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ASX ANNOUNCEMENT

24 December 2020

Takeovers Panel interim orders - Response by Nexia

The Agency Group Australia Ltd (ASX: AU1) (“The Agency” or “the Company”) hereby refers to the Takeovers Panel (“Panel”) interim orders released to ASX on 22 December 2020 and provides for release a response by Nexia Corporate Finance Pty Ltd (“Nexia”) that addresses the third party comments (submitted by Magnolia in connection with its application to the panel).

This announcement has been authorised for release by:

Stuart Usher
Company Secretary

Ends

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GROUP AUSTRALIA LTD

ASX:AU1

24 December 2020

The Directors
The Agency Group Australia Ltd
68 Milligan Street
Perth
WA 6000

Dear Sirs,

Nexia's submission regarding a review of the Independent Expert Report and Supplementary Independent Expert Report (the "Reports") by a third party appointed by Magnolia Equities III Pty Ltd ("Magnolia")

Nexia Perth Corporate Finance Pty Ltd ("NPCF" or "Nexia") was engaged by The Agency Group Australia Ltd ("The Agency", "AU1", the "Company" or the "Group") to prepare an Independent Expert Report ("IER") in relation to the Proposed potential issue of fully paid ordinary shares to Peters Investments Pty Ltd and its associates ("Peters Investments") upon conversion of convertible notes and/or upon exercise of options (the "Proposed Transaction" or the "Peters Proposal").

Nexia issued an IER, dated 23 November 2020, concluding that the Proposed Transaction was **NOT FAIR BUT REASONABLE**.

Subsequently, on 4 December 2020, AU1 received a letter from Magnolia, stating its intention to make a takeover bid for 100% of the fully paid ordinary shares in AU1 at \$0.04 per Share (the "Magnolia Proposal"). The bid was subject to various conditions. Nexia considered the impact of the Magnolia Proposal, and in accordance with Regulatory Guide 111 ("RG111"): Changes in circumstances, issued a Supplementary IER on 10 December 2020, which concluded that the Proposed Transaction was still **NOT FAIR BUT REASONABLE**.

Both the IER (dated 23 November 2020) and the Supplementary IER (dated 10 December 2020) are together referred to as the "Nexia Reports" or "Reports" throughout this document.

Subsequent to the Magnolia Proposal, both The Agency and Magnolia made respective applications to the Takeover Panel in relation to the affairs of The Agency. As part as Magnolia's submission, Magnolia appointed a third party ("Third Party") to review the Nexia Reports and accordingly, the Third Party issued a letter with commentary on the Nexia Reports.

On 23 December 2020, the Takeover Panel issued an Interim Order (the "Interim Order"), requesting AU1 to make available to AU1 shareholders a response by Nexia to the Third Party comments ("Third Party Comments") that responds specifically to certain comments. Accordingly, as requested by AU1 and in accordance with the Interim Order, our response to each question raised is attached in Appendix 1.

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We further note the following key points, relevant to the Third Party's letter:

- i. as pointed out throughout Appendix 1, a number of the Third Party Comments were factually incorrect, irrelevant and/or not in line with regulatory guidance from ASIC;
- ii. It puts a high emphasis on the question of whether Nexia (through AU1) should have engaged Macquarie Bank to ascertain whether or not (or otherwise, the likelihood of) Macquarie Bank would instigate some form of receivership process or insolvency process beyond the current date on which the existing Deed of Forbearance expires. As pointed out in Question 5(b) in Appendix 1, Nexia had sufficient support in place which indicated that the Deed of Forbearance End date was 30 December 2020. This included correspondence with Macquarie Bank, discussions with management and obtaining the relevant support.

The Third Party's letter claims that the end date of the Forbearance Deed is 27 January 2021, which is factually incorrect. It also implies Nexia has not considered the extension of the Deed, which is also factually incorrect. This is a very critical point relevant to the Proposed Transaction and played a significant part in our assessment of the Reasonableness of the Proposed Transaction.

Also, as pointed out in Question 5(b), subsequent to issuing our Reports, Macquarie issued a letter to AU1, on 23 December 2020, referring to the End date of the Forbearance period as being 30 December 2020 (refer to Appendix 2 for a copy of the Macquarie letter); and

- iii. The Third Party's letter seems to question our assessment of the Reasonableness of the Proposed Transaction to the non-associated shareholders, especially with regards to our considerations of the Magnolia Proposal. Given the extent of the conditions attached to the Magnolia Proposal, the indicative timetable to March 2021 and in the absence of an extension to the Macquarie Bank Forbearance Deed post 30 December 2020, there is a risk that AU1 will default on the Macquarie Bank loan, which could lead to Macquarie Bank exercising its rights to appoint a Receiver to take steps to wind-up the Group. This may result in AU1's shareholders not being able to realise any value for their shares in AU1.

Nexia has also considered, in terms of RG111, whether there were any other material change in circumstances since issuing our Supplementary IER on 10 December 2020 to the date of this letter. Nothing has come to our attention to this effect.

Nexia believes it has sufficiently addressed each of the Third Party Comments such that a replacement IER is not required and our opinion on the Proposed Transaction as defined in both our Reports, remains to be **NOT FAIR BUT REASONABLE**.

Yours sincerely

Nexia Perth Corporate Finance Pty Ltd (AFSL 289358)



Muranda Janse van Nieuwenhuizen CA RCA

Authorised Representative

Enclosure:

- Appendix 1: Nexia's response to Third Party engaged by Magnolia, comments in relation to Nexia's Reports in accordance with the Takeover Panel's Interim Orders
- Appendix 2: Macquarie Bank letter dated 23 December 2020

APPENDIX 1: NEXIA RESPONSE TO THIRD PARTY'S (ENGAGED BY MAGNOLIA) COMMENTS IN RELATION TO NEXIA'S REPORTS AND IN ACCORDANCE WITH THE TAKE OVER PANEL'S INTERIM ORDERS

1. Nexia do not clearly identify the valuation date¹, do not rely on "...economic, market and other conditions prevailing at the date of this Report" as referred to by Nexia in the Reports² and do not define the standard of value.³

Nexia response:

This question has three sub-sections and have been addressed accordingly:

Do not clearly identify the valuation date

As stated in section 2 of our Reports, the purpose of the Reports is to advise the Non-Associated Shareholders "on the fairness and reasonableness of the Proposed Transaction". Section 4 of our Reports clearly states that "for the purpose of considering whether or not the Proposed Transaction is fair to the Non-Associated Shareholders, we have compared the fair value of a share in AU1 on a control basis prior to the Proposed Transaction to the fair value of a share in AU1 on a minority basis after the Proposed Transaction."

The date of the Proposed Transaction refers to a point in the future, being the date of the Annual General Meeting (as referred to in our Reports in section 1.1). This was the valuation date considered in our Reports that, if the Proposed Transaction was approved, Peters Investments' voting power in the Company may increase from 0% to 45.00%.

This approach is consistent with ASIC guidance set out in Report 406 "ASIC regulation of corporate finance: January to June 2014" and the requirement to assess the position that the Non-Associated shareholders would be in from forgoing a control premium and holding a share on a minority basis after the Proposed Transaction.

Do not rely on "...economic, market and other conditions prevailing at the date of this Report" as referred to by Nexia in the Reports

Regarding relying on the "economic, market and other conditions prevailing at the date of this Report" our initial IER, dated 23 November 2020, included in section 4.2 the statement that "This Report has been prepared after taking into consideration the current economic and market climate".

Then, on 8 December 2020, following the announcement of the Magnolia Proposal, we made the decision to update our initial IER, dated 23 November 2020, with the Supplementary IER, which included updates relating to the facts relating to the Magnolia Proposal, AU1's response and the signing of a Deed of Forbearance for the Macquarie Bank loan. These updates were in accordance with guidance in RG111 (Changes in circumstances). Consequential changes included updates to section 11.4 "Alternatives to the Proposed Transaction" and section 11.5 "Implication of the Proposed Transaction Not Proceeding".

No changes were made to the valuation analysis included in our initial IER dated 23 November 2020 due to the calculations being based on dates or periods before the date of the IER (for example using data from before the date of the announcement of the Funding Package), due to the limited time which had elapsed between the two Reports and since there were no material changes in AU1 other than that noted regarding Magnolia's proposed bid, or the economic and market conditions between the dates of the two Reports.

Hence, economic, market and other conditions prevailing at the respective dates of our Reports had been considered and factored into our assessments in arriving at our respective opinions.

¹ Nexia state the Reports have been prepared in accordance with APES 225 Valuation Services (**APES 225**). APES 225 paragraph 5.2c requires that a valuation report clearly communicate the date at which the value has been determined

² See page 56 of the Supplementary Independent Expert Report

³ APES 225 paragraph 5.2h requires a valuation report to clearly communicate and define the standard of value

Do not define the standard of value

APES 225 par 5.2h requires a valuation to clearly communicate "The Premise of Value adopted in the Valuation (e.g. going concern premise or liquidation premise)".

Our Report clearly focused and assessed the Group on a Going Concern basis:

- Section 5.6 of our Report we have assessed the Group's audit reports for FY18, FY19 and FY20, which contained Emphasis of Matters regarding Going concern assumption but were not modified, hence supported the financial statements being prepared on a going concern basis;
- Also in Section 5.6, we assessed the audited financial results, which forms the basis of the Maintainable Earnings method. We clearly note that "in the Group's annual report for FY 2020 that the Directors were satisfied the going concern basis of preparation was appropriate due to ..."

Also, in section 7.1 of our Reports, we state that, in forming our opinion, we have assessed the value of the issued AU1 Shares on a fair value basis and referred to RG 111 defining fair value as the amount: "assuming a **knowledgeable and willing**, but **not anxious**, buyer and a knowledgeable and willing, but **not anxious**, seller acting at **arm's length**...". This is clearly on a going concern basis and not liquidation basis. And this is also in accordance with RG111.

- 2. Nexia do not compare Agency's current share price to the exercise price of the options. The maximum exercise price under the Peters Proposal of \$0.027 per share is 46% lower than Agency's share price on 9 December 2020 of \$0.05 per share and materially dilutive.**

Nexia response:

As noted above as clearly stated in Section 4 of our Reports we have compared the fair value of a share in AU1 on a control basis prior to the Proposed Transaction to the fair value of a share in AU1 on a minority basis after the Proposed Transaction." This approach for considering the fairness of the transaction is consistent with ASIC guidance set out in Report 406 "ASIC regulation of corporate finance: January to June 2014". In determining the fair value after the Proposed Transaction we show the impact of the convertible notes being converted at \$0.027 a share to determine the fair value of a minority interest after the Proposed Transaction. The Third Party point fails to comply with the requirements of RG111 as it does not:

1. provide a comparison to a determined fair value;
2. reflect a control premium for non-associated shareholders; and
3. provide an analysis of the actual position of non-associated shareholders before and after the transaction.

Therefore, this analysis would be misleading to the non-associated shareholders and contrary to the regulatory requirements.

- 3. Real estate businesses are often valued on a sum of parts basis rather than valuing the business as a whole using the capitalisation of earnings method given the different earnings profile of Agency's operating segments. This does not appear to be considered by Nexia.**

Nexia response:

In accordance with RG111 we have applied our judgment to select the most appropriate methodology in our Reports. Based on the background, our observations and as set out in section 5 of our Reports the majority of the AU1's revenue is not from rent rolls, but from the sale of properties. We further note that the comparable companies identified also generate revenue from the same sources as AU1, making this a valid reference point for an assessment of fair value.

We note that all valuation methodologies were considered including a Sum-of-Parts, orderly realisation and discounted cash flow; however in accordance with R111 and for the reasons set out in section 7.3 of our Reports the applied methodologies were considered the most appropriate.

4. **Nexia uses an average of two separate valuation calculations, which is inconsistent with market practice. Further, Nexia do not attempt to reconcile the material difference between its separate valuation calculations using the capitalisation of earnings method and quoted market price method.**

Nexia response:

The Third Party's observation is not correct, as the quoted market price method was not used as a cross check in our Reports. We state clearly in section 7.2 of our Reports that "it is possible for a combination of different methodologies to be used together to determine an overall value where separate assets and liabilities are valued using different methodologies." Our Reports also clearly states in section 7.3 that "an equal weighting has been applied to both approaches in determining the fair value of AU1."

As such, for the purposes of the Reports, it was not necessary to reconcile the difference between the two valuation methodologies as an average of the 2 methodologies is being used.

5. **In relation to alternative funding and the possibility of Macquarie appointing a receiver Nexia have not (or do not appear to have):**

- (a) **performed a valuation of Agency on the basis of its value in exchange on a piecemeal basis as part of an orderly realisation of assets**

Nexia response:

As addressed in previous comments, we have applied our judgment in accordance with RG111 to select the most appropriate methodology in our Reports. Section 7.1 of our Reports also clearly define fair value as the amount "assuming a knowledgeable and willing, but not anxious buyer and a knowledgeable and willing, but not anxious seller acting at arm's length...". This definition of fair value is in accordance with RG111.

As such, contrary to The Third Party's comments in their observation, Macquarie's ability to enforce its rights has little to no bearing on the appropriate methodology for the valuation of the company, and is irrelevant for the purposes of considering the most appropriate methodology in our Reports.

Assessing the fairness of the Proposed Transaction on this basis would be contrary to RG111 and misleading to non-associated shareholders.

- (b) **sought further information on the possibility of further forbearance by Macquarie, noting there were several extensions during FY20**

Nexia response:

We did make enquires to AU1 management regarding the Macquarie Bank loan and the deed of forbearance. Even though Macquarie Bank may have extended the forbearance in the past, at the time of the Reports Nexia was not given any assurances that Macquarie Bank would further extend the forbearance and was told that Macquarie Bank continues "reserves its rights".

Regarding the Supplementary IER, to be able to properly consider the Magnolia Proposal as an "Alternative to the Proposed Transaction" in section 11.4 we had to consider the proposed bid's indicative timetable in light of the terms of the Macquarie Bank loan Deed of Forbearance. We sought confirmation from AU1 management on the terms and the execution of the Deed of Variation to the Deed of Forbearance. On 10 December we received confirmation Macquarie Bank had signed the Deed of Variation which included the following clause:

"The Deed of Forbearance is varied on and from the date of this document by deleting the definition of "End Date" and replacing it with the following: **End Date** 30 December 2020".

* It came to our attention when drafting this submission that a letter dated 23 December 2020 was sent from Macquarie Bank's legal representatives to AU1 and its legal representatives. A copy of this letter is attached in Appendix 2.

- (c) **commented on other financing options referred to in Agency's ASX announcement on 29 October 2020**

Nexia response:

Regarding management's comments on 29 October 2020 ("*While we received and reviewed a range of financing options, following a review of these by the board and its advisors we believe we have secured an outcome that provides the most optimal financial framework to fund our long-term growth plans.*"), management confirmed to us that none of these financing options were in a position to move forward as viable options and therefore were not valid alternatives to the Proposed Transaction.

This was also reconfirmed with management on 23 December 2020.

- (d) **commented on the impact of the Peters Proposal on the 101,515,093 listed options which are exercisable at \$0.065 and expire on 31 December 2020⁴**

Nexia response:

These were considered in section 8.1.4 of the Reports and it was considered, for the purposes of the valuation analysis in sections 8.1, 8.2 and 9.1, that the listed options, as well as the unlisted options not owned by Peters Investments, are unlikely to be exercised before 31 December 2020 as those options are unlikely to be in-the-money (as defined) before 31 December 2020.

- (e) **commented on the history of the Macquarie relationship or commented on the likelihood of Macquarie appointing a receiver on or after 30 December 2020 and**

Nexia response:

Our comments relating to Macquarie Bank were based on the information at the time and, as per 5(b) above, the end date of the Deed of Forbearance was 30 December 2020.

- (f) **reviewed or considered correspondence, historic or current draft Macquarie facility documents or deeds of forbearance.**

Nexia response:

We considered the maturity of the Macquarie Bank loan (as detailed in section 5.6 of the Reports) and the negotiations surrounding the Deed of Forbearance including the end date of the period of forbearance, now 30 December 2020. This date was considered in section 11 of our Reports, in Advantages of the Proposed Transaction, Alternatives to the Proposed Transaction and Implication of the Proposed Transaction Not Proceeding. As mentioned in 5(b) above, whilst the Deed of Forbearance may have been extended in the past, at the time of our Reports we were not given any assurances the end date of the Deed of Forbearance would be further extended.

6. In relation to the estimation of expected earnings, Nexia:

- (a) **capitalised FY20 EBITDA adjusted for the removal of the west coast rent roll business (West Coast Business) sold after 1 July 2020 using trailing multiples of comparable companies. Nexia have included a scenario where 100% of EBITDA for the West Coast Business is excluded. This is an unreasonable assumption given the reciprocal arrangement in place with Managex. Nexia have also included two other scenarios where 25% and 62.5% of FY20 EBITDA is removed from normalised EBITDA. These scenarios seem to be purely subjective**

Nexia response:

We note that this Third Party Comment mentions the West Coast Business whereas the adjustment we made relates to the West Coast rent roll business.

⁴ See section 5.7.2 of the Supplementary Independent Expert Report

In our Reports, we have applied our judgment in arriving at a figure of 100% for the “low” adjustment, 25% for the “high” adjustment and 62.5% for the “preferred” adjustment.

This adjustment reflects that the West Coast rent roll business is no longer owned and controlled by AU1, as such reflects various degrees of uncertainty to the future EBITDA generated from it. This is again, applying our judgement in accordance with RG111.

(b) have not factored anticipated growth in agent numbers as referred to by Agency in the FY20 annual report

Nexia response:

We have applied our judgment in accordance with RG111 in using the results for FY 2020 as an indication of the AU1’s ongoing earnings potential. With regards to considering the expected or forecast EBITDA, RG111 states that an expert should not include prospective financial information (including forecasts and projections) or any other forward-looking information in its report unless there are reasonable grounds for the forward-looking information.

Further, we also note that factors accounting for the Group’s continued growth is included within the multiple applied under the capitalisation of earnings method in section 8.1 of our Reports, as well as the quoted market prices during the quarter. As such, making an adjustment to the maintainable EBITDA (for the growth in agent numbers) would result in the duplication of the Group’s growth, and would therefore be incorrect as an application of the capitalisation of earnings valuation methodology.

As such we did not include any forward-looking information (including expected or forecast EBITDA, or any forecast multiple) in our valuation, although we did consider available forecasts and other prospective information. This is also consistent with the requirements in Regulatory Guide 170.

(c) exclude reference to continued growth achieved in the “record-breaking quarter” in the first quarter of FY21

Nexia response:

Statements or phrases such as a “record-breaking quarter” are highly subjective; and including such references could be contrary to the independence requirements of Regulatory Guide 112 Independence of Experts.

We also note that results announced on 29 October 2020 (including the EBITDA of circa \$723,000 for the quarter ended 30 September 2020) are based on unaudited figures. As such, including the results from the quarter ended 30 September 2020 could lead to a misleading result.

Further, as pointed in section 2(b) above, we also note that factors accounting for the Group’s continued growth is included within the multiple applied under the capitalisation of earnings method in section 8.1 of our Reports, as well as the quoted market prices during the quarter. As such, making an adjustment to the maintainable EBITDA (for the results of the quarter ended 30 September 2020) would result in the duplication of the Group’s growth, and would therefore be incorrect as an application of the capitalisation of earnings valuation methodology.

(d) have not quantified the impact of COVID-19 and

Nexia response:

We considered the benefits from the government grants due to COVID-19 and the reason for these not being adjusted within the maintainable EBITDA calculations is addressed in section 8.1.1 of our Reports.

We also state clearly in section 8.1.1 of our Reports that no adjustment has been made to the result for FY 2020 with regards to this as the corresponding impact on COVID-19 would be unquantifiable. There appears to be mixed market practice around the treatment of the effect of COVID-19 on revenues and expenses and is a judgement call.

We further note that it would be difficult to quantify and or reliably estimate the fall in the Company's revenues due to COVID-19, given the Company's recent growth. Such an analysis may lead to a misleading valuation result.

- (e) **have not compared their estimate of normalised EBITDA to the cash flow forecasts prepared by Agency Directors.**⁵

Nexia response:

Our response above to 6(b) addresses the why we didn't use prospective financial information (including forecasts and projections) in our valuation. We note that this analysis was considered in the background as part of our judgement as to a maintainable earnings.

7. In the capitalisation of earnings valuation Nexia have made the following omissions/errors:

- (a) **incorrectly applied a control premium to EBITDA multiples of comparable companies, whereas the control premium should be applied to equity value**

Nexia response:

This is technically incorrect. The determination of a control premium is applied to the enterprise value which is determined based on an EBITDA multiple. The enterprise value is then adjusted for the absolute amount to determine the equity value. If the premium was applied as suggested this would result in a premium being applied to net debt items such as cash and borrowings.

As clearly stated in section 8.1.2 of our Reports, as the valuation before the Proposed Transaction is based on a control basis, the control premium is adjusted to the "average implied multiple for listed companies", as the listed companies' "share price reflects a minority interest";

- (b) **not included lease liabilities in their calculation of net debt (whereas they have excluded the lease expenses in EBITDA)**

Nexia response:

With reference to The Third Party's specific comment within their observation on including the lease liabilities of \$5.9 million in our calculation of net debt, we did consider adjustments for changes in accounting policy in relation to AASB 16 *Leases*. Any further adjustment would still result in a value after the Proposed Transaction being lower than the value before the Proposed Transaction. As such, our opinion on the fairness of Proposed Transaction would remain being NOT FAIR.

- (c) **not included the present value of the remaining retention amount from the sale of the West Coast Business of up to \$0.485 million**

Nexia response:

The present value of the remaining retention amount from the sale of the West Coast business of up to \$0.485 million has no material effect on the valuation of AU1 before and after the Proposed Transaction (all other things being equal). Hence has no impact on our Opinion of our Reports.

⁵ See section 5.6 of the Supplementary Independent Expert Report

(d) in assessing the value per share if the Peters Proposal does not go ahead Nexia have not deducted circa \$320,000 that will have to be repaid to Peters

Nexia response:

The circa \$320,000 has to be repaid to Peters Investments if the Proposed Transaction is not approved. If it was adjusted for it would have no material effect on the valuation of the AU1 before and after the Proposed Transaction (all other things being equal).

This potential payment was included in the reasonableness section of the Reports, (section 11.5) Implication of the Proposed Transaction Not Proceeding.

We also note that if the two adjustments suggested by the Third Party in sections 7(c) and 7(d) were included, they would have partly offset each other.

(e) not included any other normalisation adjustments for example any potential one-off and non-recurring legal and consulting costs.

Nexia response:

As per section 8.1 of our Reports we confirmed no other adjustments have been made to the AU1's financial performance for FY 2020, as there were no other material one-off and/or non-recurring expenses.

8. In adopting a quoted market price valuation methodology Nexia have stated there to be a moderate level of liquidity, however, there were 326 days of no trades over the last three years and substantial shareholders and directors were responsible for a large portion of share trades.

Nexia response:

With regards to the Third Party Comment that "there were 326 days of no trades over the last three years", this analysis is over a number of years and as such this Third Party Comment does not take into account the economic, market and other conditions prevailing at the date of our Reports. Our Reports have taken into account the economic, market and other conditions prevailing at the date of our Reports; including a share price and volume trading analysis over the period of a year before the announcement of Funding Package (including the Proposed Transaction), as noted in section 5.8 of our Report.

Also, substantial shareholders and directors were not responsible for a large portion of share trades during the year immediately before the announcement of Funding Package. As such, the second part of the above Third Party Comment is factually incorrect. It appears that the Third Party Comment is based on share trades over the last three years, rather than the most current and relevant period, as stated above.

We further note that section 5.8 of our Reports clearly states that "although less than 3% of the Company's capital were traded in the last 90 and 180 days, AU1 Shares have a moderate level of liquidity with relatively free flow of trading in the shares during the year (including the last 3 months) to 30 September 2020. There was also a notable reduction in trading volumes during February 2020 to June 2020, however this increased since July 2020 to near pre COVID-19 levels, with the highest single day trading volume (excluding insider trading) recorded on 4 August 2020 when 1,007,586 AU1 Shares were traded."

Therefore, our adoption of the quoted market price, in conjunction with the capitalisation of earnings method of valuation is reasonable.

9. In assessing the reasonableness of the Peters Proposal, the key items to look at include:

(a) whether the offer is fair, which is not stated as a specific disadvantage of the proposed Peters Proposal

Nexia response:

RG111 requires fair and reasonable to be considered separately.

Therefore this point is inconsistent with the requirements of RG111.

RG 111 also states that, if an offer is fair, it is also reasonable. As per section 4 of our Reports, we concluded that the offer was NOT FAIR and hence not automatically deemed to be reasonable.

Our Reports assessed the reasonableness of the Proposed Transaction separately in accordance with RG111.

(b) quantum: a discount of a minimum of 46% to the current share price is material

Nexia response:

This is inconsistent with the requirements of RG111 which clearly requires whether a transaction is fair or reasonable to be considered separately.

The quantum was taken into account in assessing the fair value of the shares pre before and after the Proposed Transaction (refer sections 4, 8, 9 and 10 of the Reports). Our Reports factored in the impact of the convertible note being converted into shares, which resulted in a dilution of value of shares and ultimately lead to our conclusion being NOT FAIR.

In assessing the reasonableness of the Proposed Transaction the dilutory impact of the Proposed Transaction has already been included in the Reports, under section 11.3 of our Reports Disadvantages of the Proposed Transaction.

(c) the severe dilutive impact of the Peters Proposal occurring after a record first quarter of FY21

Nexia response:

See comment in question 9(b) above regarding the quantum of this has already been included in the Reports, under section 11.3 of our Reports Disadvantages of the Proposed Transaction.

(d) comparing the offer to the quantum of any other offers

The Third Party letter states that Nexia should have compared the Magnolia Proposal at 4 cents per share to the Peters Proposal offer, which is a maximum of 2.7 cents per share.

Nexia response:

As pointed out in Section 11.4 of our Supplementary IER, the Magnolia Proposal contains a number of important considerations, including various conditions to be met and an indicative timetable contemplating the takeover bid opening late January 2021 and closing (unless extended) late February / early March 2021.

The Magnolia Proposal was thus not considered to be a formal "offer" as mentioned in sections 1 and 11.4 of our Reports.

Also, as noted in section 1.1, the Macquarie Bank loan is subject to a Deed of Forbearance which has an end date on 30 December 2020. We note that, given the Magnolia Proposal's indicative timetable, in the absence of an extension to the Macquarie Bank loan maturity, there is a risk that the Company will default on the Macquarie Bank loan, which could lead to Macquarie Bank exercising its rights to appoint a Receiver to take steps to wind-up the

Group. This may result in AU1's shareholders not being able to realise any value for their shares in AU1.

In the context of the Macquarie Deed of Forbearance expiring prior to the timing of takeover bid closing (as contemplated in the indicative timetable for the Magnolia Proposal), we did not see the Magnolia Proposal as directly impacting the Proposed Transaction. Hence, our Supplementary IER focussed on the fairness and reasonableness of the Proposed Transaction (which was the scope of our engagement) and did not see the relevance comparing the Magnolia Proposal to the Proposed Transaction.

Also, as pointed out in Section 11 of our Reports, we were advised that there were no other concrete offers on the table. At the time of our Reports, we were not aware of any other tangible offers on the table. For our Reports to speculate on "other offers" will be unsupported and a breach of RG111.

(e) presenting a counterfactual orderly realisation value

Nexia response:

Our Reports are provided to address the Proposed Transaction that has been put to the Non-Associated shareholders. The impact of alternative positions should the transaction not proceed is discussed in the reasonableness assessment (refer section 11 of our Reports), which is a subjective assessment consistent with the requirements of RG111.

Also, the Third Party makes the specific comment that "in time of potential financial distress, an asset approach is often the most appropriate approach". This statement is irrelevant to the determination of the appropriate valuation methodology as the definition of fair value according to RG111 is the amount "assuming a knowledgeable and willing, but not anxious buyer and a knowledgeable and willing, but not anxious seller acting at arm's length...". Using "potential financial distress" as a basis for using an asset approach assumes an anxious seller and/or buyer and is therefore inconsistent with the requirements of RG111.

Our Reports have, in assessing the reasonableness of the Proposed Transaction, pointed out that The Proposed Transaction will significantly reduce the risk of AU1 defaulting on its loan from Macquarie Bank.

(f) replacing Macquarie or any other senior debt with a convertible hybrid security is less attractive to shareholders

Nexia response:

Being "less attractive" implies that there are alternative offers to compare with, which there were not (other than the Magnolia Proposal), as pointed out in section 11.4 of our Reports. With regards to the Magnolia Proposal, refer to our responses to question 5(b) above.

Also, in assessing the fair value of the shares pre and post the Proposed Transaction (refer Section 4), our Reports factored in the impact of the convertible note being converted into shares, which resulted in a dilution of value of shares and ultimately lead to our conclusion being NOT FAIR.

Hence, our Reports have considered the above in forming its opinion of fairness and reasonableness in accordance with RG111.

- (g) the level of interest being shown by multiple parties in Agency may be positively perceived by the secured creditor as well as its now substantially reduced exposure**

Nexia response:

As explained further in point (i) below, our Reports have taken into account the offers at hand in section 11. For our Reports to speculate on "interest being shown by multiple parties" will be unsupportable and a breach of RG111.

- (h) a non-renounceable rights issue was completed in October 2019 at a price of 6.5 cents per share with an attaching option exercisable at 6.5 cents per share**

Nexia response:

This occurred over a year ago and there has been significant economic change since then. Our Reports have taken into account conditions existing at the time of the Reports and as noted above points regarding the impact of COVID-19.

- (i) there are alternate options but Nexia does not table alternatives**

Nexia response:

As pointed out in Section 11 of our Reports, we were advised that there were no other concrete offers on the table. At the time of our Reports, we were not aware of any other tangible offers on the table. For our Reports to speculate on "interest being shown by multiple parties" will be unsupportable and a breach of RG111.

- (j) the extent of dilution of existing shareholders**

Nexia response:

In assessing the fair value of the shares pre and post the Proposed Transaction, our Reports (refer Section 4) assumed that all the convertibles notes are converted into shares, i.e. maximum dilution, which played a significant role in the fair value of the shares post the Proposed Transaction being less than the value of the shares pre the Proposed Transaction and ultimately lead to our conclusion of the Proposed Transaction being NOT FAIR.

This has already been included in our Reports, under section 11.3 Disadvantages of the Proposed Transaction.

- (k) acknowledgment of additional value for the options of the convertible notes being issued under the Peters Proposal being material primarily due to the low and dilutive exercise price and**

Nexia response:

The "value" of the options have been addressed in the calculation of fairness in the "After Proposed Transaction" scenario, as explained in question 9 (j) above.

RG111 states that, in describing the factors that are relevant to a conclusion that an offer is reasonable, an expert should generally only include the factors that are material to this conclusion. This was not regarded as material and hence not included in the Reports.

In accordance with RG111, the dilutory impact, being considered material, has been included in our Reports, under section 11.3 as part of the Disadvantages of the Proposed Transaction.

- (l) release of personal guarantees of a director and senior management.**

Nexia response:

This was noted in our Reports (section 5.6.2), but is not considered to be an advantage or disadvantage, because the release of the personal guarantees for the Director and senior management would not affect the Non-Associated Shareholders if the Proposed

Transaction would go ahead, as this would mean that AU1 can continue to be a going concern. And if the Proposed Transaction doesn't go ahead, then the personal guarantees would stay however, we did state clearly in the Reports that the Company would still have a liability.

In addition, the personal guarantees would come into effect in the event of AU1 liquidating all of its assets and liabilities and still have a balance payable for the Senior Debt. If this were to occur, the liquidation could likely reduce the value of AU1 shares to \$nil.

RG111 states that, in describing the factors that are relevant to a conclusion that an offer is reasonable, an expert should generally only include the factors that are material to this conclusion. This was not regarded as material and hence not included in the Reports.

APPENDIX 2: Macquarie Bank letter dated 23 December 2020



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23 December 2020

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Copy to: andrewjenson@theagency.com.au

Andrew Jensen
Top Level
Level 1, 180 Campbell Parade
Bondi Beach NSW 2026
Dear Colleagues

Facilities advanced by Macquarie Bank Limited (the Lender) to Top Level Real Estate Pty Ltd (the Borrower) & others (together, the Obligors)

Deed of Forbearance

- 1 Pursuant to the clause 4.1 of the Deed of Forbearance, the Lender has agreed to forbear from taking enforcement action in connection with the Forbearance Events of Default during the Forbearance Period.
- 2 Pursuant to clause 4.2 of the Deed of Forbearance, the Forbearance period would commence on the Effective Date and would immediately end on the earliest to occur of (amongst other things):
 - (a) the occurrence of any New Event of Default (including, but not limited to, an Insolvency Event in respect of any Obligor);
 - (b) the identification of any Event of Default which was subsisting at the time of the entry into this deed but was not specifically identified as a Forbearance Event of Default
 - (c) the Lender giving notice that all conditions precedent and have either been satisfied or waived, at the Lender's absolute discretion, under the Fifth Amended and Restated Loan Agreement; and
 - (d) the End Date.

- 3 Pursuant to clause 4.2 of the Deed of Forbearance, upon the Forbearance Period ending, the Lender will be immediately entitled to enforce the Loan Agreement, the Guarantees and the Securities in any manner it sees fit.

End of the Forbearance Period

- 4 The End Date is, pursuant to the Deed of Variation, **30 December 2020**. We observe that the End Date is the same date as the date on which the rescheduled AGM is to occur.
- 5 The conditions precedent under the currently agreed draft of the Fifth Amended and Restated Loan Agreement (which is subject to final documentation) include, amongst other obligations on the Obligors, the requirement for the Obligors to pay an amount of \$3,715,868 to the Lender in partial reduction of the amount owing. The Lender understands that the source of the funds being use to partially repay the Lender's debt is the funds to be provided under the Convertible Note Agreement.
- 6 Accordingly, we are instructed to put your client on notice that, notwithstanding that the End Date and the date of the AGM coincide, the Lender fully expects the deliverables under the currently agreed terms of the Fifth Amended and Restated Loan Agreement (in particular the satisfaction of the condition precedent referred to in paragraph 5 above) to be met by the Obligors in full on or before the expiry of the End Date. If these are not met and the End Date passes, the Forbearance Period will come to an end and, as noted in paragraph 3, the Lender will be immediately entitled to enforce the Loan Agreement, the Guarantees and the Securities in any manner it sees fit.

Reservation of rights

- 7 All of the Lender's rights and remedies in relation to:
- (a) the Deed of Forbearance
 - (b) the Amended and Restated Deed;
 - (c) the Second Amended and Restated Deed;
 - (d) the Deed of Variation;
 - (e) the Loan Agreement; and
 - (f) any other Transaction Document,

are expressly reserved, and neither this notice nor anything else should be construed as a waiver by the Lender in respect of any such rights or remedies or any obligations of the Obligors.

Please contact us should you wish to discuss. In the meantime, the Lender continues to reserve all of its rights.

23 December 2020

Facilities advanced by Macquarie Bank Limited (the Lender) to Top Level Real Estate Pty Ltd (the Borrower) & others (together, the Obligors)

CORRS
CHAMBERS
WESTGARTH

Yours faithfully
Corrs Chambers Westgarth



Craig Ensor
Partner

Daniel Houghton
Senior Associate