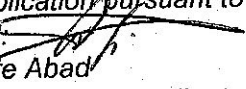
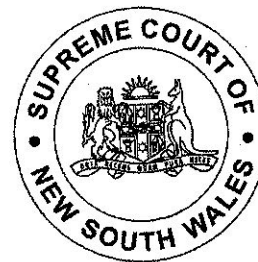


This and the following 4 pages are the Appellant's written submission in reply for publication pursuant to paragraph 27 of Practice Note NO SC CA 1

Signed: 
Florante Abad
Solicitor for the Appellant



Filed: 20 October 2025 2:23 PM



Written Submissions

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Supreme Court Sydney
Case number	2025/00011620

TITLE OF PROCEEDINGS

First Applicant	Tanwar Institute of Professional Studies Pty Ltd ATF Tanwar Family Trust
First Prospective Respondent	Gordian RunOff Pty Ltd

FILING DETAILS

Filed for	Tanwar Institute of Professional Studies Pty Ltd ATF Tanwar Family Trust, Applicant 1
Legal representative	Florante Abad
Legal representative reference	
Telephone	0298937794
Your reference	FLA-Tanwar:2025

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Written Submissions (2025-10-17-Appellants submissions in reply - 25.11620.pdf)

[attach.]

Court of Appeal of New South Wales

No. 25/11620

TANWAR INSTITUTE OF PROFESSIONAL STUDIES PTY LTD ATF TANWAR
FAMILY TRUST v GORDIAN RUNOFF LTD (ACN 052 179 647)

APPELLANT'S SUBMISSIONS IN REPLY

By way of reply, the Appellant makes the following submissions:

Ground 4

1. In response to [42] of the Respondent's written submissions, reference is made to there being no objective evidence adduced concerning background material that would assist to shine light on any ambiguity within the Policy. The Appellant notes that not only is it uncontested between the parties, but a distinction is also made within the Policy Schedule, that the business in question was and is a petrol station.
2. The rules of construction in contracts, incorporated in a vast number of authorities, of which *Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* (2015) 256 CLR 104; [2015] HCA 37 is included, consider the words and conduct that would have led a reasonable person in the position of the parties to believe what the terms of the Policy to mean, and to do so with reference to a business-like mindset. Accordingly, the inclusion of the words 'petrol station' must have some work to do. To which the Appellant submits they provide the objective foundation to read in aspects like the Pipes as being part of the term Building.
3. In response to [45] of the Respondent's written submissions, the Respondent is correct, the Appellant is not challenging his Honour's reasoning that an understanding of the term Building must be constrained by the words of the Policy. But that the Respondent has construed what the Appellant considers are relevant considerations with respect to the task of constructing a contract, as referenced above at [2], which in turn dictate how the words of the Policy are to be understood and applied.
4. In response to [46] of the Respondent's written submissions, specifically the reference to the sentiments of Justice Gibbs in *Australian Broadcasting Commission v Australasian Performing Right Association*,¹ the Appellant submits the words 'petrol station' qualify as unambiguous, they certainly were not challenged in the Court below to suggest that this petrol station differed or ought to have been excluded from the generally accepted concept of a petrol

¹ *Australian Broadcasting Commission v Australasian Performing Right Association* (1973) 129 CLR 99, 109.

station, such that with respect to the word Building, if “...*the Court must give effect to them, notwithstanding that the result may appear capricious or unreasonable and notwithstanding that it may be guessed or suspected that the parties interceded something different*”, that knife cuts both ways and could include the Pipes.

5. To the extent ambiguity is found, the Appellant relies on the contra proferentem rule wherein being the drafters of the Policy, if in determining what the word Building means, with respect to a petrol station, it ought to be interpreted against the Respondent such that the Pipes ought to be included into said definition.
6. In response to [46] of the Respondent’s written submissions, the Respondent’s mention to clause 7 of the Policy, wherein reference is made to ‘sewers’, does not assist their position as the full context of the Policy wording refers to “...sewers and the like all contained in or on or **forming part of or implicitly pertaining** to the Buildings.” [emphasis added]. Where the emphasis is added suggests that the drafters of the Policy accepted that underground pipes could indeed form part of or pertain to a building. Such that it does not fall outside a reasonable interpretation that so should the Pipes in this instance. However, it is the Appellant’s view that the conflation of the essential services of stormwater, and sewers as contained in the clause 7 Landscaping section of the Policy with the pipes needed to operate a petrol station simply introduces additional ambiguity and does not assist in the issue at hand.
7. In response to [48] of the Respondent’s written submissions, the fixture argument, now sought to be made in the submissions, was not present or put in the proceedings below. Regardless, the Policy wording does not exclude fixtures, rather it explicitly includes fixed items such as swimming pools, regularly considered to be a fixture to a property or land.

Ground 5

8. In response to [51] of the Respondent’s written submissions, the ‘under construction’ exclusion within the Policy is only applicable where the relevant construction is “...*carried out at any one Premises exceeds \$500,000 or 20% of the total Sum Insured on Buildings and Contents, whichever is the lesser,*

provided that this limit shall only apply to the portion of the Property Insured which is subject to any such work and not to any other portion of the Property Insured". That is to say, under construction alone is not sufficient to trip the exclusion term. But in order to consider the application of the 'under construction' exclusion, one must accept that the thing being considered must fall within the category. That is the Pipes ought to be considered within the definition of a Building, if the exclusion terms are to be considered.

Ground 6

9. In response to [53] of the Respondent's written submissions, at its highest, the report of Mr Cloete extrapolated from the evidence of the Plaintiff what a contract value may have been, based on the criteria as set out in said report. But Mr Cloete's report did not address the implied contract that was in place, which is what the Policy requires, such that no cross examination was needed.

Grounds 2 and 2A

10. In response to [61] of the Respondent's written submissions, the fact that the Policy does not provide for the exception or entitlements otherwise provided for at law is not entirely relevant. The application of section 54 of the *Insurance Contracts Act* (1984), is to, in part, operate in contrast to the wording of policies, or at a minimum to provide for exceptions were warranted, that may not be properly included within a policy's terms.



Alexander Kaylinger
Counsel for the Appellant
17 October 2025