

## TO INVESTORS

22 November 2013

### **EQUITITRUST INCOME FUND ARSN 089 079 854 (RECEIVER APPOINTED) (“the Fund” or “EIF”)**

I refer to my previous reports and now provide my 15<sup>th</sup> update to Investors since my appointment as Court appointed Receiver and person responsible for winding up the EIF on 21 November 2011.

## **1. Property Realisations**

Since my 14<sup>th</sup> report to Investors, the Toowoomba Foundry has settled along with all remaining residential lots at Wirrina Cove.

A summary of the properties subject to contract and the estimated settlement date are provided in the table below. As this is a public document and to ensure I do not prejudice completion of the contracts, I will not at this time identify the individual contract values.

Loan Number	Loan (Borrower)	Security location	Settlement Date
105665	Corymbia Corporation	Collingwood Park, QLD	Expected by May 2013
105739	Sunset Cove Developments	Wirrina Cove, SA	12 December 2013

Further information with respect to these properties is provided as follows:

(i) Collingwood Park, QLD

As advised in my 13<sup>th</sup> report, the contract of sale was conditional upon the purchaser completing their due diligence and obtaining approval from the Ipswich City Council and the Australian Government Department of Sustainability, Water, Population and Communities (‘Department of Sustainability’) by 15 October 2013 to clear the vegetation on the site.

The purchaser has confirmed that due diligence has been satisfied and approval has been obtained from the Ipswich City Council to clear the vegetation on the site, however approval from the Department of Sustainability has yet to be obtained.

The purchaser has advised that there were some delays with obtaining approval from the Ipswich City Council and the Ipswich Koala Protection Society to clear the vegetation, which was required to form part of the submissions to the Department of Sustainability pursuant to the Environmental Protection and Biodiversity Act (‘EPBC Act’).

As a result, the submissions and consultation process under the EPBC Act is not expected to be finalised until April 2014.

Accordingly, the contract of sale has been varied to allow the purchaser to extend the vegetation clearing approval date by 28 days up to a maximum of seven times. Each extension request requires the purchaser to pay a non-refundable fee of \$78,706.85 (for each extension) for the first four extensions and a non-refundable fee of \$118,060 (for each extension) for the final three extensions if the approvals have not been obtained. Therefore, the latest possible settlement date under the contract is 31 May 2014, however the contract is still conditional on the purchaser obtaining vegetation clearing approvals.

(iii) Worrina Cove, SA

At the time of writing this report, all 75 residential lots have settled along with the 6 undeveloped lots and caravan park with gross realisations of \$7.18 million achieved. There have also been 77 marina berths sold to date with gross realisations of \$1.1 million.

As advised in my previous report, the Worrina Resort, Golf Course and Conference Centre is under contract with settlement due 10 business days after the approval of the transfer of the liquor licence to the purchaser. This is to be heard on 28 November 2013 with settlement due on 12 December 2013.

The Marina St Vincent head lease and remaining berths were auctioned on 7 November 2013 and sold under the hammer. However, there have been issues with the purchaser of the head lease and negotiations are still being finalised in relation to the sale. The sale of the marina head lease is also subject to the approval of the assignment of the head lease by the South Australian Department of Transport.

With respect to the remaining assets, there are currently 8 offers that have been accepted and/or contracts exchanged totalling approximately \$110,000 with respect to the marina berth under leases.

As this is a public document and to ensure I do not prejudice any ongoing negotiations regarding the sale of the remaining assets, I will not at this time identify their expected realisable values.

(i) Cornwallis, NSW

The Receiver and Manager appointed over this property is continuing negotiations with interested parties following the most recent auction campaign.

(ii) Rosea (Wongawallan, QLD)

As advised in my last report report to investors, a sale campaign undertaken by the debtor closed on 3 October 2013. An offer for the property has been received however it is not at an acceptable level. Discussions are continuing with the debtor with respect to the offer and further payments required under a deed of settlement.

(iii) Gold Coast, QLD

As advised in previous reports, this property is subject to possession proceedings and where mediation took place on 11 September 2013. An agreement was reached to obtain possession of

the property, however, this was subject to the Equititrust Premium Fund (Receivers and Managers Appointed) ('EPF') also agreeing to provide a release of its claims. At this stage, the EPF has not agreed to the release of its claims and therefore it is likely that the matter will proceed to trial early in the New Year.

## 1.1 Legal Proceedings

As advised in my 14<sup>th</sup> report to Investors, there are several legal actions currently on foot. I am unable to provide specific details with respect to each matter and the expected outcome of same. However, I provide an overview below:

- As indicated above, an agreement was reached with a borrower to obtain possession of a property, however this was subject to the EPF agreeing to also provide a release of its claims. As an agreement has not been reached with the EPF, the matter is likely to proceed to trial. A sale campaign for the property will be conducted thereafter.
- Two claims have been filed against the same valuer for negligence and damages in excess of \$10 million. An amended statement of claim has been lodged with respect to one of the claims whilst an expert witness report is still being finalised in order to submit an amended statement of claim with respect to the other. Any amount recoverable will be sought against a professional indemnity insurance policy.
- Two other claims have been filed against separate valuers for negligence and damages. The amount of the claim is still to be determined and expert valuers are preparing retrospective valuations to progress the claims.
- Monetary judgement was obtained against a guarantor and orders sought to sell properties caveated to Equititrust, however a cross claim was filed by the borrower. To avoid the cost of going to trial, a settlement was recently agreed at \$570,000. As advised in my previous report, the EPF has asserted a claim to some of these proceeds, however, this is strongly disputed and the matter is still to be resolved.
- Proceedings are ongoing against a bankrupt/related parties to realise an interest in the surplus proceeds that have been realised from the sale of a property. This is likely to result in a substantial recovery for the Fund.
- The proceeds from the sale of a property are currently in dispute with the EPF with proceeds of approximately \$423,000 currently held in my solicitors trust account and legal proceedings on foot to resolve the matter. The matter is likely to proceed to trial early in the New Year.
- Other claims are still being considered against borrowers/guarantors/valuers to determine if commercial recoveries are achievable.

Given the nature of these matters, they are likely to take some time to resolve. However, it is expected that the actions will realise several million dollars for the benefit of Investors.

## 2. Creditor Claims

### 2.1 Secured Creditors

As advised in my 14<sup>th</sup> report to Investors, secured creditors' claims have been discharged, with the exception of approximately \$1.1 million in respect of bank guarantees issued by the National

Australia Bank. The bank guarantees support bonds held by two Councils with respect to certain development sites.

Works required in order for two of the guarantees to be released by the Tweed Shire Council have been completed, with the bonds totalling \$103,759 recently returned to the bank for cancellation. Discussions are ongoing with the Ipswich City Council (“ICC”) with respect to when the other guarantees will be called upon or released. ICC has advised that the works required in respect of the bonds will significantly exceed the value of the bonds (\$893,820).

## **2.2 Other Creditors**

As advised in my 14<sup>th</sup> report to Investors, there are a number of creditors that require to be paid (or funds retained) before a distribution is made to Investors, which include:

- Rates and land tax against certain properties to be realised;
- Trade creditors, which relate to liabilities necessarily incurred in the winding up of the Fund;
- Any other creditors outstanding at the date of my appointment; and
- Receiver’s remuneration and outlays.

An application was filed with the Court on 12 November 2013 to determine the correct trustee of the Mclvor Superannuation Fund (‘MSF’) in order to repay a loan advanced by the MSF to the EIF so that the interest stops accruing.

This application is to be heard on 2 December 2013 whereby the following orders will be sought:

- That the monies owed by the Fund pursuant to the loan agreement with the MSF, inclusive of all interest accrued pursuant to the loan up to the date of payment of those monies is paid into Court; and
- That the payment of the monies into Court constitutes payment of the monies owed by the Fund pursuant to the terms of the loan and discharges the Fund’s liabilities under the loan.

I have received legal advice confirming that the loan is due and payable and cannot be set off against any other claims. Once the monies have been paid into Court, whoever is the correct trustee of the MSF will have to prove that they are entitled to the monies.

## **2.3 Claims by the Liquidators of Equititrust Limited (‘EL’)**

The liquidators of EL (Hall Chadwick) have previously indicated that EL is indebted to the Fund for \$2,272,388, which is purported to be supported by a loan recorded in the management accounts of EL. This includes a management fee of \$2,810,045 for the 2011 financial year which was previously waived by the board but purportedly reinstated when Mark Mclvor became a director in November 2011. I have disputed EL’s right to reinstate the fee and also assert that it is not payable on the basis that:

- (i) The management fee was waived by the board of EL in or around September 2011 (although the new board purportedly resolved to reinstate the management fee on 23 November 2011, after my appointment on 21 November 2011); and
- (ii) The relevant terms of the constitution of the Fund provides that EL (as the responsible entity) is only entitled to the management fee out of the income of the Fund and this

entitlement is subject to the priorities set out in the constitution. This includes, inter alia, that unit holders are paid a distribution of income up to their benchmark return. The Fund generated a loss during the 2011 financial year and all distributions to unit holders were accounted for as distributions of capital.

An adjustment in the accounts for the incorrect charging of the management fee for the year ended 30 June 2011, which was booked to a loan account between the Fund and EL, determined that the Fund has a claim against EL.

As previously advised, on 20 April 2012, I attended the second meeting of creditors of EL and submitted a proof of debt in the amount of \$537,656.57 for the purposes of voting on behalf of the Fund at that meeting (as a creditor of EL). The liquidators subsequently sought to rule on this proof of debt. I disputed their right to do so as it was only lodged for voting purposes and, therefore, the proof of debt was withdrawn. Notwithstanding this, the liquidators decided to reject the claim. As a result, I lodged an application with the Supreme Court of Queensland on 24 July 2013 appealing their decision. The matter is set down for a hearing on 5 December 2013 to determine if the liquidators had the right to rule on the proof of debt.

The Fund's claim against EL may increase following an investigation of prior years management fees and the potential claims against the responsible entity for any wrong doing. However, as there is currently unlikely to be a distribution in the liquidation of EL, I do not intend incurring costs in investigating the claim further at this stage.

As advised in my previous reports, the liquidators of EL have lodged an application for directions with the Supreme Court of Queensland in relation to the extent to which they are entitled to be indemnified out of the Fund's assets for remuneration and expenses incurred by them as administrators totalling approximately \$805k. At this stage, I have not been served in the proceedings and no hearing date has been set. I have previously queried the basis of the liquidators' claims and their right to claim against the Fund's assets given that I was appointed to wind up the Fund prior to their appointment and that the Court Order of 29 February 2012 (which Hall Chadwick consented to) clarified the roles of the various insolvency practitioners to avoid the duplication of costs. It should also be noted that at the first meeting of creditors, Richard Albarran advised unit holders of the Fund that the costs and expenses of Hall Chadwick would not be claimed against the Fund and at the second meeting of creditors, assurances were provided by Mr Albarran that they would not seek reimbursement of their costs from the Fund if they were appointed liquidators of EL.

## **2.4 Annual Distribution Recipients**

A large proportion of the Fund's Investors received distributions monthly, however a number of Investors elected to receive distributions annually in exchange for a slightly higher benchmark rate of return. As many Investors are aware, distributions ceased in March 2011, with the last distribution made to monthly distribution recipients originally treated as interest accrued for the month ending 28 February 2011.

As the Fund recorded a loss for the year ending 30 June 2011, the distributions made to Investors during this financial year were subsequently declared as a repayment of capital.

As a result of the cessation of distributions in March 2011, the majority of annual distribution recipients were left disadvantaged when compared to the monthly distribution recipients. The level of disadvantage differs between Investors and depends on the annual maturity date of the investment. For example, an Investor whose investment matured on 31 January 2011 has been



disadvantaged, as unlike the monthly distribution recipients, has not received a capital distribution equal to the interest accrued on their investment for the month ending 28 February 2011.

The annual distribution recipients whose investments matured between 1 March 2011 and 30 June 2011 have been more severely disadvantaged, as these Investors have not received a return of capital in the financial year ending 30 June 2011 and have also not received the interest accrued on their investment up to 30 June 2010.

Preliminary investigations have identified 121 Investors who are owed interest for the financial year ending 30 June 2010 totalling approximately \$140,000. Investigations have also identified 384 Investors who are owed capital distributions equal to interest accrued on their investment for the period 1 July 2010 to 28 February 2011 totalling approximately \$1,100,000. Please note, these figures are yet to be verified and are subject to change.

I understand that prior to my appointment, it was proposed by the EIF staff that an “equalisation payment” should be made to these Investors prior to the commencement of further capital distributions. I have obtained legal advice to determine if an “equalisation payment” can be made pursuant to the terms of the EIF Constitution, however the Constitution does not contemplate or specifically permit a distribution of this nature during the course of the winding up.

I am currently considering how to resolve this matter, however it may be I need to seek directions from the Court to determine the position before making a final distribution to Investors.

### 3. Receipts and Payments

I provide below a summary of the Receipts and Payments of the Fund for the period from 17 September 2013 to 20 November 2013.

Summary of Receipts and Payments for the Period 17 September 2013 to 20 November 2013		
	\$	\$
<b>Opening Cash at Bank</b>		<b>10,811,418.56</b>
<b>Receipts</b>		
Interest Income		28,629.76
<i>Loan Recoveries:</i>		
Checkling Pty Ltd	30,000.00	
Corymbia Corporation Pty Ltd	157,413.70	
Toowoomba (Foundry Shopping Centre) Pty Ltd	4,064,494.72	
Tweed Central Pty Ltd	57,745.57	
Wirrina Corporation Pty Ltd	54,255.00	4,363,908.99
Legal Recoveries		18,035.74
Sundry Income		35.56
<b>Total Receipts</b>		<b>4,410,610.05</b>

## Payments

Bank Charges		57.50
<i>Distressed Loan funding:</i>		
Boothers Pty Ltd	21,304.91	
Checkling Pty Ltd	55,522.34	
Corymbia Corporation Pty Ltd	2,045,345.71	
Corymbia Estates Pty Ltd	1,630.83	
Gamp Developments Pty Ltd	26.00	
National Resorts Corporation Pty Ltd	11,701.98	
Rosea Pty Ltd	615.33	
Spottiswood, Graham (A Bankrupt)	1,183.44	
Toowoomba (Foundry Shopping Centre) Pty Ltd	514,044.06	
Tweed Central Pty Ltd	38,206.83	
Western Land Corporation Pty Ltd	1,089.83	
Windsor Turf Pty Ltd	25,354.55	
Wirrina Corporation Pty Ltd	202,661.53	2,918,687.34
GST Paid		186,431.00
IT expenses		12,315.90
Legal Fees		108,456.96
Professional Consultation Fees		2,551.66
	<b>Total Payments</b>	<b>3,228,500.36</b>
<b>Closing Cash at Bank</b>		<b>11,993,528.25</b>

I note that the 'Distressed Loan Funding' relates to marketing costs, agents' fees, consultants' fees, legal fees and rates and land tax. The incurring of these costs are considered essential in terms of successfully realising the assets subject to the Fund's securities.

The distressed loan funding for Checkling Pty Ltd includes:

- Council rates of approximately \$55,000.

The distressed loan funding for Corymbia Corporation Pty Ltd includes:

- Land Tax of approximately \$1,994,000; and
- Council Rates of approximately \$50,000.

The distressed loan funding Toowoomba (Foundry Shopping Centre) Pty Ltd includes:

- Liquidators' care and preservation costs of approximately \$56,000;
- Liquidators' GST liability on sale of approximately \$430,000; and
- Legal fees of approximately \$28,000.

The distressed loan funding for Wirrina Corporation Pty Ltd includes:

- Legal fees of approximately \$80,000;
- Agent's commission of approximately \$22,000;
- Advances to cover trading losses of approximately \$30,000;
- Marketing for Marina St Vincent head lease of approximately \$15,000; and
- Costs to upgrade the water and sewage infrastructure of approximately \$48,000.

#### 4. Estimated Return to Investors

I provide below an estimated return to Investors of between 11 and 12 cents in the dollar as at 21 November 2013 as follows:

	Low	High
	\$000's	\$000's
Cash at Bank	11,993	11,993
Estimated selling prices	17,510	19,160
<i>Less:</i>		
Bank guarantees	(1,100)	(1,100)
Selling costs (3.5% of sale price)	(613)	(671)
Other loan - Mclvor Superannuation Fund	(3,700)	(3,700)
Land tax & rates	(670)	(670)
Other unsecured creditors	(600)	(450)
Receiver's fees and outlays	(624)	(624)
<b>Estimated net amount available to investors as at 21 November 2013</b>	<b>22,196</b>	<b>23,938</b>
Total investor units	193,916	193,916
<b>Estimated return in the dollar</b>	<b>0.11</b>	<b>0.12</b>

The above table does not take into account future operating costs, future interest on the other loan, future Receiver's fees and future rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

##### 4.1 Interim Distribution to Investors

The timing of an interim distribution to investors was originally dependent on the settlement of the properties at Collingwood Park, Cornwallis and the remaining assets at Wirrina Cove.

As explained previously in this report, the Collingwood Park property is now only expected to settle between April and May 2014 and there is also still no clear timeframe with respect to the sale of the Cornwallis property at this stage. Combined, these two properties represent 72% and 76% of the estimated selling prices of \$17.5m and \$19.16m in the above table.

Due to these unanticipated delays, I have to consider the merits of making an interim distribution to investors without the sale proceeds from these key properties. Please note, in estimating the funds that would be available for distribution to Investors I must not only take



into account the secured creditors, land tax, rates, Receiver's fees and the unsecured creditors, but also set aside monies in order to pay future liabilities that may arise.

I provide below the estimated funds that are available to form an interim distribution to Investors as at 21 November 2013.

	\$000's
Cash at Bank	11,993
<i>Less:</i>	
<b><i>Current Liabilities</i></b>	
Other loan	(3,700)
Land tax & rates	(670)
Other unsecured creditors	(600)
Receiver's fees and outlays	(624)
<b><i>Future Liabilities</i></b>	
Selling costs	(613)
Legal Fees	(400)
Other unsecured creditors	(300)
Receiver's fees and outlays	(600)
<b><i>Contingent Liabilities</i></b>	
Bank guarantees	(1,100)
2011 EL Management Fee	(2,272)
Administrators' remuneration and outlays	(805)
Potential equalisation payment	(1,240)
<b>Estimated funds available for distribution as at 21 November 2013</b>	<b>(931)</b>

Given the above, I require the resolution of the claims with the liquidators before making a distribution to Investors. I will update Investors further upon settlement of the Wirrina Resort, Golf Course and Conference Centre (expected on 12 December 2013) and after the hearings of 2 and 5 December 2013 in respect of the MSF loan and the liquidators' rejection of the Fund's proof of debt.

## 5. Receiver's Remuneration and Expenses

I attach a summary of my current remuneration and outlays outstanding for the period from 1 September 2013 to 31 October 2013. My remuneration incurred during this period totals \$211,928.50 plus outlays of \$7,099.66 plus GST.

I advise that my third application for approval of my remuneration will be heard on 28 November 2013. This covers the period from 1 May to 31 October 2013 and is for a total amount of \$667,795.70 (inclusive of GST). A copy of my application in this respect has been posted to the websites [www.equitytrust.com.au](http://www.equitytrust.com.au) and [www.equitytrustincomefund.com.au](http://www.equitytrustincomefund.com.au). Investors have also been individually notified of the lodgement of this application.

The total remuneration claimed since my appointment on 21 November 2011 to 31 October 2013 is \$2,137,854 plus GST. It should be noted that prior to my appointment the Responsible Entity was reimbursed for expenses totalling approximately \$6 million in relation to the management of the Fund for the year ended 30 June 2011.

## 6. Updating your contact details

If Investors wish to update their postal address or bank details, a request should be submitted in writing to the following address.

Equititrust Income Fund (Receiver Appointed)  
C/- BDO  
GPO Box 457, Brisbane, QLD 4001

## 7. Queries

The Bundall office was closed on 30 April 2013 and therefore any queries should be directed to Daniel Tipman of this office who can be contacted as follows;

Phone: 07 3237 5999  
Email: [daniel.tipman@bdo.com.au](mailto:daniel.tipman@bdo.com.au)

Should Investors have any queries in relation to the winding up of the Fund, they should contact my office on (07) 3237 5999 or by email at [info@bdo.com.au](mailto:info@bdo.com.au).

Yours faithfully,



David Whyte  
Receiver

**Equititrust Income Fund (Receiver Appointed)**  
**1 September 2013 to 31 October 2013**

Employee	Position	Rate (\$)	Total Units	Total (\$)	Administration		Assets		Creditors		Investigation		Trade On	
					Units	(\$)	Units	(\$)	Units	(\$)	Units	(\$)	Units	(\$)
Whyte, David	Partner	560.00	71.60	40,096.00	13.30	7,448.00	52.20	29,232.00	4.00	2,240.00	0.10	56.00	2.00	1,120.00
Somerville, John	Senior Manager	425.00	212.20	90,185.00	29.70	12,622.50	159.30	67,702.50	20.30	8,627.50	-	-	2.90	1,232.50
Tipman, Daniel	Senior Accountant I	310.00	256.20	79,422.00	43.00	13,330.00	22.70	7,037.00	140.10	43,431.00	0.70	217.00	49.70	15,407.00
Coulston, Jayden	Senior Accountant I	310.00	0.40	124.00	0.40	124.00	-	-	-	-	-	-	-	-
Kennedy, Nicola	Accountant II	190.00	5.40	1,026.00	4.60	874.00	0.80	152.00	-	-	-	-	-	-
Watson, Sarah	Financial Assistant	180.00	2.10	378.00	-	-	-	-	2.10	378.00	-	-	-	-
Jackson, Nicole	Practice Assistant	150.00	2.80	420.00	-	-	-	-	2.80	420.00	-	-	-	-
Hattingh, Moira	Administration Assistant	75.00	2.20	165.00	2.20	165.00	-	-	-	-	-	-	-	-
Richardson, Ashley	Administration Assistant	75.00	1.50	112.50	1.50	112.50	-	-	-	-	-	-	-	-
<b>TOTAL</b>			<b>554.40</b>	<b>211,928.50</b>	<b>94.70</b>	<b>34,676.00</b>	<b>235.00</b>	<b>104,123.50</b>	<b>169.30</b>	<b>55,096.50</b>	<b>0.80</b>	<b>273.00</b>	<b>54.60</b>	<b>17,759.50</b>
			<b>GST</b>	<b>21,192.85</b>										
			<b>TOTAL INC GST</b>	<b>233,121.35</b>										
<b>AVERAGE HOURLY RATE</b>			<b>382.27</b>	<b>366.17</b>		<b>443.08</b>		<b>325.44</b>		<b>341.25</b>		<b>325.27</b>		

**DISBURSEMENT REPORT**

Equititrust Income Fund (Receiver Appointed)  
1 September 2013 to 31 October 2013

Item	\$
Couriers	35.43
Postage	1,774.03
Printing/photocopying	3,338.70
Searches	215.03
Travel - Flights/Parking/Car	1,736.47
<b>Sub Total</b>	<b>7,099.66</b>
GST	709.97
<b>TOTAL</b>	<b>7,809.63</b>