Ltd (Controllers Appointed)
The ninth defendant, New Norfolk MPA Nominees Pty Ltd (Controllers Appointed)	The twelfth defendant, The Mills Stage 6 Pty Ltd
The thirteenth defendant, Noble Retirement Holdings Pty Ltd	The fourteenth defendant, 1202 Creek Road TDG Pty Ltd
The fifteenth defendant, Gateway Investment Holdings Pty Ltd	The sixteenth defendant, Gateway Estate Nominees Pty Ltd (Controllers Appointed)
The tenth defendant, The Mills Norfolk Views Investment Holdings Pty Ltd	The twenty-seventh defendant, Capital Provider Nominees Pty Ltd ACN 654 507 221
The twenty-seventh defendant, Capital Provider Nominees Pty Ltd ACN 654 507	The eleventh defendant, The Mills Nominees Norfolk Views Pty Ltd



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The seventeenth defendant, NIVA Group Pty Ltd	The eighteenth defendant, ISG NIVA Pty Ltd, and the nineteenth defendant Noble NIVA Pty Ltd