

# SIX REASONS WHY YOU SHOULD REJECT THE BRANSGROVE PROPOSAL

## 1. Affiliates of Phil Sullivan will gain control of your Fund

While the Notice of Meeting does not expressly refer to Phil Sullivan (Sullivan), there are a number of facts suggesting that Sullivan is behind the Bransgrove Proposal including:

- a) Matthew Bransgrove is Sullivan's lawyer and recently acted for him in:
  - i) requesting a copy of the register for the Fund. No one else has recently requested a copy of the register of the Fund;
  - ii) commencing action against a director of Balmain Trilogy for defamation; and
  - iii) bringing proceedings against ASIC in respect of ASIC's examination of Phil Sullivan;
- b) the Notice of Meeting sent by Matthew Bransgrove was made available through the ProtectPFMF website with which Sullivan is associated;
- c) Sullivan has made numerous public statements to the effect that he wants to procure a change of responsible entity of the Fund;
- d) Sullivan has an interest in appointing a new responsible entity which is prepared to discontinue legal proceedings against himself and others; and
- e) the identity of the "Convening Members" remains unknown.

We strongly urge Unitholders to consider carefully whether it is in their interests to hand the reins of the Fund back to affiliates of Phil Sullivan. It was under the poor management of City Pacific Limited that the Fund entered a number of loss making loans which significantly affected the returns and capital value of Unitholders' investment.

## 2. It puts in doubt litigation against those responsible for causing your financial losses

Balmain Trilogy is well progressed in its litigation against those responsible for causing the significant losses to the Fund. A key step in these proceedings is the public examination of certain officers of City Pacific Limited, including Phil Sullivan. Phil Sullivan was served with an examination summons in March 2011. Dates have been reserved in the Supreme Court for the 2<sup>nd</sup> and 3<sup>rd</sup> of February 2012.

Phil Sullivan is also seeking to avoid a separate examination by ASIC. Sullivan recently commenced action against ASIC suggesting that their actions constituted an "abuse of process".

The Fund also continues to pursue guarantors of loans made by the original responsible entity, City Pacific Limited. Many of these individuals are known associates of Sullivan.

**It is disturbing, and indeed Unitholders would be justified in finding it most offensive, that the Bransgrove Proposal leaves open the possibility that these proceedings may be discontinued.**

### 3. The NoM is defective and is inaccurate, incomplete and liable to mislead or deceive

In a number of material respects the Notice of Meeting (NoM) provided by Bransgrove is defective as it is in contravention of both the Corporations Act 2001 (Cth) and the Constitution of the Fund. In particular:

1. Under the Corporations Act, unitholders have until 48 hours prior to any meeting to return their proxy forms whereas the Bransgrove Notice of Meeting requires proxy forms to be returned a whole week prior to the meeting date.
2. The Constitution of the Fund requires that at least 28 days' notice of a meeting called by Unitholders of the Fund be provided. This is designed to enable Unitholders ample time to consider the issues which will be discussed and voted upon at the meeting. The Bransgrove Notice of Meeting does not provide Unitholders with that required 28 days' notice.
3. The Constitution of the Fund also requires that proxy forms be provided directly by Unitholders to the responsible entity of the Fund. This is designed to protect the integrity of the proxy voting procedure and eliminate any errors caused by multiple handling of proxy forms. By providing Link Market Services Limited as a proxy collection agent, the Bransgrove Notice of Meeting is contravening this provision of the Constitution and thereby potentially invalidating the votes of all Unitholders who vote using that proxy form.

Balmain Trilogy considers the Bransgrove Proposal to be inaccurate, incomplete and liable to mislead or deceive Unitholders as follows:

Reference in the Bransgrove Proposal	Balmain Trilogy response
<b>Unitholders were swayed to vote for Balmain Trilogy in mid 2009 (page 5)</b>	<ul style="list-style-type: none"><li>• Unitholders on 25 June 2009 voted with their feet and appointed Trilogy as responsible entity of the Fund. Over 87% of the units voted at the meeting were voted in favour of Trilogy's appointment.</li><li>• Only 8% of total units were voted in favour of retaining City Pacific.</li><li>• This was an overwhelming appointment of Trilogy as responsible entity.</li></ul>
<b>Balmain and Trilogy do not have the skills or ability (page 5)</b>	<ul style="list-style-type: none"><li>• Balmain and Trilogy combined have in excess of 40 years' experience in the mortgage industry.</li><li>• Balmain and Trilogy's senior executives bring over 100 years of combined experience in property development and construction, property funds and mortgage management.</li><li>• The combined Balmain Trilogy joint venture possesses vast skills and experience that is unsurpassed in the mortgage fund sector.</li></ul>

Reference in the Bransgrove Proposal	Balmain Trilogy response
<b>Balmain Trilogy cannot manage residential developments (page 7)</b>	<ul style="list-style-type: none"> <li>Balmain Trilogy was required to undertake rectification and construction works to enable the underlying assets of the Fund to be fit for sale. The assets included Assets 3, 6, 11, 16, 18, 22 and 24.</li> <li>Together with the physical completion and often complex building works, Balmain Trilogy has successfully undertaken the rectification and extension of statutory planning and building approvals and rectified critical agreements on several major assets.</li> </ul>
<b>Balmain Trilogy failure to deliver on its commitments (page 7)</b>	<ul style="list-style-type: none"> <li>Balmain Trilogy and Trilogy abide by the commitments they made when becoming responsible entity of the Fund and are taking action on an ongoing basis to ensure that Unitholder value is restored to the maximum extent possible. The Bransgrove Proposal contains no certain commitments to Unitholders.</li> </ul>
<b>Balmain Trilogy lacks transparency in its accounts (pages 7-8)</b>	<ul style="list-style-type: none"> <li>In addition to full disclosure through the Fund's accounts, Balmain Trilogy has provided Unitholders with regular fund and liquidity updates and individual asset reviews.</li> </ul>
<b>Balmain Trilogy has failed to pay out the CBA debt as promised (page 8)</b>	<ul style="list-style-type: none"> <li>Balmain Trilogy never promised to pay out the CBA facility within any specific time frame.</li> <li>As advised to Unitholders in August 2010, Balmain Trilogy negotiated an extension of the Fund's finance facility with the CBA for a further two year period to allow for capital repayments to be made to Unitholders.</li> <li>Balmain Trilogy reduced the CBA facility by over \$60 million within 12 months of taking over the management of the Fund.</li> </ul>
<b>Balmain Trilogy is compromising the interests of investors in favour of its own remuneration (page 8)</b>	<ul style="list-style-type: none"> <li>Trilogy and Balmain Trilogy have not and will not compromise their fiduciary role as responsible entity and manager of the Fund (respectively) in favour of their own remuneration.</li> <li>Consistent with this Trilogy and Balmain Trilogy have reduced their management fee in line with the scheduled capital repayment structure.</li> <li>By contrast in the last year of operation (FYE 09), City Pacific Limited as responsible entity of the Fund received \$25 million in management fees. Within the same period, City Pacific impaired the value of the Fund assets by 39.5% from \$965 million to \$621 million.</li> </ul>

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<p><b>Balmain Trilogy disregards its commitments to Unitholders - Mariner's Cove sale (page 6)</b></p>	<ul style="list-style-type: none"> <li>• The Fund was placed in a subordinated position (second ranking) to a co lender from the inception of the loan facility in direct contravention to the Fund's Constitution and Product Disclosure Statement.</li> <li>• City Pacific approved and advanced monies to a related party borrower (50% owned by City Pacific) within days of the Fund being closed to redemptions.</li> <li>• The asset was controlled by the first ranking mortgagee who directed that the asset be sold.</li> <li>• The Fund in its subordinated second ranking position had no other choice but to follow the direction of the first ranking mortgagee.</li> </ul>
<p><b>Balmain Trilogy poured money down the drain at the Wakerley Project (page 6)</b></p>	<ul style="list-style-type: none"> <li>• The site had been left derelict by City Pacific for almost two years.</li> <li>• Engineers' reports that were commissioned by Balmain Trilogy confirmed the structural integrity of 12 partially built dwellings had been jeopardised due to exposure to the elements.</li> <li>• The engineer was unable to certify the development if building works continued.</li> <li>• The incoming builder was unable to provide the required statutory home warranty insurance on the 12 dilapidated dwellings.</li> <li>• The 12 dwellings were demolished and rebuilt by Balmain Trilogy.</li> <li>• Without having taken this action, the dwellings would have been unsaleable with no certification or home warranty insurance.</li> <li>• Balmain Trilogy confirms that the Brisbane City Council has approved the community title plan for stage one.</li> </ul>
<p><b>Asset 29 - Sold at a fire sale price (page 6)</b></p>	<ul style="list-style-type: none"> <li>• The Receiver and Manager undertook an open market Expression of Interest Campaign of the property in March 2010.</li> <li>• Following very limited interest in the property, only three offers were received.</li> <li>• None of the offers received from the campaign were on terms acceptable to the Receivers and Managers.</li> <li>• After seven months, the agents were able to secure a cash offer which was accepted.</li> <li>• Unitholders should note that a Receiver and Manager must adhere to strict obligations as detailed under section 420 of the Corporations Act. These obligations include ensuring a fair market value for the relevant assets is achieved.</li> <li>• Asset 29 was not sold at below fire sale price and to suggest otherwise is untrue, misleading and deceptive.</li> </ul>

Reference in the Bransgrove Proposal	Balmain Trilogy response
Balmain Trilogy has allowed developers and associated borrowers to benefit from the sale of properties (page 6)	<ul style="list-style-type: none"> <li>All assets that have been sold have been placed in the open market with appointed agents to achieve the highest price possible.</li> </ul>
Asset 26 - King Tide Apartments (page 6)	<ul style="list-style-type: none"> <li>Balmain Trilogy has been open and transparent with its strategy for all assets of the Fund.</li> <li>As stated in 8 July 2011 Asset Review update we confirmed the following: <ul style="list-style-type: none"> <li><i>“The Fund is in possession of 15 units in a beach front block. An amalgamation of the site has been pursued, however given conflicting interest of other unit owners and their unwillingness to participate in repositioning the property, an orderly sale of units is now considered in the best interests of the Fund. Further to this, the current down turn and market forecast for residential developments in the immediate area reconfirms the position that the sale of individual units should achieve the best value possible in the circumstances.”</i></li> </ul> </li> </ul>

#### 4. The Bransgrove Proposal does not contain a comprehensive strategy for the Fund or its assets

The Bransgrove Proposal:

- **DOES NOT** provide a clear strategy regarding the assets of the Fund and how they will deal with defaulting borrowers;
- **DOES NOT** provide an asset realisation strategy;
- **DOES NOT** provide commitment not to undertake related party borrowings or dealings;
- **DOES NOT** provide a commitment to continue with legal proceedings against defaulting borrowers;
- **DOES NOT** provide commitments to Unitholders other than reporting on the assets;
- **DOES NOT** provide a commitment to continue with legal proceedings against those responsible for causing significant losses to the Fund;
- **DOES NOT** provide a commitment to continue with hardship redemptions;
- **DOES NOT** advise how the new manager will manage the Fund’s debt with CBA. A change of the responsible entity and investment manager is an **event of default** under the Fund’s finance facility unless prior consent is granted by the CBA. It is a matter for the CBA to accept a change of the responsible entity and investment manager or it can request for an immediate repayment of the Fund’s finance facility
- **DOES NOT** provide a clear outline as to the timing and amount of capital repayments;

- Give the new responsible entity **UNLIMITED** ability to charge **MANAGEMENT FEES**. It merely states that the total management cost during the first year is “expected to be under \$3 million” but at the same time puts in place a framework to attain unlimited cost recovery from the Fund in the future;
- **PROPOSES** the **REMOVAL** of receivers and managers from defaulting borrowing entities;
- **PROPOSES** to **HAND BACK** assets to defaulting borrowers. These are borrowers who have not provided guarantees and are not aligned to seek recovery of the Fund’s debt (it should be noted that the majority of the remaining loans are non-recourse and are to entities related to Phil Sullivan);
- **PROPOSES** to enter into **JOINT VENTURE** development opportunities – no indication has been provided as to which assets would be fit for redevelopment or on what terms such “joint ventures” would be based;
- **LACKS** any understanding of the **NEEDS** of Unitholders; and
- **DESTROYS** the voice of Unitholders in closing the Investor Committee.

## 5. Under the Bransgrove Proposal, all the costs and expenses of managing the Fund are completely uncertain

The Bransgrove Proposal provides no commitment as to the management fees over the course of the Fund term.

The Bransgrove Proposal:

- advises that Stacks will charge a fee of \$2.2 million in year 1 but makes no commitment in relation to future years;
- advises that this fee will increase or decrease depending on the performance of the Fund but does not provide any performance or asset value benchmarks or targets; and
- puts in place a mechanism which will allow for **UNLIMITED COST RECOVERY** over and above the fee paid to Stacks.

## 6. How can you trust the Bransgrove proposal? Will it benefit Bransgrove and his associates to the disadvantage of Unitholders?

It is not clear who is behind the Bransgrove Proposal. Is it Phil Sullivan? Are there others? What is their real motivation?

Without knowing this background, how can Unitholders know whether the Bransgrove Proposal is properly motivated or whether it will favour associates of Bransgrove at their expense?

What we do know is this:

- Bransgrove is Phil Sullivan’s lawyer;
- Bransgrove has convened the Meeting of Unitholders to remove Trilogy as responsible entity of the Fund;
- Trilogy has commenced legal proceedings to investigate Phil Sullivan and others in relation to losses sustained by the Fund; and
- It would be in Phil Sullivan’s interest for the new responsible entity to discontinue proceedings to investigate him.