

6 December 2023

## TO THE CREDITOR AS ADDRESSED

**WBHO Australia Pty Ltd ACN 095 983 681 and certain subsidiaries listed in Appendix A  
(all Subject to Deed of Company Arrangement)  
(Probuild Group or Companies)**

I refer to the appointment of David Orr, Jason Tracy, Matthew Donnelly and myself as Joint and Several Administrators of the Probuild Group on 23 February 2022, and our subsequent appointment as Deed Administrators on 21 July 2022. In this report, we will refer to the Voluntary Administrators and Deed Administrators as the **Administrators**.

The purpose of this report is to provide an update to creditors regarding the progress of the Deed of Company Arrangement (**DOCA**), summarise the current status and outstanding actions in the DOCA and to convene a meeting of creditors to consider, amongst other things, the remuneration of the Administrators.

Please be advised, we refer to our previous updates and reports to creditors throughout this report which are available for download from the following website: <https://aurestructuring.deloitte-halo.com/probuild/?Pg=3>

## **ACTION REQUIRED**

<b>Appendix #</b>	<b>Document</b>	<b>Action Required?</b>
	Report to Creditors	Yes – please read
Appendix A	Entities subject to Deed of Company Arrangement	No
Appendix B	Notice of Meeting of Creditors	Yes – please read, register your attendance and lodge a POD (if not already done so) by 5pm AEDT on Monday 11 December 2023
Appendix C	Remuneration approval report	Yes – please read
Appendix D	Instructions on how to attend Meeting of Creditors	Yes – please read
Appendix E	Circulars to creditors dated 1 June 2023 and 22 June 2023 regarding the DOCA	No
Appendix F	Detailed Administrators' Receipts and Payments to 31 October 2023	No
Appendix G	ARITA Information Sheet: Approving Remuneration	No

Should you have any queries regarding this report or the DOCA in general, please contact do not hesitate to contact us at [probuild1@deloitte.com.au](mailto:probuild1@deloitte.com.au).

Yours faithfully



**Sal Algeri**

Joint and Several Deed Administrator

Encl

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/au/about](http://www.deloitte.com/au/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

The entity named herein is a legally separate and independent entity. In providing this document, the author only acts in the named capacity and does not act in any other capacity. Nothing in this document, nor any related attachments or communications or services, have any capacity to bind any other entity under the 'Deloitte' network of member firms (including those operating in Australia).

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Touche Tohmatsu Limited



## Report to Creditors

WBHO Australia Pty Ltd ACN 095 983 681

and certain subsidiaries listed in Appendix A

(all Subject to Deed of Company Arrangement)

(Probuild Group or Companies)

# Contents

1	Executive summary	4
1.1	Expected outcome for creditors from the DOCA	4
1.2	Administrators' remuneration	6
1.3	Meeting of creditors	6
2	Update on DOCA progress	7
2.1	Execution of the DOCA	7
2.2	'Pooling' impact of the DOCA	7
2.3	Finalisation of trading	7
2.4	Asset realisations	7
2.5	Legal matters	10
2.6	Distributions to creditors	12
2.7	Other matters	13
2.8	Outstanding matters to conclusion of the DOCA	13
3	Receipts and payments	14
4	Creditor distribution update	15
4.1	Estimated outcome for Pool C creditors	15
4.2	Interim Pool C distribution	17
5	Remuneration approval	18
	Appendix A Entities subject to Deed of Company Arrangement	20
	Appendix B Notice of Meeting of Creditors	21
	Appendix C Remuneration Approval Report	23
	Appendix D Instructions on how to attend Meeting of Creditors	51
	Appendix E Circulars to creditors dated 1 June 2023 and 22 June 2023 regarding the DOCA	67
	Appendix F Detailed Administrators' Receipts and Payments to 31 October 2023	138
	Appendix G ARITA Information Sheet: Approving Remuneration	139

# 1 Executive summary

We refer to the Probuild Group Deed of Company Arrangement (**DOCA**) which was entered into on 21 July 2022, and to our subsequent updates to creditors, all of which are available here: <https://aurestructuring.deloitte-halo.com/probuild/?Pg=3>

The purpose of this report is to:

- provide creditors with an update on the DOCA including the proceedings addressed in our previous circulars to creditors dated 1 June 2023 and 22 June 2023
- provide creditors with an update on actual asset realisations to date and expected in the DOCA, and the impact on the expected outcome for creditors
- update creditors on the outstanding matters in the DOCA, and the expected timing to finalisation
- convene a meeting of creditors to, amongst other things, consider approval of the Administrators' remuneration.

## 1.1 Expected outcome for creditors from the DOCA

Under the terms of the DOCA, creditors of the DOCA companies were split into four (4) pools. The expected outcome for creditors of each pool is set out below, set against the estimate included in our report to creditors pursuant to Rule 75-225 of the Insolvency Practice Rules (Corporations) (**VA Report**). We are pleased to advise that there is an increase in the estimated distributions (which are outlined below) from those disclosed in our last report to creditors. Pool B Small Creditors (being those owed not more than \$25,000 by the Companies) have received 100c in the \$ on their adjudicated claims, and Pool C unsecured creditors will share in \$13.6m (in a low case scenario) which is c. 44.6% higher than estimated in our last report to creditors (\$9.4m).

Creditor Pool	Participating creditors	Estimated outcome per VA Report		Current estimated outcome		Status
		Low	High	Low	High	
Pool A	Employees	100c in the \$	100c in the \$	100c in the \$	100c in the \$	Fully distributed
Pool B	Small creditors	50c in the \$	71c in the \$	100c in the \$	100c in the \$	Fully distributed
Pool C	General unsecured creditors	\$9.4m of funds available for distribution	\$45.1m of funds available for distribution	\$13.6m of funds available for distribution	Unknown (dependent on legal and other recoveries)	Subject to congoing asset realisations
Pool D	ATO (for certain assets)			Not used - no known Pool D creditors		Not expected to be used

### 1.1.1 Pool A – employee entitlements

All available assets of the DOCA were originally deposited into Pool A, to be first available to priority unsecured creditors (being employees, in respect of unpaid employee entitlements).

A first and final Pool A distribution at a rate of 100c in the \$ was paid in July 2022.

### 1.1.2 Pool B – small creditors

The DOCA included a segregated pool of funds totalling \$1,765,273 to be made available to Small Creditors (defined as being creditors with claims of not more than \$25,000).

A first and final Pool B distribution at a rate of 100c in the \$ was paid in September 2022.

### 1.1.3 Pool C – general unsecured creditors

In our VA Report, we estimated there would be in the range from \$9.4m to \$45.1m available for distribution to Pool C (unsecured) creditors. **Based on assets realised to date and expected to be realised in future, we are pleased to report that we now expect there to be at least \$13.6m (in a low scenario) available to Pool C creditors which is c. 44.6% higher than what was disclosed in our last report to creditors.** This improvement is notwithstanding the loss of c. \$6.4m included in our previous estimate in relation to the Allianz matter discussed at Section

2.5.1, which has been offset by better than previously anticipated realisation of other assets. The key drivers of the improvement in the outcome for Pool C creditors are summarised below.

Asset	Comment	Impact on creditor returns	Report section for further information
Final pre-appointment BAS	The Administrators caused the Company's pre-appointment BAS for the period from 1 to 22 February 2022 to be lodged, recovering the c. \$1.6m credit from the ATO in March 2023.	Improvement of \$1.6m	2.4.5.1
GST on contract price adjustments	Identification of an opportunity to recover GST on contract price adjustments, giving rise to a GST credit that should be recoverable in the relevant entity's BAS.	Improvement of \$1.1m	2.4.5.2
Improved outcome from the WBHOI Creditors Trust	WBHO Construction SA's interest as a beneficiary of the WBHOI Creditors Trust was assigned to Probuild as a term of the DOCA. The estimated outcome from the WBHOI Creditors Trust has materially improved.	Improvement of c. \$10m	2.4.1
Improved recovery of cash deposits	In a number of instances, cash deposits were placed by Probuild by way of performance security, in particular with councils and other statutory authorities. The Administrators have worked closely with several parties holding cash for this purpose at the date of our appointment to understand and to follow the requirements for the release of the cash deposits held, resulting in greater release of this cash than originally anticipated.	Improvement of c. \$0.7m	2.4.2.2
Insurance and other legal claims	The Administrators have pursued a range of insurance and other legal claims and have been successful in achieving settlement in a number of these matters.	Improvement (settlement terms are confidential)	2.4 and 2.5
Allianz proceedings	The NSW Court of Appeal ordered the Administrators to pay \$6.4m to Allianz (being a settlement amount received, less the costs of realisation of the asset) to Allianz in April 2023, finding that the sum was surplus bond monies held on trust for Allianz. The settlement amount was included in calculating our estimated outcome for Pool C creditors included in our VA Report.	Reduction of \$6.4m	2.5.1
Settlement payment in relation to retention trust monies	It was alleged that Probuild had improperly had recourse to monies held as a retention from a subcontractor on a NSW project, and that the general trading account was impressed with a trust in favour of Cubic to the value of these retention monies. While the Administrators did not agree with this position, at mediation the Administrators agreed to settle this dispute.	Reduction (settlement terms are confidential)	2.5.2
Increased VA and Deed Administrator remuneration	Additional remuneration has been incurred in pursuing the recovery of assets and other matters than originally anticipated, resulting in the additional remuneration approval sought from creditors with this Update Report.	Reduction of \$2.6m	5

The funds ultimately available to Pool C creditors may be higher should additional assets (primarily litigation and insurance claims) be recoverable in the DOCA.

This outcome assumes that the DOCA can be amended in a manner foreshadowed at **Section 2.5.4** which will provide the Administrators with certainty as to the coverage of costs associated with the various insurance recovery proceedings against the Companies (including the holdings costs of any prolonged DOCA period).

### 1.1.4 Pool D - ATO

Pool D was intended to receive an allocation of asset realisations from Pool A relating to asset realisations that the ATO would have had access to in liquidation as the only (known) potential creditor in the relevant entities. The Administrators are not aware of any claim by the ATO against the particular DOCA entities, and accordingly do not now expect this pool to be utilised.

## 1.2 Administrators' remuneration

As discussed throughout this report, the Administrators have encountered several unforeseen and complex matters which were not anticipated at the time the original remuneration forecast and report was prepared. To appropriately address and resolve these matters, the Administrators have been required to dedicate more time and resources than initially forecasted, and accordingly the remuneration approved by creditors previously has been exhausted. Much of this time has been incurred to realise and preserve assets, which has resulted in the significantly improved outcomes for creditors described in **Section 1.1** above.

Additionally, at the time of preparation of the Remuneration Approval Report attached to our VA Report, it was anticipated that the Deed of Company Arrangement (DOCA) would be executed shortly following the meeting. Ultimately, it took longer than anticipated for the DOCA to be executed, with it being executed on the last possible day permitted by the Act. Consequently, several tasks that were expected to be completed during the DOCA were instead completed during the Voluntary Administration (VA) period resulting in more fees and costs being incurred in the VA period than anticipated when forecasting our future remuneration for the period from the 2nd meeting of creditors in the VA to execution of the DOCA. These tasks include:

- time sensitive and intensive tasks associated with trading the business and handing over the novated projects to Roberts Co
- obtaining full forensic data backups of the Group's electronic books and records to preserve access to information that may be required to pursue assets (including insurance and other legal claims) in the DOCA or Liquidation.

The Administrators are seeking approval of the following additional remuneration resolutions:

Resolution	Basis and period	Amount excluding GST and disbursements (\$)
Resolution #1	Voluntary Administrators' remuneration for the period from 24 June 2022 to 21 July 2022	\$900,551.25
Resolution #2	Deed Administrators' remuneration for the period from 23 May 2023 to 15 November 2023	\$676,424.25
Resolution #3	Deed Administrators' future remuneration from 16 November 2023	\$1,000,000.00

Further detail is provided at **Section 5** of this report and the attached Remuneration Approval Reports at **Appendix C**.

## 1.3 Meeting of creditors

A meeting of creditors for the Probuild Group DOCA entities will be held at [11:00AM (AEDT) on Wednesday, 13 December 2023]. The purpose of the meeting will be to:

- provide creditors with an update on the DOCA including the proceedings addressed in our previous circulars to creditors dated 1 June 2023 and 22 June 2023
- provide creditors with an update on actual asset realisations to date and expected in the DOCA, and the impact on the expected outcome for creditors
- update creditors on the outstanding matters in the DOCA, and the expected timing to finalisation
- consider resolutions for the approval of the Administrators remuneration
- any other business.

Formal notice of the meeting of creditors for the Probuild Group DOCA entities is provided at **Appendix B**.

Instructions as to how to attend this meeting are contained at **Appendix D**.

## 2 Update on DOCA progress

### 2.1 Execution of the DOCA

At the meeting of creditors of the Companies held on 30 June 2022, creditors voted in favour of each of the Companies executing the WBHO Construction SA DOCA (the **DOCA**). Pursuant to Section 444B of the *Corporations Act 2001 (Cth)* (**Act**), a deed of company arrangement is required to be executed within 15 business days of the resolution of creditors to execute it. The DOCA was executed on 21 July 2022.

Upon execution of the DOCA, the Administrators were appointed Deed Administrators of the DOCA. The key features of the DOCA were set out in Section 9 of the VA Report, as summarised below:

- it is a single pooled DOCA so that all assets, recoveries, contributions and creditor claims are pooled. A creditor of one of the Companies will be treated under the DOCA as a creditor of all the Companies, without the need for creditors to prove their claim separately against each entity. All intercompany payables and receivables between the Probuild Group companies (including claims against WBHO Construction SA) were released or extinguished on and from the DOCA's commencement date
- a DOCA Contribution would be made by WBHO Construction SA comprising cash contributions and assignment of its interests in the SRG DOCA (refer **Section 2.4.1** below)
- WBHO Construction SA is prevented from proving as a creditor in the administration, which we estimated in our VA Report has a financial benefit to ordinary unsecured creditors of between \$2.7m and \$14.1m
- the DOCA comprises 4 pools, Pool A through to Pool D. We refer creditors to Section 9 of the VA Report and **Section 4** of this report below for further detail on each pool
- potential recoveries from project Principals of monies related to securities issued under the CBA bank guarantee facility, and the recovery of a loan owing to PCA by Mr Brad Duggan were assigned to WBHO Construction SA on commencement of the DOCA
- upon complete performance of the DOCA, all claims of creditors arising on or before 23 February 2022 (the date of the Administrators' appointment) will be extinguished
- in total, we estimated that the DOCA provides for a total contribution of value to Probuild Group creditors in the range of \$15.0m to \$28.8m.

### 2.2 'Pooling' impact of the DOCA

A key feature of the DOCA was that all assets and liabilities of the DOCA Companies were pooled upon entering the DOCA. Accordingly, we will make no distinction between legal entities in considering the asset realisations and creditor claims in the DOCA in this report.

### 2.3 Finalisation of trading

As creditors are aware from sections 7 and 8 of our VA Report, the Administrators continued to trade the Probuild business during the Administration including continuing to progress construction works on several key projects with the support of project stakeholders including employees, unions, principals/developers, subcontractors and regulators.

Responsibility for the management of trading activities on some projects passed to Roberts Co as each relevant project novated, following which the Administrators were required to reconcile and remit payment for all costs incurred during the VA trading period. The final project novated to Roberts Co on 30 June 2022. The Administrators have now completed this process and there are no known remaining trading liabilities outstanding relating to the VA trading period.

### 2.4 Asset realisations

Since the execution of the DOCA, the Administrators have primarily focussed on the realisation of assets for the benefit of creditors.

In this section we will provide creditors with further detail on the activity undertaken to realise assets during the DOCA period. As noted in our VA Report there were minimal physical assets available for realisation (aside from cash at bank realised immediately on the Administrators' appointment), and assets which largely comprise claims against third parties have often been disputed and difficult to realise in the context of a highly litigious and adversarial sector.

We note that asset realisations now significantly exceed the ‘Low’ outcome set out in the VA Report (refer Section 10). The impact of this on the expected range of outcomes for creditors is considered at **Section 4** of this report and summarised below.

Creditor Pool	Participating creditors	Estimated outcome per VA Report		Current estimated outcome	
		Low	High	Low	High
Pool A	Employees	100c in the \$	100c in the \$	100c in the \$	100c in the \$
Pool B	Small creditors	50c in the \$	71c in the \$	100c in the \$	100c in the \$
Pool C	General unsecured creditors	\$9.4m of funds available for distribution	\$45.1m of funds available for distribution	\$13.6m of funds available for distribution	Unknown (dependent on legal and other recoveries)
Pool D	ATO (for certain assets)			Not used - no known Pool D creditors	

#### 2.4.1 DOCA Contributions

In accordance with the DOCA terms, the Deed Administrators received the DOCA Contributions from the Proponent as follows:

- \$6.0m cash contribution on 2 August 2022
- \$2.5m cash contribution for Pool B creditors on 2 August 2022
- \$0.6m cash contribution in respect of operating expenditure incurred by the Administrators and Deed Administrators on 3 August 2022
- \$0.5m Project Contingent Payment on 2 August 2022
- Assignment of WBHO Construction SA’s interest in any dividend from the Creditor’s Trust formed under the SRG DOCA (SRG DOCA Contribution) immediately on execution of the DOCA.
  - Based on the latest indications from the Trustee of the WBHOI creditors’ trust, we expect to receive a distribution of of c. \$12m (total claim of c. \$134m). On 4 December 2023, the Trustees confirmed their intention to make an interim distribution to beneficiaries of the trust in the first half of 2024. The impact of this distribution on the outcome for Probuild’s creditors is considered further in **Section 4** below.

#### 2.4.2 Performance bond and cash security returns

It is standard market practice that constructors will be required to provide security bonds to their clients in relation to the performance of their obligations under the construction contract (and that the contractor will, in turn, require similar security in the form of a bond, bank guarantee or cash retention to be provided by its subcontractors). It is also common for statutory authorities to require security bonds to be provided upon issuing work permits to ensure contractors comply with the asset protection and other conditions that may be imposed on the works to be undertaken.

##### 2.4.2.1 Security bonds

At the time of the Administrators’ appointment, Probuild had issued performance security bonds totalling c. \$289.9m (including securities issued by WBHOI and indemnified by Probuild). This included \$119.5m of performance securities provided under a Commonwealth Bank of Australia Ltd (CBA) performance guarantee facility which was guaranteed by WBHO Construction SA and by WBHOI. We understand that WBHO Construction SA has paid an amount to CBA in satisfaction of performance guarantees called such that WBHO Construction SA stands in the shoes of CBA in having a claim in the Probuild DOCA and the WBHOI Creditors Trust. Further:

- WBHO Construction SA agreed as a term of the DOCA not to prove in the Probuild DOCA
- WBHO Construction SA’s claim against WBHOI as a guarantor to the CBA performance guarantee facility has been assigned to the Probuild DOCA.



At the time of preparing this report, the status of Probuild’s performance security facilities is summarised as follows:

Facility provider	As at 23-Feb-22		Current			
	Number of securities issued	Value of securities issued	Number of outstanding securities	Value of outstanding securities	Value of securities called	Value of securities returned
CBA	41	\$119.5m	9	\$2.9m	\$72.7m	\$43.9m
AIG	5	\$21.7m	4	\$9.9m	\$11.8m	-
ANZ	3	\$0.9m	3	\$0.9m	-	-
BCC	4	\$13.7m	1	\$4.5m	\$6.4m	\$2.8m
Euler Hermes (now Allianz)	2	\$35.8m	1	\$1.3m	\$34.5m	-
NAB	8	\$26.1m	2	\$1.7m	\$24.2m	\$0.2m
Vero	16	\$72.2m	6	\$7.7m	\$31.1m	\$33.4m
<b>Total</b>	<b>79</b>	<b>\$289.9m</b>	<b>26</b>	<b>\$28.9m</b>	<b>\$180.7m</b>	<b>\$80.3m</b>

We note that the value delivered to the administration through return of bank guarantees (totalling c. \$80.3m to date) materially exceeds the value estimated in our VA Report of c. \$56.2m. These activities have materially reduced security bonding provider unsecured creditor claims by 42.8% more than originally anticipated would be possible.

Where performance securities have been called, the Administrators have been working closely with the project principals and the security facility provider to understand and consider the reasonableness of the actions of the principal in calling on the security and application of the proceeds. The Administrators may bring actions against project principals where performance securities have been called without a proper basis.

At the time of the Administrators’ appointment, 384 individual subcontractor performance bonds/bank guarantees with a total value of \$71.9m were held by Probuild, and a further \$12.9m was held in a New South Wales retention trust account. The Administrators have established a process for the review of security held by project and subcontractor to establish whether:

- Probuild has any rights to enforce against the security held
- Probuild has any ongoing rights to continue to hold the security to protect Probuild’s position in the event defects and/or other issues are identified with works undertaken by the subcontractor at a later time, or
- Where there is no requirement and/or right to continue to hold the performance bonds, for these to be returned to the subcontractor.

We now hold 59 individual subcontractor performance bonds/bank guarantees with a value of \$7.3m, and \$1.6m in the New South Wales retention trust account. These funds primarily relate to the 311 Spencer Street, Greenland and Curtin University projects, and the Administrators are working closely with the principals on these projects to identify any outstanding defects and the process for finalisation and release of the subcontractor security as soon as possible.

#### 2.4.2.2 Cash securities

As discussed at Section 5.7 of our VA Report, in the period leading up to its insolvency Probuild was unable to secure additional headroom in its security bonding facilities. Accordingly, in a number of instances, cash deposits were placed by way of performance security, in particular with councils and other statutory authorities.

The Administrators have worked closely with several parties holding cash for this purpose at the date of our appointment to understand and to follow the requirements for the release of the cash deposits held. This has typically involved:

- confirmation that the cash deposit is held by the authority
- review of the scope and purpose for the security being placed
- assessment of the works undertaken and compliance with the permit or other contractual requirements
- where no defects or non-compliance has been identified, negotiation for the release of the cash security held.

To date, we have recovered approximately \$1.6m of cash from the return of security held by third parties at the date of our appointment, being c. \$0.7m more than estimated at the time of preparing our VA Report.

### 2.4.3 Insurance refunds

In several instances, insurance policies placed by Probuild prior to the administration were based on estimates (for turnover, wages etc) and included adjustment mechanisms which allowed for a return of the policy premium paid based on actuals. Where applicable, the Administrators have worked with Probuild's pre-appointment insurance broker to lodge the required returns and/or declarations to confirm actual results and have recovered c. \$0.7m from policy premium adjustments which is in line with our expectations at the time of preparing our VA Report.

### 2.4.4 Insurance recovery – Discovery Point

At the time of the Administrators' appointment, Probuild had brought proceedings for recovery from insurers of Probuild's subcontractor in relation to a crane collapse at the Discovery Point project in Wollli Creek, NSW. The claim included subrogated claims on behalf of Probuild's insurers who had paid claim amounts to Probuild, as well as Probuild's uninsured loss.

The Administrators reached settlement with the subcontractors' and Probuild's insurers so that the DOCA received a settlement amount in August 2023 which exceeded our estimate at the time of preparing our VA Report. The terms of the settlement are confidential.

### 2.4.5 GST recoveries

#### 2.4.5.1 Final pre-appointment GST return

At the time of the appointment of the Administrators, there was no known claim against the company by the Australian Taxation Office (ATO), and the final pre-appointment BAS return for the period from 1 February 2022 to 22 February 2022 was outstanding. During the DOCA, the Administrators identified the opportunity to recover credit GST for this period and caused the pre-appointment BAS to be lodged, recovering c. \$1.6m from the ATO in March 2023 (noting there was no amount included in our calculation of the estimated outcome for creditors included in our VA Report for this).

#### 2.4.5.2 Recovery of GST on contract price adjustments

As described in **Section 2.4.2** above, to date \$208.6m of bonds issued by Probuild to project principals have been called upon by the beneficiary. Where the bond proceeds have been applied by the principal to an increase in the costs of the delivery of the project (rather than liquidated or other damages claims), the Administrators' view is that this should properly be treated as an adjustment to the contract price, paid by Probuild, and should give rise to a GST decreasing adjustment.

On 1 November 2023, the Administrators received a private ruling from the ATO confirming that the Administrators' interpretation is correct and as a result, there is at least \$1.1m of GST in relation to an initial tranche of projects that should be recoverable in the relevant entity's BAS. This initiative is a significant recovery for the trust/unsecured creditors over and above what was originally estimated at the time of preparing our VA Report.

The Administrators are reviewing documentation in relation to the remaining bonds called by principals to identify whether similar principles may apply.

## 2.5 Legal matters

### 2.5.1 Allianz

At the time of the Administrators' appointment, Probuild had an outstanding progress claim for works undertaken on the West Side Place project. The Administrators pursued recovery of this claim pursuant to the Building and Construction Industry Security of Payments Act 2002 (Victoria) (SOPA). By settlement reached with the project principal, the Administrators recovered \$7.7m in two instalment in July 2022 and September 2022 from this claim.

Allianz Australia Insurance Ltd (**Allianz**) (formerly Euler Hermes) had provided security bond facilities totalling \$34.6m to the project principal on instruction from Probuild. The project principal cashed these bonds following the Administrators appointment.

Allianz subsequently brought proceedings against Probuild alleging that the \$7.7m SOPA claim settlement proceeds received were 'surplus bond monies' which they had a right to recover pursuant to a trust arrangement contained within their Probuild facility documents. The Supreme Court of New South Wales at first instance found in favour of Probuild, however on appeal that decision was overturned (Court of Appeal Decision) and the Administrators were required to pay \$6.4m (being the settlement amount received less the costs of realisation of the asset) to Allianz in April 2023.

The Administrators sought special leave to appeal the Court of Appeal decision to the High Court on grounds that the Court had erred in its decision either because the trust arrangement that Allianz asserted gave them right to claim the 'surplus bond money' was a security interest required to be registered on the Personal Property Securities Register (which it was not), or that the money was not in fact 'surplus bond money' in any case.

At a hearing on 17 November 2023, the High Court refused Probuild's application for special leave to appeal the Court of Appeal Decision. Accordingly, there is no remaining avenue for the Administrators to seek recovery of these monies from Allianz.

### 2.5.2 Cubic mediation

Cubic Interiors (NSW) Pty Ltd (**Cubic**) was a Probuild subcontractor on the Ribbon, NSW project. In November 2021, Cubic entered liquidation, at which time Probuild took steps to access approximately \$5.1m of funds held as retention money held on behalf of Cubic in its NSW retention trust account held in relation to works undertaken by Cubic (i.e. prior to the Administrators' appointment). As at the date of appointment, these funds were commingled in Probuild's general trading account.

The relevant Cubic subcontract was novated to Tianlong Ribbon Development Pty Ltd (**Tianlong**) (the principal on the Ribbon, NSW project that took steps to novate Probuild's subcontracts to its newly appointed builder) on 23 September 2022. Following novation of the Cubic subcontract, Tianlong alleged that Probuild had improperly had recourse to those monies, and that the general trading account was impressed with a trust in favour of Cubic to the value of these retention monies which should properly have been paid to Tianlong under the terms of the novation deed.

While the Administrators did not agree with this position, at mediation the Administrators agreed to settle this dispute with Tianlong on 18 July 2023. The terms of the settlement are confidential.

### 2.5.3 Defended litigation

Pursuant to Section 444E of the Act, there is an automatic stay on proceedings against a company that is subject to DOCA. This automatic stay can only be lifted with leave of the court.

Many applications have been brought against Probuild for leave to proceed under Section 444E. A Court will typically grant leave to proceed under Section 444E of the Act where there is an insurance policy held in the name of the Company that may respond to the applicant's claim.

In all cases, leave to proceed has been granted by the Court on various different terms, including that any orders obtained by the applicant cannot be enforced against Probuild while it remains subject to DOCA.

Since the commencement of the administration, there has been 31 proceedings and 1 arbitration on foot against one of the Companies at various times relating to pre-appointment matters and there are currently 17 proceedings in which a court has granted leave to proceed against a Company pursuant to Section 444E, and several more are expected. **This far exceeds the expected number of claims contemplated at the commencement of the DOCA.** These claims are varied and include, for example, third party liability claims for injuries sustained on projects managed by Probuild and professional negligence claims seeking to rely on Probuild's professional indemnity insurance. Several of these claims are extremely complex and significant in quantum and we expect that it may take several years for these proceedings to conclude. In many instances, where leave to proceed has been granted and there is a responsive insurance policy, the insurer has taken carriage of the defence of the proceeding on the Company's behalf (which is standard practice in these circumstances to minimise costs to the administration however noting that steps are required to be taken by the Administrators to achieve this outcome which result in additional time and cost in the administration). There is a varying level of work required to be undertaken by the Administrators and their legal team on each of these proceedings. There is a risk that the costs associated with this work will significantly reduce, and potentially entirely expend, the assets available for distribution to creditors under the DOCA.

### 2.5.4 DOCA Amendment Application

We refer to our previous two circulars to creditors dated 1 June 2023 and issued 2 June 2023 (**1 June Circular**) and 22 June 2023 (**22 June Circular**) regarding the DBC Application and the Deed Administrators' Application in Queensland Supreme Court Proceedings No BS4023 of 2023 (**Queensland Proceedings**). Unless otherwise defined, capitalised terms in this section 2.5.4 have the meaning given to them in the 1 June Circular. Copies of the 1 June Circular and 22 June Circular are annexed to this report at Appendix E. Since the 22 June Circular, the Administrators have received correspondence from the solicitors for two more potential creditors (Dexus and Cbus) with potentially insured claims against a Company, both of which now also wish to be heard in relation to the Queensland Proceedings.

#### 2.5.4.1 Creditor vote

The Administrators are considering whether, to ensure that the assets available for distribution to creditors under the DOCA are not entirely expended in dealing with the insurance recovery proceedings against the Companies, the DOCA needs to be amended to require the claimants in the insurance recovery proceedings to fund some of the costs of the Companies associated with the insurance recovery proceedings including any holding costs associated with a prolonged DOCA period. The Administrators are considering potential amendments to the DOCA to reflect this.

The Administrators may determine that the best course is to seek directions from the Court in the Queensland Proceedings that the Administrators are justified in convening a meeting of the DOCA creditors, to consider and vote on such proposed amendments to the DOCA. If the Court provided those directions, in due course the Administrators would issue a notice to DOCA creditors convening a meeting and setting out the proposed DOCA amendments, alongside and a detailed explanation of the proposed amendments for consideration by creditors.

#### 2.5.4.2 Creditors' views

If creditors wish to express their views on the Queensland Proceedings, they are encouraged to email the Administrators at [probuid1@deloitte.com.au](mailto:probuid1@deloitte.com.au) as soon as possible, and in any event, by no later than **4pm AEST on 12 December 2023**. The Administrators will be available to address creditor queries by email in response or at the meeting of creditors on 13 December 2023.

### 2.5.5 Other assets

The Administrators are continuing to assess several claims that they may bring pursuant to construction contracts and/or insurance policies in place at the time of their appointment to realise assets for the benefit of creditors.

Given the status of each of these matters (with no proceedings commenced), we are unable to provide particulars to creditors at this time. However, the claims generally relate to claims in the nature of damages for breach of contract by the contract counterparty, insurance claims arising out of bond calls and potential claims for inappropriate recourse to bonds. We will provide a more detailed update to creditors once those claims have been prosecuted or abandoned.

The Administrators are also investigating whether there may be any realisable value from a joint venture held by a Probuild subsidiary company (which is not subject to the DOCA).

## 2.6 Distributions to creditors

As noted in **Section 1.1** above, the DOCA contemplates four (4) separate pools. Distributions have now been made to Pool A and Pool B creditors.

### 2.6.1 Pool A Distribution

Except for the \$2.5m set aside for a Pool B distribution, all assets available in the DOCA were first paid into Pool A to be available to meet outstanding employee entitlements.

A full and final Pool A distribution was paid on 29 September 2022 at a rate of 100c in the \$ on outstanding priority unsecured creditor claims (being claims for outstanding employee entitlements). After payment of this distribution, all remaining Pool A assets became Pool C assets.

### 2.6.2 Pool B Distribution

The DOCA included a separate pool of funds totalling \$2.5m to be made available to 'Small Creditors' (being those owed in total less than \$25,000 including GST). It was a requirement of the DOCA that these funds be distributed to on a pro rata basis and within 45 days after employees have been paid in full.

A full and final Pool B distribution was paid on 24 October 2022 at a rate of 100c in the \$ on admitted Small Creditor claims. After payment of this distribution, the remaining Pool B balance of \$734,727 was transferred to Pool C in accordance with the terms of the DOCA.

### 2.6.3 Pool C Distribution

Following on the work undertaken by the Administrators to identify and realise assets as discussed in **Section 2.4** above, the Deed Administrators now expect there to be at least c. \$13.6m (in a low scenario) available for distribution to Pool C creditors. The Pool C distribution, including expected timing and quantum are discussed in further detail at **Section 4.1** below.

## 2.7 Other matters

### 2.7.1 Deed Administrators' Form 5602

Pursuant to Section 422A of the Act, the Administrators are required to prepare and lodge with ASIC an annual return in relation to each entity that remains in DOCA. The annual return (Form 5602) is required to be lodged within 3 months of the anniversary of the appointment.

The Form 5602 was lodged with ASIC on 20 October 2023. Creditors may obtain a copy of the report from ASIC or may inspect a copy on request with our office, if required.

## 2.8 Outstanding matters to conclusion of the DOCA

The key outstanding matters to be resolved before the conclusion of the DOCA are summarised below:

1. Finalise DOCA **asset realisations**, including:
  - a. GST on contract price adjustments
  - b. Final Project Handover Arrangement payment for the Curtin University project
  - c. Release of cash deposits held by third parties
  - d. Realisation of an interest in a joint venture (held by a Probuild subsidiary that is not subject to DOCA)
  - e. Potential legal and insurance recoveries (details of which cannot be provided at this time as the matters / claims remaining have not yet been brought)
2. Finalise the position in relation to **subcontractor securities** and return these where possible.
3. Resolve the issues in relation to the **Queensland Proceedings** and any **amendments to the DOCA** discussed in **Section 2.5.4**.
4. Resolution of **various insurance proceedings against the Companies**.
5. **Distribution of available funds to Pool C** (and Pool D, if relevant) creditors including **adjudication of all claims** for distribution purposes (noting this is likely to be complex given the nature of some of the breach of contract and damages claims expected).
  - a. As discussed at **Section 4.2**, the Administrators are seeking to pay a first interim distribution to creditors within the next 12 months.
6. Decommissioning and closure of remaining IT and other systems containing the Company's financial and other information.

### 3 Receipts and payments

The Administrators' receipts and payments for the period to 31 October 2023 is summarised below.

	VA Period	DOCA Period	Combined total
	23 Feb 2022	22 Jul 2022 to 31 Oct 2023	23 Feb 2022 to 31 Oct 2023
	VA Total	Pooled DOCA	Total for all entities
<b>\$'000</b>			
<b>Opening cash at Bank</b>	<b>36,235</b>	<b>53,659</b>	<b>36,235</b>
<b>Receipts</b>			
Project related income	91,408	4,045	95,453
Sale of Plant & Equipment	12,171	129	12,300
Pre-Appointment Debtors	1,623	10,402	12,024
Bond & Bank Guarantee returns	3,561	1,567	5,127
Insurance Policy Refunds	601	738	1,339
Pre-Appointment Refund	528	-	528
Other Income	1,762	260	2,021
Bank Interest / fees	5	404	409
Net GST received relating to VA period	-	605	605
DOCA Contribution	-	9,080	9,080
<b>Total Receipts</b>	<b>111,657</b>	<b>27,229</b>	<b>138,886</b>
<b>Payments</b>			
Project suppliers & subcontractors	(66,346)	(5,030)	(71,376)
ASA Project Funds Transfer	(5,644)	(4,122)	(9,766)
Insurance	(6,430)	(157)	(6,587)
Employee Costs	(7,008)	(472)	(7,480)
Taxes and other government charges	(1,956)	-	(1,956)
Site closure costs	(3,618)	(52)	(3,670)
Professional fees	(900)	(450)	(1,349)
Intercompany loan	1,503	-	1,503
Head office and other costs	(3,462)	(1,203)	(4,664)
Transfer of Cash Retentions	-	(13,722)	(13,722)
Court Ordered Settlement Payment	-	(6,363)	(6,363)
Legal fees	(373)	(7,603)	(7,976)
Voluntary Administrators' Remuneration	-	(13,656)	(13,656)
Voluntary Administrators' Expenses	-	(298)	(298)
Deed Administrators' Remuneration	-	(3,848)	(3,848)
Deed Administrators' Expenses	-	(14)	(14)
Priority Creditor Distribution	-	(16,266)	(16,266)
Unsecured Creditor Distribution	-	(1,765)	(1,765)
<b>Total Payments</b>	<b>(94,233)</b>	<b>(75,022)</b>	<b>(169,254)</b>
<b>Movement</b>	<b>17,425</b>	<b>(47,793)</b>	<b>(30,368)</b>
<b>Closing cash at bank</b>	<b>53,660</b>	<b>5,867</b>	<b>5,867</b>

Note: closing cash at bank includes c. \$1.6m of funds held in the NSW retention trust account

We refer creditors to **Appendix F** for a detailed breakdown of Receipts and Payments on an entity-by-entity basis.

## 4 Creditor distribution update

As noted at **Section 1.1** above, the DOCA is made up of four distinct DOCA funds:

DOCA Pool	Description	Status
Pool A	Employee entitlement pool	Distribution complete and surplus Pool A funds transferred to Pool C.
Pool B	Small Creditor pool	Distribution complete and surplus Pool B funds transferred to Pool C.
Pool C	General pool	Funds available for general unsecured creditors of the DOCA companies. The expected outcome for creditors participating in Pool C is discussed in this section of this report.
Pool D	ATO pool	Allocation from Pool A of the proceeds of asset realisations that the ATO would have had access to in liquidation as the only (known) potential creditor in the relevant entities. The Administrators are not aware of any claim by the ATO against the particular DOCA entities and accordingly do not expect this pool to be utilised.

### 4.1 Estimated outcome for Pool C creditors

#### 4.1.1 Administrators estimated statement of position

Notes	Receipts and Future estimated receipts and payments to 31 October 2023		Estimated outcome	
	Low	High	Low	High
<b>Opening cash at Bank</b>			<b>36,235</b>	<b>36,235</b>
<b>Receipts</b>				
<b>Total receipts to 31 Oct 23 per R&amp;P</b>			<b>138,281</b>	<b>138,281</b>
<b>Future expected receipts</b>				
WBHOI Creditors Trust distribution	1	12,000	12,000	12,000
GST on bond calls	2	-	1,100	1,100
Insurance recoveries	3	-	-	Unknown
Curtin University Settlement	4	-	816	816
Bond & Bank Guarantee returns	5	-	375	Unknown
<b>Total Receipts</b>		<b>138,281</b>	<b>14,291</b>	<b>Unknown</b>
<b>Payments</b>				
<b>Total payments to 31 Oct 23 per R&amp;P</b>			<b>(168,649)</b>	<b>(168,649)</b>
<b>Future expected payments</b>				
Legal fees	6	-	(1,502)	Unknown
Ongoing maintenance costs (i.e. IT systems, consultants)	7	-	(500)	(750)
Distribution of remaining funds in NSW retention trust account		-	(1,605)	(1,605)
Voluntary Administrators' Remuneration	8	-	(901)	(901)
Deed Administrators' Remuneration	9	-	(2,000)	(2,000)
<b>Total Payments</b>		<b>(168,649)</b>	<b>(6,508)</b>	<b>Unknown</b>
<b>Movement</b>		<b>(30,368)</b>	<b>7,783</b>	<b>Unknown</b>
<b>Closing cash at bank (funds available for distribution to creditors)</b>			<b>13,650</b>	<b>Unknown</b>

#### Notes

- As detailed in Section 4.2 & Section 9.3 of the VA Report, Probuild Constructions (Aust) Pty Ltd is a creditor of the WBHOI Creditors Trust, including an intercompany loan outstanding at the time of the Administrators' appointment (c. \$42m) and the assignment of WBHO Construction SA's claim against WBHOI as a guarantor of the CBA guarantee facility (at least \$92m). The approximate distribution of c. \$12m (on Probuild's claim of \$134m) represents a discount to the estimated outcome for unsecured creditors of the WBHOI Creditors Trust as most recently advised by the trustee. In a circular to beneficiaries dated 4 December 2023, the Trustee of the WBHOI Creditors' Trust indicated that an interim distribution of 2.5c in the \$ may be paid in the first half of 2024. In the event an interim distribution is received from the WBHOI Creditors' Trust, the Administrators may be in a position to make an interim Pool C distribution (refer **Section 4.2** below).

2. Refer **Section 2.4.5** above.
3. Any legal and/or insurance claim recoveries are unknown at this time (refer **Section 2.4** above).
4. A final payment is expected to be recovered in relation to a project handover agreement in relation to the Curtin University project.
5. Refer to **Section 2.4.2.2**. The low scenario reflects the expected return of at least 50% of a particular cash-backed security that will cause the cash currently supporting it to be released to the administration. There are other outstanding cash deposits and cash-backed securities that we continue to liaise with the beneficiaries of to secure release.
6. In a low scenario, we expect to incur further legal fees in the sum of c. \$1.5m reflecting the complexity in attending to the outstanding matters in the DOCA including the many insurance recovery proceedings against the Companies and the Queensland Proceedings. The expected legal costs in a high scenario are unknown.
7. We have retained a provision for a further \$500k of costs related to the maintenance of records and all other costs in the DOCA, rising to \$750k in the high scenario reflecting that we may maintain the administration for a longer period in this scenario to pursue recovery of legal and insurance claims. This outcome assumes that the DOCA can be amended in a manner foreshadowed at **Section 2.5.4** which will provide the Administrators with certainty as to the coverage of costs associated with the various insurance recovery proceedings against the Companies (including the holding costs of any prolonged DOCA period).
8. In line with the Remuneration Approval Report dated 6 December 2023 attached to this report, the Administrators incurred an additional \$900k in time and resources during the Voluntary Administration due to a delay in the execution of the DOCA which we seek approval of from creditors.
9. In line with the Remuneration Approval Report dated 6 December 2023 attached to this report, the Administrators are seeking approval for costs incurred to 15 November 2023 in excess of the DOCA remuneration previously approved by creditors, and a further \$1m in remuneration from 16 November 2023 which is expected to cover a circa 12-month period, for reasons outlined in **Section 1** of the Remuneration Approval Report. We have illustratively included a provision for an additional \$1m should the administration extend beyond this 12-month period. We will seek approval from creditors for any such additional remuneration if it is required. This outcome assumes that the DOCA can be amended in a manner foreshadowed at **Section 2.5.4** which will provide the Administrators with certainty as to the coverage of costs associated with the various insurance recovery proceedings against the Companies (including the holding costs of any prolonged DOCA period).

#### 4.1.2 Estimated range of outcomes for Pool C creditors

The Administrators current estimate of the range of funds expected to be available for unsecured creditors, set against the estimate included in our VA Report is provided below:

Estimated amount available for distribution to Pool C creditors	Low	High
Per VA Report	\$9.4m	\$45.1m
Current	\$13.6m	Unknown
<i>Movement</i>	<i>+4.2m</i> <i>(44.6% improvement)</i>	<i>Unknown</i>

In our VA Report, the Administrators estimated the funds expected to be available to unsecured Pool C creditors to be in the range from \$9.4m to \$45.1m. In the Low scenario, this has now improved to \$13.6m (an uplift of 44.6%) (which assumes that the additional remuneration sought in the remuneration report accompanying this report is approved). But for the Queensland Proceedings and various insurance recovery proceedings against the Companies discussed at **Section 2.5** of this report, the Administrators would expect to be in a position to conclude all matters in the DOCA by June 2025.

A detailed reconciliation of the further asset realisations and costs estimated by the Administrators is included at **Section 4.1.1** above.

This outcome assumes that the DOCA can be amended in a manner foreshadowed at **Section 2.5.4** which will provide the Administrators with certainty as to the coverage of costs associated with the various insurance recovery proceedings against the Companies (including the holding costs of any prolonged DOCA period). If the DOCA is not amended in this way, or the DOCA is amended in such a way that the Administrators do not have coverage of costs associated with the various insurance recovery proceedings against the Companies (including



the holding costs of any prolonged DOCA period), it is likely that the outcomes for creditors will reduce from those estimated above with additional holding costs eroding the assets otherwise available for creditors for an unknown period of time.

#### 4.2 Interim Pool C distribution

As illustrated in **Section 4.1** above, achievement of the estimated 'Low' outcome for Pool C creditors is reliant on a small number of remaining asset realisations, in particular the interim distribution from the WBHOI Creditors' Trust.

Based on the expected timing to recover those remaining required asset realisations, the Administrators expect to be in a position to make an interim distribution to Pool C creditors within the next 12 months. This outcome assumes that the DOCA can be amended in a manner foreshadowed at **Section 2.5.4** which will provide the Administrators with certainty as to the coverage of costs associated with the various insurance recovery proceedings against the Companies (including the holding costs of any prolonged DOCA period). We will provide further information to creditors including the quantum and timing of funds available for distribution, and the claim adjudication process once we have recovered sufficient asset realisations for an interim distribution to be possible.

## 5 Remuneration approval

As outlined in **Section 1.3** of this Report, a meeting of creditors will be convened whereby creditors will be asked to approve our remuneration. In accordance with previous meetings in the administrations, voting will be conducted via the Halo platform. Creditors will be able to cast their vote from 9am (AEDT) on 7 December 2023, and voting will close during the meeting to be held at 11am (AEDT) on 13 December 2023. Instructions for voting are included in **Appendix D** and within Halo. Please note that in order to vote you must first have lodged a claim in the administration. A claim can be lodged electronically through the Halo platform at <https://aurestructuring.deloitte-halo.com/probuild/?Pg=3>.

A remuneration approval report has also been included in this report to enable you to make an informed assessment regarding the remuneration approval being sought.

The Administrators are seeking further approval for fees due to unforeseen and complex matters which were not anticipated at the time the original remuneration forecast and report was prepared. To appropriately address and resolve these matters, the Administrators have been required to dedicate more time and resources than initially forecasted, and accordingly the remuneration approved by creditors previously has been exhausted. **Much of this time has been incurred to realise and preserve assets, which has resulted in the improved outcomes for creditors described in Section 4.1 of this report.**

Additionally, at the time of preparation of the Remuneration Approval Report attached to our VA Report, it was anticipated that the Deed of Company Arrangement (DOCA) would be executed shortly following the meeting. Ultimately, it took longer than anticipated for the DOCA to be executed, with it being executed on the last possible day permitted by the Act. Consequently, several tasks that were expected to be completed during the DOCA were instead completed during the Voluntary Administration (VA) period resulting in more fees and costs being incurred in the VA period than anticipated when forecasting our future remuneration for the period from the 2nd meeting of creditors in the VA to execution of the DOCA. These tasks include:

- time sensitive and intensive tasks associated with trading the business and handing over the novated projects to Roberts Co
- obtaining full forensic data backups of the Group's electronic books and records to preserve access to information that may be required to pursue assets (including insurance and other legal claims) in the DOCA or Liquidation.

We are now seeking approval of this additional VA remuneration from creditors of Probuild Constructions (Aust) Pty Ltd only.

We trust creditors find this report information and useful. In the event you have any queries regarding the contents of this report, or the administration in general, please do not hesitate to contact us at [probuid1@deloitte.com.au](mailto:probuid1@deloitte.com.au).

Yours faithfully



.....  
**Sal Algeri**

Joint and Several Deed Administrator

## Appendix A

### Entities subject to Deed of Company Arrangement

Company	ACN
ACN 098 866 794 Pty Ltd	098 866 794
Contexx Holdings Pty Ltd	144 707 022
Contexx Pty Ltd	147 249 796
Monaco Hickey Pty Ltd	144 945 611
Northcoast Holdings Pty Ltd	009 296 780
PCA (QLD) Pty Ltd	141 148 245
Probuild Civil Pty Ltd	010 870 587
Probuild Constructions (Aust) Pty Ltd	095 250 945
Probuild Constructions (NSW) Pty Ltd	165 675 874
Probuild Constructions (QLD) Pty Ltd	166 966 034
Probuild Constructions (VIC) Pty Ltd	165 675 865
Probuild Constructions (WA) Pty Ltd	165 676 095
Prodev Investments 4 Pty Ltd	629 246 653
Prodev Murphy Pty Ltd	120 758 803
WBHO Australia Pty Ltd	095 983 681
WBHO Construction Australia Pty Ltd	149 901 931

# Appendix B

## Notice of Meeting of Creditors

### FORM 529

CORPORATIONS ACT 2001  
Section 439A

Insolvency Practice Rules (Corporations)  
75-10, 75-15, 75-225

**WBHO Australia Pty Ltd ACN 095 983 681  
and certain subsidiaries listed in Appendix A  
(All Subject to Deed of Company Arrangement)**

Notice is given under *Insolvency Practice Rules (Corporations) (IPR)* Section 75-225 that a virtual concurrent meeting of creditors of the abovenamed entities will be held:

Place: Deloitte, Riverside Centre, 123 Eagle Street, Brisbane QLD 4000  
Date: Wednesday, 13 December 2023  
Time: 11:00AM Australian Eastern Daylight Time  
URL: <https://aurestructuring.deloitte-halo.com/probuild/?Pg=3>

Due to the geographic spread of creditors for each of the Companies, a virtual concurrent meeting will be held. All creditors are expected to attend by electronic means, and no physical place of meeting will be made available.

### Agenda

The purpose of the meeting is:

- a. to provide an update to creditors regarding the progress of the Deed of Company Arrangement (DOCA), and
- b. summarise the current status and outstanding actions in the DOCA.

At the meeting, creditors may also, by resolution:

- a. consider approval of the Voluntary Administrators' remuneration and disbursements, and
- b. consider approval of the Deed Administrators' remuneration and disbursements.

### Votes to be taken on a poll

Votes taken at the Meeting will be taken on a poll. This means that, to calculate the outcome of each resolution, the Deed Administrators must calculate the number and dollar value of each vote in favour together with the number and dollar value of each vote against. A resolution is taken to have passed if a majority in both number and dollar value have voted in favour.

### Attendance at this meeting is not compulsory.

Creditors may access electronic proofs of debt via the Deloitte Halo Platform at <https://aurestructuring.deloitte-halo.com/probuild/?Pg=3>. Electronic proxy forms will also be available to creditors in the Deloitte Halo Platform.

Proofs of debt must be lodged on the Deloitte Halo Platform by **5:00PM (AEDT) on Monday, 11 December 2023**.

Creditors may attend virtually and vote in person electronically, by proxy or attorney. The appointment of a proxy must be in the approved form. A special proxy can be lodged confirming approval or rejection of each resolution. Proxy forms must be lodged through the Halo Platform not later than **5:00PM (AEDT) on Monday, 11 December 2023**. An attorney of the creditor must show the instrument by which he or she is appointed to the Chairperson of the meeting, prior to the commencement of the meeting.

Please note under IPR Section 75-25 if you wish to participate in the meeting using such facilities you must give the convenor not later than **5:00PM (AEDT) on Monday, 11 December 2023** a written statement, lodged via the Deloitte Halo Platform, setting out:

- i. the name of the person and of the proxy or attorney (if any); and
- ii. an email address to which notices to the person, proxy or attorney may be sent; and
- iii. a method by which the person, proxy or attorney may be contacted for the purposes of the meeting.

Upon receipt of the abovementioned statement of participation, a link for the virtual meeting will be displayed at **10:00AM (AEDT) on Wednesday, 13 December 2023** after you log onto the Deloitte Halo Platform.

Please note that additional guides on the process of lodging a claim and registering/voting for the meeting can be found in the Halo Platform here – <https://aurestructuring.deloitte-halo.com/probuild/?Pg=3>

Dated: 6 December 2023



**Sal Algeri**

Joint and Several Deed Administrator  
Deloitte Financial Advisory Pty Ltd  
477 Collins Street  
MELBOURNE VIC 3000

# Appendix C

## Remuneration Approval Report

## Remuneration Approval Report

6 December 2023

WBHO Australia Pty Ltd ACN 095 983 681  
and certain subsidiaries listed in Appendix A  
(all Subject to Deed of Company Arrangement)  
(Probuild Group or Companies)

### Contents

1	Introduction	2
2	Summary	3
3	Declaration	3
4	Remuneration	3
5	Likely impact on dividends	6
6	Summary of receipts and payments	7
7	Queries	7



## 1 Introduction

This remuneration report dated 6 December 2023 covers the following administrations (all Subject to Deed of Company Arrangement) (**the Companies**):

Name	Date of appointment	ACN
ACN 098 866 794 Pty Ltd	23-Feb-2022	ACN 098 866 794
Contexx Holdings Pty Ltd	23-Feb-2022	ACN 144 707 022
Contexx Pty Ltd	23-Feb-2022	ACN 147 249 796
Monaco Hickey Pty Ltd	23-Feb-2022	ACN 144 945 611
Northcoast Holdings Pty Ltd	23-Feb-2022	ACN 009 296 780
PCA (QLD) Pty Ltd	23-Feb-2022	ACN 141 148 245
Probuild Civil Pty Ltd	23-Feb-2022	ACN 010 870 587
Probuild Constructions (Aust) Pty Ltd	23-Feb-2022	ACN 095 250 945
Probuild Constructions (NSW) Pty Ltd	23-Feb-2022	ACN 165 675 874
Probuild Constructions (QLD) Pty Ltd	23-Feb-2022	ACN 166 966 034
Probuild Constructions (VIC) Pty Ltd	23-Feb-2022	ACN 165 675 865
Probuild Constructions (WA) Pty Ltd	23-Feb-2022	ACN 165 676 095
Prodev Investments 4 Pty Ltd	23-Feb-2022	ACN 629 246 653
Prodev Murphy Pty Ltd	23-Feb-2022	ACN 120 758 803
WBHO Australia Pty Ltd	23-Feb-2022	ACN 095 983 681
WBHO Construction Australia Pty Ltd	23-Feb-2022	ACN 149 901 931

As discussed in the Update Report to Creditors dated 6 December 2023 (**Update Report**) the Deed Administrators are seeking further approval for fees due to unforeseen and complex matters which were not anticipated at the time the original remuneration forecast and report was prepared. To appropriately address and resolve these matters, the Administrators have been required to dedicate more time and resources than initially forecasted, and accordingly the remuneration approved by creditors previously has been exhausted. Much of this time has been incurred to realise and preserve assets, which has resulted in the improved outcomes for creditors described in **Section 4.2** of the Update Report.

Additionally, at the time of preparation of the Remuneration Approval Report attached to our VA Report, it was anticipated that the Deed of Company Arrangement (DOCA) would be executed shortly following the meeting. Ultimately, it took longer than anticipated for the DOCA to be executed, with it being executed on the last possible day permitted by the Act. Consequently, several tasks that were expected to be completed during the DOCA were instead completed during the Voluntary Administration (VA) period resulting in more fees and costs being incurred in the VA period than anticipated when forecasting our future remuneration for the period from the 2nd meeting of creditors in the VA to execution of the DOCA. These tasks include:

- time sensitive and intensive tasks associated with trading the business and handing over the novated projects to Roberts Co
- obtaining full forensic data backups of the Group's electronic books and records to preserve access to information that may be required to pursue assets (including insurance and other legal claims) in the DOCA or Liquidation.

We are now seeking approval of this additional VA remuneration from creditors of Probuild Constructions (Aust) Pty Ltd (**PCA**) only.

## 2 Summary

We are asking creditors to approve the following remuneration (exclusive of GST):

PCA	Schedule number	Resolution	Amount \$ (Excl GST)
PCA VA Actual: 24 June 2022 to 20 July 2022 (VA)	1.1	1	900,551.25
DOCA Actual: 23 May 2023 to 15 November 2023	2.1	2	676,424.25
DOCA Future: From 16 November 2023	3.1	3	1,000,000.00
<b>Total</b>			<b>2,576,975.50</b>

Approval for the future remuneration sought is based on an estimate of the work necessary to be completed over the next 12 months. We expect that should the DOCA not be completed within this period, we will seek further remuneration approval from creditors at that time.

## 3 Declaration

We, Sal Algeri, Jason Tracy, Matt Donnelly and David Orr, have undertaken an assessment of the remuneration and disbursement claims for our appointment as Joint and Several Administrators of the Companies in accordance with the law and applicable professional standards. We are satisfied the remuneration and disbursements claimed are necessary and proper.

## 4 Remuneration

### 4.1 Remuneration method chosen and hourly rates

For the reasons outlined in our Initial Remuneration Notice (IRN) dated 24 February 2022, we propose that our remuneration be calculated on a time basis. The rates for our remuneration calculation which were provided in our IRN are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the Administrations and the role they undertake. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

Given the time that has passed since the rates set out in our IRN were set, we also provide notice to creditors that for all time incurred from 1 January 2024, the updated rates included below will be applied to the calculation of our remuneration.

### Deloitte – Restructuring Services

Title	Description	Hourly Rate (excl. GST)	
		To 31-Dec-23	From 1-Jan-24
Appointee	Registered liquidator. Brings his or her specialist skills to the administration or insolvency task.	\$825	\$890
Partner	Registered liquidator. Brings his or her specialist skills to the administration or insolvency task.	\$825	\$890
Principal/ Consultant	Typically, CA or CPA qualified with in excess of 10 years' experience on insolvency matters with a number of years at manager level. Answerable to the appointee but otherwise responsible for all aspects of an administration. Capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in his/her own right.	\$750	\$780

Director	Typically CA or CPA qualified with in excess of 7 years' experience on insolvency matters with a number of years at manager level. Answerable to the appointee but otherwise responsible for all aspects of an administration. Capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in his/her own right.	\$650	\$780
Associate Director	Typically CA or CPA qualified with in excess of 5 years' experience on insolvency matters with a number of years at manager level. Answerable to the appointee and responsible for material aspects of an administration. Experienced in and capable of controlling most aspects of an administration.	\$575	\$675
Manager	Typically CA or CPA qualified with 5 to 8 years' experience working on insolvency matters. Will have experience conducting administrations and directing a number of staff.	\$550	\$580
Senior Analyst	Typically completed or near completion of CA or CPA qualifications with 3 to 6 years insolvency experience. Assists in planning and control of smaller matters as well as performing some more difficult tasks on larger matters.	\$475	\$500
Analyst	Typically studying towards CA or CPA qualification with 1 to 4 years insolvency experience. Works under supervision of more senior staff in performing day-to-day fieldwork.	\$425	\$460
Graduate	Junior staff member who has completed a university degree with less than one year's experience working on insolvency matters. Works under supervision of more senior staff in performing day-to-day fieldwork. This may include staff located in other offices of Deloitte overseas. These staff work under the supervision of Australian staff with insolvency experience.	\$325	\$350
Secretary	Advanced secretarial skills	\$225	\$250
Other Clerical	Support secretarial and administrative skills	\$225	\$250
Other Junior	Junior staff member who has not yet completed a university degree with less than one year's experience working on insolvency matters. Works under supervision of more senior staff in performing day-to-day fieldwork.	\$230	\$315

During the administrations, work has also been completed by other Deloitte staff from our Tax & Legal, PDS Group and Risk Advisory practices. The rates charged by these staff are the same as those charged by Deloitte Restructuring staff.

#### 4.2 Remuneration claim resolutions

Creditors will be asked to pass the following resolutions to approve our remuneration. Details to support these resolutions are included in each of the respective schedules listed below.

In respect of the estimated future remuneration resolutions, should a lesser amount be incurred, only the incurred amount will be charged and drawn. Should a greater amount be incurred, only the capped amount approved by creditors will be charged and we may seek further approval of the additional fees incurred.

**Resolution 1 – Actual PCA Joint and Several Voluntary Administrators’ remuneration from 24 June 2022 to 20 July 2022**

*“That the remuneration of the Voluntary Administrators, for the period of the administration from 24 June 2022 to 20 July 2022 (completion of the Voluntary Administration), calculated at the hourly rates as detailed in the Initial Remuneration Notice of 24 February 2022, is approved for payment in the sum of \$900,551.25 exclusive of GST, and that the Administrators can draw the remuneration immediately or as required.”*

**Resolution 2 – Actual Joint and Several Deed Administrators’ remuneration from 23 May 2023 to 15 November 2023**

*“That the remuneration of the Deed Administrators, for the period of the administration from 23 May 2023 to 15 November 2023, calculated at the hourly rates as detailed in the Initial Remuneration Notice of 24 February 2022, is approved for payment in the sum of \$676,424.25 exclusive of GST, and that the Deed Administrators can draw the remuneration immediately or as required.”*

**Resolution 3 – Future Joint and Several Deed Administrators’ remuneration from 16 November 2023**

*“That the future remuneration of the Deed Administrators from 16 November 2023, is determined at a sum equal to the cost of time spent by the Deed Administrators and their partners and staff, calculated at the hourly rates as detailed in the Initial Remuneration Notice of 24 February 2022 (for time incurred up to and including 31 December 2023) or set out in the Remuneration Approval Report dated 6 December 2023 (for time from 1 January 2024), up to a capped amount of \$1,000,000, exclusive of GST, and that the Deed Administrators can draw the remuneration on a monthly basis or as required.”*

### 4.3 Total remuneration reconciliation

The remuneration approval we have received to date for the entities for which we seek additional remuneration approvals is set out in the table below (excluding GST, legal fees and disbursements).

	Amount \$ (Excl GST)
Probuild Constructions (Aust) Pty Ltd Voluntary Administration (PCA VA)	11,449,286.75
Probuild Constructions (Aust) Pty Ltd (and others) DOCA	3,498,680.00

As set out in **Section 2** of this report, the total remuneration we are seeking approval is for the sum of \$2,576,975.50. This is in addition to previously approved Administrators' remuneration in the sum of \$11,449,286.75 for the PCA Voluntary Administration and \$3,498,680.00 for the DOCA. The remuneration has increased compared to our initial estimated range primarily because of significant work involved in:

- extensive correspondence with Principals and subcontractors' lawyers regarding the execution of project novation and handover agreements
- realisation of complex assets (contractual and insurance claims) which in many instances have been subject to actual or potential legal proceedings
- engaging with project principals regarding performance bond positions, including reconciliation of the application of the proceeds received by principals that cashed securities
- managing projects in the Defects Liability Period (DLP), including reviewing outstanding defects lists, assessing the nature of defects and the costs of rectifying same, engaging with bond and surety providers, and liaising with clients regarding releases of security and bond calls
- identifying unfixed assets with company team including locations, costs and amounts paid, and entering negotiations with project principals for the purchase of same
- liaising with suppliers regarding liens over inventory and materials held by the Company and confirm whether such liens are valid
- extensive correspondence with legal counsel regarding a large number of legal actions brought against the Probuild entities (generally in order to seek recovery of alleged losses from Probuild's insurers) including where required preparation of required court materials
- together with legal counsel, giving consideration to potentially required amendments to the DOCA terms following lodgement of an application by an alleged creditor seeking to amend the DOCA.

We refer creditors to Schedule 1.3 and 2.3 of this report which illustrate the variance between our original estimate and the actual time and material incurred.

Further, at this stage of the administration, given the uncertainty surrounding the further costs that will be incurred in the DOCA, we consider it appropriate to seek approval of our remuneration from creditors on a periodic basis (rather than seeking a single approval to the end of the administration). In preparing this remuneration approval report, we are seeking approval from creditors for a further \$1,000,000 of future remuneration (from 16 November 2023), which we expect will cover our remuneration for the next 12-month period. We expect that should the DOCA not be completed within this period, we will seek further remuneration approval from creditors at that time.

## 5 Likely impact on dividends

The Act sets the order for payment of claims against the Companies, and it provides for remuneration of the administrations to be paid in priority to other claims. This ensures that when there are sufficient funds, the Administrators receive payment for the work done to recover assets, investigate the Companies' affairs, report to creditors and ASIC and distribute any available funds. Even if creditors approve our remuneration, this does not guarantee that we will be paid, as we are only paid if sufficient assets are recovered.

Since our appointment originally as Voluntary Administrators, we focused on maximising the chances of the Companies, or as much as possible of its business, to continue in existence in order to preserve jobs of employees and

provide a better return to creditors which we were successful in doing through the Roberts Co transaction discussed in **Section 8** of the VA Report. While the focus in particular in the DOCA has been on prioritising those tasks relating to the realisation of assets, we are also required to perform a number of tasks which do not relate to the preservation and realisation of assets, for example responding to creditors enquiries, undertaking statutory tasks, assisting with employee queries and calculating entitlements, responding to legal actions brought against the DOCA companies, adjudicating creditor claims and distributing funds in accordance with the DOCA terms.

Any dividend to creditors will be impacted not just by our fees and disbursements, but also by the amount of assets that we are able to recover, and the amount of creditor claims that are admitted to participate in any dividend.

For further information regarding estimated return to creditors, please refer to **Section 4** of the Update Report.

## 6 Summary of receipts and payments

Please refer to **Section 3** of the Update Report for a summary of the receipts and payments for the administrations as at 31 October 2023.

## 7 Queries

If you have any queries in relation to the information in this report, please email us at [probuild1@deloitte.com.au](mailto:probuild1@deloitte.com.au).

You can also access information which may assist you on the following websites:

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for INFO 85).

Further supporting documentation for my remuneration claim can be provided to creditors on request.

## Attachments:

Entity	Schedule	Resolution	Description
PCA VA	1.1	1	Time charged to each major task
	1.2		Detailed description of tasks
	1.3		Explanation where remuneration previously approved
All entities listed in Schedule 4.1 and subject to DOCA	2.1	2	Time charged to each major task
	2.2		Detailed description of tasks
	2.3		Explanation where remuneration previously approved
All entities listed in Schedule 4.1 and subject to DOCA	3.1	3	Time to be charged to each major task
	3.2		Detailed description of tasks

## Schedule 1.1 | Time charged to each major task

### Probuild Constructions (Aust) Pty Ltd (Administrators Appointed)

Resolution 1: Remuneration from 24 June 2022 to 20 July 2022 (completion of the VA)

#### Time charged by Administrators' staff

Position	\$/hour	Total actual hours	Total (\$)	Task Area											
				Administration		Assets		Creditors		Employees		Trade On		Investigations	
				Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Partner	825	96.0	79,200.00	27.1	22,357.50	13.4	11,055.00	52.0	42,900.00	3.5	2,887.50	-	-	-	-
Principal	750	77.1	57,825.00	26.8	20,100.00	26.5	19,875.00	6.0	4,500.00	-	-	16.8	12,600.00	1.0	750.00
Director	650	452.9	294,385.00	160.2	104,130.00	44.0	28,600.00	20.3	13,195.00	41.8	27,170.00	-	-	186.6	121,290.00
Associate Director	575	163.9	94,242.50	46.9	26,967.50	8.8	5,060.00	96.0	55,200.00	0.1	57.50	0.6	345.00	11.5	6,612.50
Manager	550	200.1	110,055.00	11.9	6,545.00	-	-	-	-	188.2	103,510.00	-	-	-	-
Senior Analyst	475	198.9	94,477.50	80.8	38,380.00	8.3	3,942.50	26.6	12,635.00	-	-	40.0	19,000.00	43.2	20,520.00
Analyst	425	194.9	82,851.75	42.2	17,935.00	4.0	1,719.25	39.0	16,575.00	92.9	39,482.50	-	-	16.8	7,140.00
Graduate	325	232.9	75,692.50	142.8	46,410.00	44.5	14,462.50	12.5	4,062.50	5.6	1,820.00	20.5	6,662.50	7.0	2,275.00
Other Junior	230	51.4	11,822.00	47.1	10,833.00	-	-	3.8	874.00	0.5	115.00	-	-	-	-
Other Clerical	225	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total</b>		<b>1,668.1</b>	<b>900,551.25</b>	<b>585.8</b>	<b>293,658.00</b>	<b>149.5</b>	<b>84,714.25</b>	<b>256.2</b>	<b>149,941.50</b>	<b>332.6</b>	<b>175,042.50</b>	<b>77.9</b>	<b>38,607.50</b>	<b>266.1</b>	<b>158,587.50</b>
GST			90,055.13												
<b>Total (including GST)</b>			<b>990,606.38</b>												
<i>Average hourly rate</i>					<i>501</i>		<i>566</i>		<i>585</i>		<i>526</i>		<i>496</i>		<i>596</i>

## Schedule 1.2 | Detailed description of tasks performed

### Probuild Constructions (Aust) Pty Ltd (Administrators Appointed)

*Resolution 1: Remuneration from 24 June 2022 to 20 July 2022 (completion of the VA)*

#### Description of works completed for the administration from 24 June 2022 to 20 July 2022

Task Area	General Description	Includes
<b>Assets</b> <b>149.5 hours</b> <b>\$84,714.25</b>	Sale of business	<ul style="list-style-type: none"> <li>Facilitating detailed discussions and interpretation work on operationalising the agreements with the purchaser (Roberts Co)</li> <li>Discussions and meetings with internal staff and lawyers to finalise the sale process</li> <li>Liaising with the Company's staff regarding transfer of employment</li> <li>Considering taxation impacts of DOCA proposal</li> <li>Review and execute asset sale agreement</li> <li>Continuing to liaise with solicitors regarding deeds of novation for client contracts and subcontracts and consultants and execution of same</li> <li>Continuing discussions with solicitors and Roberts Co to compile correspondence and continuing discussions required to transfer relevant leases to purchasers</li> <li>Documentation of the sale process and outcomes for creditors and external stakeholders</li> <li>Ongoing engagement with Roberts Co in respect of requirements under the Transitional Services Agreement</li> </ul>
	Plant and equipment	<ul style="list-style-type: none"> <li>Ongoing internal meetings to discuss realisation of plant and equipment, in particular for projects outside of the sale agreement with Roberts Co and Head Office equipment</li> <li>Liaising with auctioneers to attend to collection and realisations of plant and equipment</li> <li>Updating assets schedule and monitoring recoveries</li> <li>Liaising with storers regarding liens over plant and equipment</li> <li>realisation of complex assets (contractual and insurance claims) which in many instances have been subject to actual or potential legal proceedings</li> </ul>
	Assets subject to specific charges	<ul style="list-style-type: none"> <li>Liaising with secured creditors regarding releases for assets included in sale agreement</li> <li>Continuing discussions with Probuild team, Roberts Co and Principals regarding purchase of Meraki financed equipment/novation of agreement</li> <li>Corresponding with Group's team and Principal regarding novation of head contracts</li> <li>Engage solicitors and liaise with Principal in executing site Handover Agreement</li> </ul>
	Debtors	<ul style="list-style-type: none"> <li>Correspondence with debtors</li> <li>Corresponding with debt collectors in relation to debtors</li> <li>Following up correspondence with debtors, and issuing demands where appropriate</li> <li>Monitoring collection of receivables and liaising with debt collectors and solicitors where required</li> </ul>



		<ul style="list-style-type: none"> <li>Calculating and demanding payment of intercompany loans</li> </ul>
	Sale of real property	<ul style="list-style-type: none"> <li>Finalising issues related to the sale of real property at Darlinghurst NSW, including attending to tax issues</li> </ul>
	Other assets	<ul style="list-style-type: none"> <li>Tasks associated with realising other assets including contractual and insurance claims</li> <li>Internal discussions and determination of various subcontractor bank guarantee positions</li> <li>Liaise with solicitors, Principals, and incoming contractor regarding execution of novation deeds</li> <li>Maintaining bank guarantee and novation deed schedule</li> <li>Preparing schedule of remaining assets that may be recoverable in the DOCA</li> <li>Additional time incurred in negotiating and finalising the terms of the DOCA</li> </ul>
<b>Creditors</b> <b>256.2 hours</b> <b>\$149,941.50</b>	General creditor enquiries, requests and directions	<ul style="list-style-type: none"> <li>Receiving and responding to creditor enquiries via inboxes, telephone and Halo platform</li> <li>Reviewing and preparing correspondence to creditors and their representatives via Halo platform, email and post</li> <li>Maintaining creditor request log via Halo platform</li> <li>Considering reasonableness of creditor requests</li> <li>Compiling information requested by creditors</li> <li>Documenting reasons for complying or not complying with requests or directions</li> <li>Corresponding with COI members</li> </ul>
	Deloitte – Forensics	<ul style="list-style-type: none"> <li>Managing the Halo Help inbox to assist creditors with technical Halo queries</li> </ul>
	Deloitte – Risk Advisory	<ul style="list-style-type: none"> <li>Maintaining the claims and voting dashboards in Halo</li> </ul>
	Creditor reports	<ul style="list-style-type: none"> <li>Preparing updates and circulars to creditors</li> <li>Processing 'Return to sender' correspondence</li> <li>Meeting with DOCA proponent and their advisors to process and execute DOCA</li> </ul>
	Dealing with PODs	<ul style="list-style-type: none"> <li>Maintaining register of PODs through Halo platform</li> <li>Creditor data management including processing updates to creditor information in Halo platform</li> <li>Attending to creditor queries regarding information in the Halo creditor platform and submitted PODs</li> <li>Creditor data management including processing updates to creditor information in Halo platform</li> <li>Adjudicating PODs for voting purposes for the second meeting of creditors</li> </ul>
	Creditors meeting	<ul style="list-style-type: none"> <li>Finalise materials for the second meeting of creditors on 30 June 2022</li> <li>Prepare minutes of second meeting of creditors held on 30 June 2022</li> </ul>
	Committee of inspection	<ul style="list-style-type: none"> <li>Corresponding with COI members</li> </ul>
<b>Employees</b>	Employee enquiries	<ul style="list-style-type: none"> <li>Receiving and following up employee enquiries</li> </ul>

332.6 hours \$175,042.50	<ul style="list-style-type: none"> <li>• Reviewing and preparing correspondence to employees via email and Halo</li> <li>• Assist employees with various queries regarding the Halo creditor platform and their employee entitlements</li> <li>• Updating employee contact details in Halo</li> <li>• Assisting the purchaser with transition issues relating to employees</li> </ul>
ATO	<ul style="list-style-type: none"> <li>• Corresponding with the ATO regarding STP lodgements</li> </ul>
Payroll	<ul style="list-style-type: none"> <li>• Reviewing weekly and monthly pay reconciliations and arranging Administrators' approval to process payroll</li> <li>• Reviewing and lodging STP reports</li> <li>• Liaising with superannuation funds</li> <li>• Remittance of Child Support deductions</li> <li>• Reviewing superannuation payment contributions and arranging required approvals</li> <li>• Reviewing and arranging payment of employee termination payments and associated correspondence</li> <li>• Updating cash flow and cost analysis for revised run rate of staff being employed during the administration period</li> <li>• Liaising with the respective state offices regarding payroll tax issues</li> <li>• Liaising with the respective novated leasing companies regarding current arrangements and procedures going forward following transfer of staff to Roberts Co</li> </ul>
Calculation of entitlements	<ul style="list-style-type: none"> <li>• Calculate and review of employee entitlements, including bonuses / retentions; outstanding salary sacrifice; annual leave; leave loading; long serve leave; PILN and redundancy</li> <li>• Reviewing employment contracts; agreements; EBAs</li> <li>• Correspondence with solicitors regarding the review of contracts; agreements and EBAs for the purposes of calculating redundancy and payment in lieu of notice calculations</li> <li>• Preparing letters to staff regarding their outstanding entitlement position</li> <li>• Receiving and preparing correspondence in response to employee's objections to leave entitlements</li> <li>• Employee entitlement calculations specific to Probuild project site requests</li> </ul>
Ongoing planning and strategy	<ul style="list-style-type: none"> <li>• Internal discussions and meetings with employee workstream regarding status, key issues and next steps</li> <li>• Maintaining employee dashboard regarding status of employees across the business</li> </ul>
Correspondence to staff whose positions had been made redundant or where staff had been requested not to serve out the remainder of their notice period	<ul style="list-style-type: none"> <li>• Correspondence to staff whose positions were made redundant including: notice of their redundancy; FAQ; details of EAP support and a separation certificate</li> <li>• Correspondence to employees that resigned that were not required to serve out the remainder of their notice period</li> <li>• Liaising with the relevant redundancy and LSL schemes in each state regarding payments during the administration period and notification of redundancies</li> <li>• Correspondence with Centrelink regarding notification of redundancies</li> </ul>

		<ul style="list-style-type: none"> <li>• Correspondence with each state’s respective workers compensation insurers in relation to redundancies and the recovery of any outstanding reimbursements</li> </ul>
	Sale of business to Roberts Co	<ul style="list-style-type: none"> <li>• Reconciliation of staff salaries to be reimbursed to / from Roberts in accordance with the respective Transitional Service Agreements</li> </ul>
	Staff transferred to an alternate builder / developer	<ul style="list-style-type: none"> <li>• Reconciliation of staff salaries to be reimbursed to/from alternate builder/developer in accordance with the respective Transitional Service Agreements</li> </ul>
	Workers’ compensation claims	<ul style="list-style-type: none"> <li>• Reviewing insurance policies</li> <li>• Receipt of claims</li> <li>• Liaising with claimant</li> <li>• Liaising with insurers and solicitors regarding claims</li> <li>• Identifying potential issues requiring attention of insurance specialists</li> <li>• Corresponding with previous brokers</li> </ul>
<b>Trade On</b> <b>77.9 hours</b> <b>\$38,607.50</b>	Projects	<ul style="list-style-type: none"> <li>• Finalising all tasks associated with transferring projects included in sale agreement to Roberts Co, including: <ul style="list-style-type: none"> <li>- Assisting with negotiating the execution of Subcontractor Deeds of Novation</li> <li>- Facilitating the transfer of employees</li> <li>- Arranging for the return of securities to subcontractors</li> <li>- Arranging transfer of project information</li> </ul> </li> <li>• Finalising all tasks associated with facilitating handover of projects outside sale agreement to Principals/Developers, including: <ul style="list-style-type: none"> <li>- Assisting with negotiating the execution of Subcontractor Deeds</li> <li>- Facilitating the transfer of employees</li> <li>- Arranging for the return of securities to subcontractors</li> <li>- Recovery cash bonds provided to state authorities</li> <li>- Arranging transfer of project information</li> </ul> </li> <li>• All tasks associated with managing projects in the Defects Liability Period (<b>DLP</b>), including continuing to assess the nature of defects and the costs of rectifying same, engaging with bond and surety providers, and liaising with clients regarding releases of security and bond calls</li> </ul>
	Deloitte – PDS Group	<ul style="list-style-type: none"> <li>• Providing project management consulting services to project leads</li> </ul>
	Suppliers	<ul style="list-style-type: none"> <li>• Corresponding with suppliers via phone and email</li> <li>• Maintaining and processing purchase orders for continued supply of goods and services</li> <li>• Reviewing payment requests and arranging required approvals from Administrators</li> </ul>
	Trade on management	<ul style="list-style-type: none"> <li>• Liaising regularly via phone, email and meetings with management and staff regarding trade on operations</li> <li>• Ongoing assessment of cash commitment and trade on cash flow</li> </ul>

		<ul style="list-style-type: none"> <li>• Maintaining purchase order registry</li> </ul>
	Leasing	<ul style="list-style-type: none"> <li>• Liaising with lessors regarding specific occupation issues, including amended lease for Victoria Head Office</li> <li>• Issuing notices of intention not to exercise rights for certain leases where not required following Roberts Co transaction</li> <li>• Adhoc and administrative tasks associated with maintaining leases, including reviewing rental charges and raising purchase orders for the Administration period</li> <li>• Facilitating transfer of leases for sites included in Roberts Co sale agreement</li> </ul>
	Processing receipts and payments	<ul style="list-style-type: none"> <li>• Preparing and authorising payments</li> <li>• Entering receipts and payments into accounting system</li> <li>• Reviewing supplier payments</li> <li>• Liaising with ANZ on all bank accounts</li> <li>• Maintenance of FX hedges</li> </ul>
	Cashflow funding and trading	<ul style="list-style-type: none"> <li>• Reviewing Company's budgets and financial statements</li> <li>• Preparing, maintaining and reviewing cashflow forecasts</li> <li>• Maintenance of receipts and payments made by the Administrators</li> <li>• Preparation and lodgement of BAS</li> <li>• Regular meetings to discuss trading position</li> <li>• Management of bank accounts, including project accounts, retention trusts and cash-backed securities</li> </ul>
<b>Investigation</b> <b>266.1 hours</b> <b>\$158,587.50</b>	Conducting investigation	<ul style="list-style-type: none"> <li>• Further review of Company's Books and records</li> <li>• Reviewing specific transactions</li> <li>• Reviewing Company's books and records</li> <li>• Considering solvency, directors' conduct and holding company liability</li> <li>• Preparing and finalising investigation file</li> <li>• Conducting forensic data backups of the Group's books and records to preserve access to information required in the DOCA or Liquidation</li> <li>•</li> </ul>
<b>Administration</b> <b>585.8 hours</b> <b>\$293,658.00</b>	Correspondence	<ul style="list-style-type: none"> <li>• Maintaining Probuild VA General inbox</li> <li>• Maintaining employee general inbox</li> <li>• Preparing general correspondence including letters, telephone calls and emails</li> </ul>
	DOCA negotiation	<ul style="list-style-type: none"> <li>• Negotiation of full terms of the DOCA with the Proponent</li> <li>• Consideration of protections for Pool A and Pool B creditors</li> <li>• Establishing required accounts to reflect DOCA structure</li> </ul>

Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>• Administrator reviews</li> <li>• Filing of documents and emails</li> <li>• Updating Core IPS checklists</li> <li>• Uploading receipts and payments to IPS for reporting purposes and statutory lodgements</li> </ul>
Insurance	<ul style="list-style-type: none"> <li>• Liaising with insurance broker regarding any ongoing queries</li> </ul>
Bank account administration	<ul style="list-style-type: none"> <li>• Liaising with bank regarding sweeps and transfers</li> <li>• Bank account reconciliations</li> <li>• Opening and closing bank accounts as required</li> </ul>
Preparation of ASIC forms	<ul style="list-style-type: none"> <li>• Preparing and lodging ASIC forms including 5011s</li> <li>• Corresponding with ASIC regarding statutory forms and other ad-hoc matters of attention</li> </ul>
ATO and other statutory reporting	<ul style="list-style-type: none"> <li>• Corresponding with the ATO regarding general taxation matters</li> <li>• Preparing and lodging BASs</li> </ul>
Planning / review	<ul style="list-style-type: none"> <li>• Holding team meetings regarding status and planning of the administration, including for the transition to DOCA as approved by creditors</li> </ul>
Books and records / storage	<ul style="list-style-type: none"> <li>• Maintaining electronic and hard copy files</li> <li>• Dealing with records</li> </ul>
Deloitte – Tax & Legal	<ul style="list-style-type: none"> <li>• Providing tax advice to Administrators regarding various tax issues</li> <li>• Reviewing BASs</li> <li>• Ongoing discussions with project teams regarding correct tax treatment of transactions</li> </ul>
Legal matters	<ul style="list-style-type: none"> <li>• Assisting solicitors with information requests, corresponding with solicitors with respect to all Court matters</li> <li>• Strategy meetings and briefing to solicitors</li> <li>• Liaising with solicitors regarding various legal matters, including those relating to active and legacy projects, insurance claims, stay of proceedings, potential recoveries and court applications concerning various aspects of the VA</li> <li>• Maintaining tracker of legal issues</li> </ul>

**TOTAL**  
**1,668.1 hours**  
**\$900,551.25**

### Schedule 1.3 | Explanation where remuneration previously approved

#### Probuild Constructions (Aust) Pty Ltd (Administrators Appointed)

To date creditors have approved remuneration in the sum of \$11,449,286.75 exclusive of GST in our capacity as Voluntary Administrators'. Our remuneration has exceeded this cap, and, in this report, we are now seeking approval of a further capped amount of \$900,551.25 exclusive of GST in respect to the completion of the voluntary administration.

To assist creditors in understanding how actual expenditure differs to the original estimate, we have constructed the table below.

Task	Fees already approved as at the date of this report (\$)	Total per task (\$)	Difference (\$)	Reasons for differences
Assets	1,271,926.50	2,102,138.50	830,212.00	Additional time spent facilitating the project handover including assisting with the execution of subcontractor deeds of novation, arranging for the transfer of staff, and assessing securities needed to be replaced. Additional time spent on assets realisations and bank guarantee and bonding facilities reviews.
Creditors	2,123,384.00	2,126,653.50	3,269.50	Additional time incurred responding to creditor queries due to delay in the execution of the DOCA.
Employees	2,101,099.50	2,157,752.00	56,652.50	Additional time spent on employee related tasks due to delay in the execution of the DOCA, including calculating employee entitlements, issuing communications to staff regarding the transfer of their employment, and managing redundancies.
Trade on	3,195,135.00	2,992,330.00	(202,805.00)	Less time incurred than anticipated in respect to novated projects included in transfer.
Investigation	852,002.50	334,942.50	(517,060.00)	Less time incurred than anticipated in respect to collecting and reviewing books and records, considering claims available in Liquidation and D&O policy.
Administration	1,905,739.25	2,633,159.00	727,419.75	Further time spent managing exited projects of which Developers and Principals took control. Additional time spent corresponding with lawyers regarding various legal matters. Additional time incurred in negotiating and finalising the terms of the DOCA.
Distribution	-	2,862.50	2,862.50	Time incurred in preparation for employee distribution.
<b>TOTAL</b>	<b>11,449,286.75</b>	<b>12,349,838.00</b>	<b>900,551.25</b>	

Descriptions and costs of the tasks to support my current remuneration approval request are at **Schedule 1.2**.

Schedule 2.1 | Time charged to each major task

Probuild Constructions (Aust) Pty Ltd (Subject to Deed of Company Arrangement)

Resolution 2: Remuneration from 23 May 2023 to 15 November 2023

Time charged by Administrators' staff

Position	\$/hour	Total actual hours	Total (\$)	Task Area														
				Administration		Assets		Creditors		Dividend		Employees		Trade On		Investigations		
				Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	
Partner	825	215.0	177,375.00	186.0	153,450.00	-	-	29.0	23,925.00	-	-	-	-	-	-	-	-	-
Principal	750	59.3	44,475.00	-	-	59.3	44,475.00	-	-	-	-	-	-	-	-	-	-	-
Director	650	234.7	152,555.00	171.4	111,410.00	46.6	30,290.00	11.1	7,215.00	-	-	5.2	3,380.00	-	-	0.4	260.00	-
Associate Director	575	134.4	77,251.25	67.3	38,668.75	1.4	805.00	63.5	36,512.50	-	-	2.2	1,265.00	-	-	-	-	-
Manager	550	30.4	16,720.00	30.4	16,720.00	-	-	-	-	-	-	-	-	-	-	-	-	-
Senior Analyst	475	140.0	66,480.50	92.0	43,680.50	-	-	0.5	237.50	-	-	47.5	22,562.50	-	-	-	-	-
Analyst	425	170.0	72,250.00	109.8	46,665.00	8.7	3,697.50	2.0	850.00	-	-	49.5	21,037.50	-	-	-	-	-
Graduate	325	210.6	68,445.00	144.4	46,930.00	7.2	2,340.00	46.0	14,950.00	-	-	-	-	-	-	13.0	4,225.00	-
Other Junior	230	3.5	805.00	3.5	805.00	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Clerical	225	0.3	67.50	0.3	67.50	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total</b>		<b>1,198.1</b>	<b>676,424.25</b>	<b>805.0</b>	<b>458,396.75</b>	<b>123.2</b>	<b>81,607.50</b>	<b>152.1</b>	<b>83,690.00</b>	<b>-</b>	<b>-</b>	<b>104.4</b>	<b>48,245.00</b>	<b>-</b>	<b>-</b>	<b>13.4</b>	<b>4,485.00</b>	<b>-</b>
GST			67,642.43															
<b>Total (including GST)</b>			<b>744,066.68</b>															
Average hourly rate					569		662		550		n/a		462		n/a			335

## Schedule 2.2 | Detailed description of tasks performed

### Probuild Constructions (Aust) Pty Ltd (Subject to Deed of Company Arrangement)

#### Resolution 2: Remuneration from 23 May 2023 to 15 November 2023

#### Description of work completed from 23 May 2023 to 15 November 2023

Task Area	General Description	Includes
<b>Assets</b> <b>123.2 hours</b> <b>\$71,607.50</b>	Plant and equipment	<ul style="list-style-type: none"> <li>• Updating asset schedules</li> <li>• Preparing asset offsite storage register and reviewing documentation for asset storage</li> <li>• Preparation of master asset listings and reconciliation with PPSR registrations</li> <li>• Corresponding with internal team, the Group's management and external parties regarding various plant and equipment matters, locations and to request further information</li> <li>• Negotiations regarding sale of plant and equipment</li> <li>•</li> </ul>
	Assets subject to specific charges	<ul style="list-style-type: none"> <li>• Reviewing asset listings and secured asset position</li> <li>• Corresponding with Group's team and Principal regarding novation of head contracts</li> <li>• Engage solicitors and liaise with Principal in executing site Handover Agreement</li> <li>• Corresponding with secured creditors to request information on assets subject to security registrations on the PPSR</li> <li>•</li> </ul>
	Debtors	<ul style="list-style-type: none"> <li>• Preparing and maintaining debtor register</li> <li>• Reviewing information on individual debt collection matters and making decisions on collection actions</li> <li>• Issuing correspondence to debtors</li> <li>• Confirming current status of receivables</li> <li>• Collecting outstanding receivables owed</li> <li>• Monitoring collection of receivables and liaising with solicitors where required</li> <li>• Reviewing and negotiating offset claims for pre-appointment receivables owing</li> <li>•</li> </ul>
	Inventory and materials	<ul style="list-style-type: none"> <li>• Identifying unfixed assets including locations, cost and amount paid, preparing summary of same</li> <li>• Liaising with suppliers regarding liens over inventory and materials held by the Group's and confirm whether such liens are valid</li> <li>• Negotiations and discussions with Principal to realise materials on and off site</li> <li>• Attending to Retention of Title claims by suppliers</li> </ul>



	Other assets	<ul style="list-style-type: none"> <li>• Tasks associated with realising other complex assets (contractual and insurance claims) which in many instances have been subject to actual or potential legal proceedings</li> <li>• Corresponding with banking institutions regarding maintaining administration accounts</li> <li>• Preparing and maintaining file note of all the Group's assets including recoverability details and correspondence issued</li> <li>• Internal discussions and determination of various subcontractor bank guarantee positions</li> <li>• Liaise with solicitors, Principals, and incoming contractor regarding execution of novation deeds</li> <li>• Maintaining bank guarantee and novation deed schedule</li> </ul>
<b>Creditors</b> <b>152.1 hours</b> <b>\$83,690.00</b>	General creditor enquiries, requests and directions	<ul style="list-style-type: none"> <li>• Receiving and responding to creditor enquiries via inboxes, telephone and Halo platform</li> <li>• Reviewing and preparing correspondence to creditors and their representatives via Halo platform, email and post</li> <li>• Maintaining creditor request log via Halo platform</li> <li>• Considering reasonableness of creditor requests</li> <li>• Compiling information requested by creditors</li> <li>• Obtaining legal advice on requests</li> <li>• Documenting reasons for complying or not complying with requests or directions</li> <li>• Compiling information requested by creditors</li> </ul>
	Retention of Title Claims	<ul style="list-style-type: none"> <li>• Receive completed retention of title claim form</li> <li>• Maintain retention of title file</li> <li>• Adjudicate retention of title claim</li> <li>• Forward correspondence to claimant notifying outcome of adjudication</li> <li>• Preparation of payment vouchers to satisfy valid claim</li> <li>• Preparation of correspondence to claimant to accompany payment of claim (if valid)</li> </ul>
	Dealing with PODs	<ul style="list-style-type: none"> <li>• Maintaining register of PODs through Halo platform</li> <li>• Creditor data management including processing updates to creditor information in Halo platform</li> <li>• Attending to creditor queries regarding information in the Halo creditor platform and submitted PODs</li> <li>• Creditor data management including processing updates to creditor information in Halo platform</li> <li>• Admitting PODs for voting purposes for the second meeting of creditors</li> </ul>
	Deloitte – Forensics	<ul style="list-style-type: none"> <li>• Managing the Halo Help inbox to assist creditors with technical Halo queries</li> </ul>
	Deloitte – Risk Advisory	<ul style="list-style-type: none"> <li>• Maintaining the claims and voting dashboards in Halo</li> </ul>
	Secured creditor reporting	<ul style="list-style-type: none"> <li>• Responding to secured creditors' queries</li> <li>• Liaising with secured creditors in relation to the sale of business</li> <li>• Maintaining secured asset register</li> </ul>

<b>Employees</b> <b>104.4 hours</b> <b>\$48,245.00</b>	Employee enquiries	<ul style="list-style-type: none"> <li>• Receiving and following up employee enquiries</li> <li>• Maintain employee enquiry register</li> <li>• Reviewing and preparing correspondence to employees via email and Halo</li> <li>• Assist employees with various queries regarding the Halo creditor platform and their employee entitlements</li> <li>• Updating employee contact details in Halo</li> <li>• Assisting the purchaser with transition issues relating to employees</li> </ul>
	FEG	<ul style="list-style-type: none"> <li>• Ongoing correspondence with FEG regarding outcomes from the Voluntary Administration and position of employee entitlements in the DOCA</li> </ul>
	ATO	<ul style="list-style-type: none"> <li>• Corresponding with the ATO regarding STP lodgements</li> </ul>
	Payroll	<ul style="list-style-type: none"> <li>• Reviewing weekly and monthly pay reconciliations and arranging Administrators' approval to process payroll</li> <li>• Reviewing and lodging STP reports</li> <li>• Liaising with superannuation funds</li> <li>• Remittance of Child Support deductions</li> <li>• Reviewing superannuation payment contributions and arranging required approvals</li> <li>• Reviewing and arranging payment of employee termination payments and associated correspondence</li> <li>• Updating cash flow and cost analysis for revised run rate of staff being employed during the administration period</li> <li>• Liaising with the respective state offices regarding payroll tax issues</li> <li>• Liaising with the respective novated leasing companies regarding current arrangements and procedures going forward</li> </ul>
	Calculation of entitlements	<ul style="list-style-type: none"> <li>• Calculate and review of employee entitlements, including bonuses / retentions; outstanding salary sacrifice; annual leave; leave loading; long serve leave; PILN and redundancy</li> <li>• Reviewing employment contracts; agreements; EBAs</li> <li>• Correspondence with solicitors regarding the review of contracts; agreements and EBAs for the purposes of calculating redundancy and payment in lieu of notice calculations</li> <li>• Preparing letters to staff regarding their outstanding entitlement position</li> <li>• Receiving and preparing correspondence in response to employee's objections to leave entitlements</li> <li>• Employee entitlement calculations specific to Probuild project site requests</li> </ul>
	Ongoing planning and strategy	<ul style="list-style-type: none"> <li>• Internal discussions and meetings with employee workstream regarding status, key issues and next steps</li> <li>• Maintaining employee dashboard regarding status of employees across the business</li> </ul>
	Correspondence to staff whose positions had been made redundant or where staff had been requested	<ul style="list-style-type: none"> <li>• Correspondence to staff whose positions will be made redundant including: notice of their redundancy; FAQ; details of EAP support and a separation certificate</li> </ul>

	not to serve out the remainder of their notice period	<ul style="list-style-type: none"> <li>• Correspondence to employees that have resigned that are not required to serve out the remainder of their notice period</li> <li>• Communications with solicitors regarding the review of the Administrators' pro-forma documents to be issued to staff where their positions have been made redundant or where staff have been requested not to serve out the remainder of their notice period</li> <li>• Liaising with the relevant redundancy and LSL schemes in each state regarding payments during the administration period and notification of redundancies</li> <li>• Correspondence with Centrelink regarding notification of redundancies</li> <li>• Correspondence with each state's respective workers compensation insurers in relation to redundancies and the recovery of any outstanding reimbursements</li> </ul>
	Sale of business to Roberts Co	<ul style="list-style-type: none"> <li>• Attend to ad hoc queries from Roberts Co regarding employees transferred</li> </ul>
	Staff transferred to an alternate builder / developer	<ul style="list-style-type: none"> <li>• Attend to ad hoc queries from alternative builder / developer regarding employees transferred</li> </ul>
	Workers' compensation claims	<ul style="list-style-type: none"> <li>• Reviewing insurance policies</li> <li>• Receipt of claims</li> <li>• Liaising with claimant</li> <li>• Liaising with insurers and solicitors regarding claims</li> <li>• Identifying potential issues requiring attention of insurance specialists</li> <li>• Corresponding with previous brokers</li> </ul>
<b>Investigation</b> <b>13.4 hours</b> <b>\$4,485.00</b>	Conducting investigation	<ul style="list-style-type: none"> <li>• Further review of the Group's books and records</li> <li>• Conducting forensic data backups of the Group's books and records to preserve access to information required in the DOCA</li> <li>•</li> </ul>
<b>Administration</b> <b>805.0 hours</b> <b>\$458,396.75</b>	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>• Administrator reviews</li> <li>• Filing of documents and emails</li> <li>• Updating Core IPS checklists</li> <li>• Uploading receipts and payments to IPS for reporting purposes and statutory lodgements</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>• Liaising with insurance broker regarding any ongoing queries</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>• Liaising with bank regarding sweeps and transfers</li> <li>• Bank account reconciliations</li> <li>• Opening and closing bank accounts as required</li> </ul>
	Preparation of ASIC forms	<ul style="list-style-type: none"> <li>• Preparing and lodging ASIC forms including 5011s</li> </ul>

	<ul style="list-style-type: none"> <li>• Corresponding with ASIC regarding statutory forms and other ad-hoc matters of attention</li> </ul>
ATO and other statutory reporting	<ul style="list-style-type: none"> <li>• Corresponding with the ATO regarding general taxation matters</li> <li>• Preparing and lodging BASs</li> </ul>
Finalisation of VA	<ul style="list-style-type: none"> <li>• Notifying ATO of finalisation</li> <li>• Completing checklists</li> <li>• Finalising WIP for VA period</li> <li>• Preparing and lodging End of Administration Return (Form 5603) with ASIC</li> </ul>
Planning / review	<ul style="list-style-type: none"> <li>• Holding team meetings regarding status and planning of the administration</li> </ul>
Books and records / storage	<ul style="list-style-type: none"> <li>• Maintaining electronic and hard copy files</li> <li>• Dealing with records</li> </ul>
Deloitte – Tax & Legal	<ul style="list-style-type: none"> <li>• Providing tax advice to Administrators regarding various tax issues</li> <li>• Reviewing BASs</li> <li>• Ongoing discussions with project teams regarding correct tax treatment of transactions</li> </ul>
Legal matters	<ul style="list-style-type: none"> <li>• Preparation of court applications and accompanying affidavits for any further Court orders and attending court hearings to obtain orders</li> <li>• Assisting solicitors with information requests, corresponding with solicitors with respect to all Court matters</li> <li>• Strategy meetings and briefing to solicitors</li> <li>• Liaising with solicitors regarding various legal matters, including those relating to active and legacy projects, insurance claims, stay of proceedings, potential recoveries and court applications concerning various aspects of the VA</li> <li>• Maintaining tracker of legal issues</li> </ul>

**TOTAL**  
**1,198.1 hours**  
**\$676,424.25**

## Schedule 2.3 | Explanation where remuneration previously approved

### Probuild Constructions (Aust) Pty Ltd (Subject to Deed of Company Arrangement)

To date creditors have approved remuneration in the sum of \$3,498,680.00 exclusive of GST in our capacity as Deed Administrators'. Our remuneration has exceeded this cap, and, in this report, we are now seeking approval of a further capped amount of \$676,424.25 for current work and \$1,000,000.00 for future works (total of \$1,676,424.25), both exclusive of GST, in respect to management of the deed of company arrangement.

To assist creditors with understanding how total remuneration has and will be incurred, this table shows remuneration to date, including the current claim(s), divided by task categories and an explanation of the differences, by task, in the table that follows.

Task	Fees already approved as at the date of this report (\$)	Total per task (\$)	Difference (\$)	Reasons for differences
Assets	489,794.00	673,052.50	183,258.50	Additional time spent on complex assets realisations and bank guarantee and bonding facilities reviews.
Creditors	489,789.00	645,630.00	155,841.00	Additional time spent managing projects in the Defects Liability Period (DLP), including reviewing outstanding defects lists, assessing the nature of defects and the costs of rectifying same, engaging with bond and surety providers, and liaising with subcontractors regarding releases of security and bond calls.
Employees	244,830.00	557,107.50	312,277.50	Additional time spent on employee related tasks, including calculating employee entitlements, issuing communications to staff regarding the transfer of their employment, and managing redundancies.
Trade on	104,835.00	17,090.00	(87,745.00)	Less time incurred than anticipated in respect novated projects included in transfer.
Investigation	874,865.00	177,147.50	(697,717.50)	Less time incurred than anticipated in respect to preservation, collection and review of books and records.
Dividend	524,775.00	642,772.50	117,997.50	Additional time spent adjudicating complex claims for Pool A and Pool B distributions.
Administration	769,792.00	2,462,304.25	1,692,512.25	Additional time spent considering complex legal issues and corresponding with lawyers regarding matters relating to court applications and proceedings, and seeking advice and guidance on various aspects of the DOCA.
<b>TOTAL</b>	<b>3,498,680.00</b>	<b>5,175,104.25</b>	<b>1,676,424.25</b>	

Descriptions and costs of the tasks to support my current remuneration approval request are at **Schedule 2.2 and 3.2**.

Schedule 3.1 | Time to be charged to each major task

Probuild Constructions (Aust) Pty Ltd (Subject to Deed of Company Arrangement)

Resolution 2: Future Remuneration from 16 November 2023

Time to be charged by Administrators' staff

Position	\$/hour	Total actual hours	Total (\$)	Task Area											
				Administration		Assets		Creditors		Dividend		Trade On		Investigations	
				Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Partner	825	107.0	88,275.00	30.0	24,750.00	20.0	16,500.00	25.0	20,625.00	30.0	24,750.00	1.0	825.00	1.0	825.00
Principal	750	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Director	650	310.0	201,500.00	100.0	65,000.00	100.0	65,000.00	50.0	32,500.00	50.0	32,500.00	5.0	3,250.00	5.0	3,250.00
Associate Director	575	200.0	115,000.00	50.0	28,750.00	50.0	28,750.00	50.0	28,750.00	50.0	28,750.00	-	-	-	-
Manager	550	93.0	51,150.00	-	-	-	-	-	-	93.0	51,150.00	-	-	-	-
Senior Analyst	475	420.0	199,500.00	100.0	47,500.00	20.0	9,500.00	50.0	23,750.00	250.0	118,750.00	-	-	-	-
Analyst	425	420.0	178,500.00	100.0	42,500.00	20.0	8,500.00	50.0	21,250.00	250.0	106,250.00	-	-	-	-
Graduate	325	390.0	126,750.00	100.0	32,500.00	20.0	6,500.00	20.0	6,500.00	250.0	81,250.00	-	-	-	-
Other Junior	230	172.0	39,325.00	-	-	39.0	8,965.00	32.0	7,360.00	100.0	23,000.00	-	-	-	-
Other Clerical	225	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total</b>		<b>2,112.0</b>	<b>1,000,000.00</b>	<b>480.0</b>	<b>241,000.00</b>	<b>269.0</b>	<b>143,715.00</b>	<b>277.0</b>	<b>140,735.00</b>	<b>1,073.0</b>	<b>466,400.00</b>	<b>6.0</b>	<b>4,075.00</b>	<b>6.0</b>	<b>4,075.00</b>
GST			100,000.00												
<b>Total (including GST)</b>			<b>1,100,000.00</b>												
<i>Average hourly rate</i>					502		534		508		435		679		679

## Schedule 3.2 | Detailed description of tasks performed

### Probuild Constructions (Aust) Pty Ltd (Subject to Deed of Company Arrangement)

#### Resolution 2: Future Remuneration from 16 November 2023

#### Description of work to be completed for the administration from 16 November 2023

Task Area	General Description	Includes
<b>Assets</b> 269.0 hours \$143,715.00	Other assets	<ul style="list-style-type: none"> <li>• Tasks associated with realising GST on bond calls, such as liaising with solicitors &amp; engage Deloitte tax to assist with recovery</li> <li>• Tasks associated with final project handover arrangement payments, including liaising with the project principal</li> <li>• Maintaining a bank guarantee and bond register and liaising with the relevant party to ensure release</li> <li>• Tasks associated with realising interests in a joint venture</li> <li>• Continue analysis of potential legal and insurance claims and commence recovery actions where appropriate</li> <li>• Ongoing oversight of legal and insurance claims on foot</li> </ul>
<b>Creditors</b> 277.0 hours \$140,735.00	General creditor enquiries, requests and directions	<ul style="list-style-type: none"> <li>• Receiving and responding to creditor enquiries via inboxes, telephone and Halo platform</li> <li>• Reviewing and preparing correspondence to creditors and their representatives via Halo platform, email and post</li> <li>• Maintaining creditor request log via Halo platform</li> <li>• Considering reasonableness of creditor requests</li> <li>• Compiling information requested by creditors</li> <li>• Obtaining legal advice on requests</li> <li>• Documenting reasons for complying or not complying with requests or directions</li> <li>• Compiling information requested by creditors</li> </ul>
	Dealing with PODs	<ul style="list-style-type: none"> <li>• Maintaining register of PODs through Halo platform</li> <li>• Creditor data management including processing updates to creditor information in Halo platform</li> <li>• Attending to creditor queries regarding information in the Halo creditor platform and submitted PODs</li> <li>• Creditor data management including processing updates to creditor information in Halo platform</li> <li>• Admitting PODs for voting purposes for the second meeting of creditors</li> </ul>
	Creditor reporting and meeting	<ul style="list-style-type: none"> <li>• Prepare update reports and other correspondence to creditors</li> <li>• Hold meeting of creditors</li> </ul>
	Deloitte – Forensics	<ul style="list-style-type: none"> <li>• Managing the Halo Help inbox to assist creditors with technical Halo queries</li> </ul>
	Deloitte – Risk Advisory	<ul style="list-style-type: none"> <li>• Maintaining the claims and voting dashboards in Halo</li> </ul>

<b>Trade On</b> 6.0 hours \$4,075.00	Processing receipts and payments	<ul style="list-style-type: none"> <li>• Prepare any required payments relating to the Voluntary Administrators' trade on period</li> </ul>
<b>Investigation</b> 6.0 hours \$4,075.00	Records preservation	<ul style="list-style-type: none"> <li>• Attend to preservation of the Group's books and records required for outstanding matters in the DOCA</li> </ul>
<b>Dividend</b> 1,073.0 \$466,400.00	Processing proofs of debt (POD)	<ul style="list-style-type: none"> <li>• Preparation of correspondence to potential creditors inviting lodgement of POD, should an interim Pool C dividend be called</li> <li>• Receipt of PODs</li> <li>• Maintain POD register</li> <li>• Adjudicating PODs (which we assume will include a number of complex claims that may be subject to dispute)</li> <li>• Request further information from claimants regarding POD</li> <li>• Preparation of correspondence to claimant advising outcome of adjudication</li> </ul>
	Dividend procedures	<ul style="list-style-type: none"> <li>• Preparation of correspondence to creditors advising of intention to declare interim Pool C dividend</li> <li>• Advertisement of intention to declare dividend</li> <li>• Obtain clearance from ATO to allow distribution of the Group's assets</li> <li>• Preparation of dividend calculation</li> <li>• Preparation of correspondence to creditors announcing declaration of dividend</li> <li>• Advertise announcement of dividend</li> <li>• Preparation of distribution</li> <li>• Preparation of dividend file</li> <li>• Preparation of payment vouchers to pay dividend</li> <li>• Preparation of correspondence to creditors enclosing payment of dividend</li> </ul>
<b>Administration</b> 480.0 hours \$241,000.00	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>• Administrator reviews</li> <li>• Filing of documents and emails</li> <li>• Updating Core IPS checklists</li> <li>• Uploading receipts and payments to IPS for reporting purposes and statutory lodgements</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>• Liaising with bank regarding sweeps and transfers</li> <li>• Bank account reconciliations</li> <li>• Opening and closing bank accounts as required</li> </ul>
	Preparation of ASIC forms	<ul style="list-style-type: none"> <li>• Preparing and lodging ASIC forms including 5011s &amp; 5602s</li> <li>• Prepare lodge minutes of meeting of creditors</li> <li>• Corresponding with ASIC regarding statutory forms and other ad-hoc matters of attention</li> </ul>
	ATO and other statutory reporting	<ul style="list-style-type: none"> <li>• Corresponding with the ATO regarding general taxation matters</li> <li>• Preparing and lodging BASs</li> </ul>



Finalisation of VA (when relevant)	<ul style="list-style-type: none"> <li>• Notifying ATO of finalisation</li> <li>• Completing checklists</li> <li>• Finalising WIP for VA period</li> <li>• Preparing and lodging End of Administration Return (Form 5603) with ASIC</li> </ul>
Planning / review	<ul style="list-style-type: none"> <li>• Holding team meetings regarding status and planning of the administration</li> </ul>
Books and records / storage	<ul style="list-style-type: none"> <li>• Maintaining electronic and hard copy files</li> <li>• Dealing with records</li> <li>• Decommissioning and closure of remaining IT and other systems containing the Company's financial and other information</li> </ul>
Deloitte – Tax & Legal	<ul style="list-style-type: none"> <li>• Providing tax advice to Administrators regarding various tax issues</li> <li>• Reviewing BASs</li> <li>• Ongoing discussions with project teams regarding correct tax treatment of transactions</li> </ul>
Legal matters	<ul style="list-style-type: none"> <li>• Preparation of court applications and accompanying affidavits for any further Court orders and attending court hearings to obtain orders</li> <li>• Assisting solicitors with information requests, corresponding with solicitors with respect to all Court matters</li> <li>• Strategy meetings and briefing to solicitors</li> <li>• Liaising with solicitors regarding various legal matters, including those relating to active and legacy projects, insurance claims, stay of proceedings, potential recoveries and court applications concerning various aspects of the administrations</li> <li>• Resolve issues in relation to the DOCA Amendment Application including Court process and commercial considerations as may be required</li> </ul>

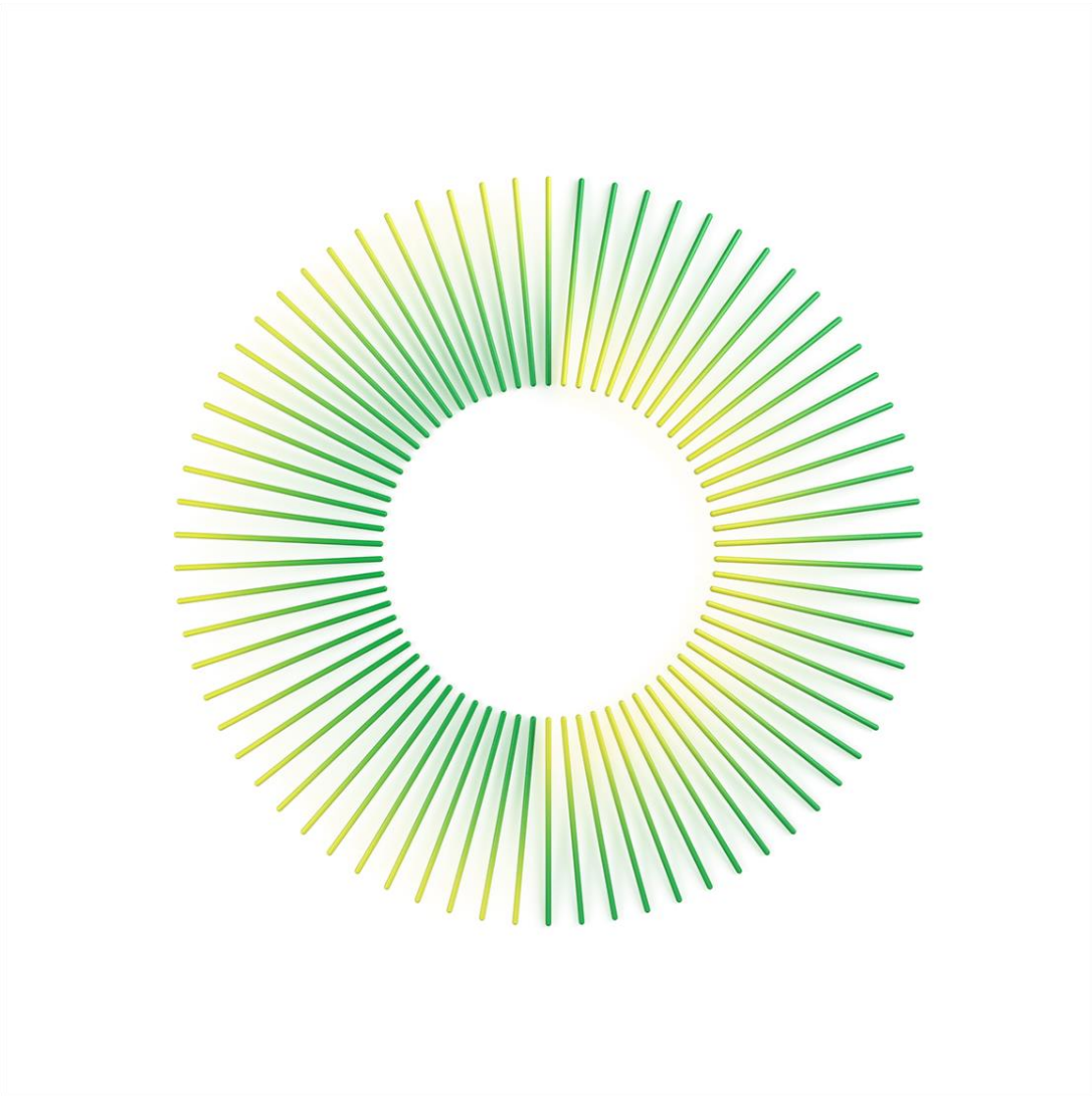
**TOTAL**  
**2,112.0 hours**  
**\$1,000,000.00**

## Schedule 4.1 | WHBO Australia Group of companies (all Subject to Deed of Company Arrangement)

Company name	ACN
WBHO Australia Pty Ltd	095 983 681
WBHO Construction Australia Pty Ltd	149 901 931
Northcoast Holdings Pty Ltd	009 296 780
Probuild Constructions (Aust) Pty Ltd	095 250 945
Probuild Civil Pty Ltd (formerly Probuild Civil (QLD) Pty Ltd)	010 870 587
PCA (QLD) Pty Ltd (formerly Probuild Constructions (QLD) Pty Ltd)	141 148 245
Probuild Constructions (NSW) Pty Ltd	165 675 874
Probuild Constructions (VIC) Pty Ltd	165 675 865
Probuild Constructions (WA) Pty Ltd	165 676 095
Probuild Constructions (QLD) Pty Ltd	166 966 034
ACN 098 866 794 Pty Ltd (formerly Probuild Constructions (NSW) Pty Ltd)	098 866 794
Contexx Holdings Pty Ltd	144 707 022
Contexx Pty Ltd	147 249 796
Prodev Murphy Pty Ltd	120 758 803
Prodev Investments 4 Pty Ltd	629 246 653

## Appendix D

### Instructions on how to attend Meeting of Creditors



Halo Guide  
(Proxy Nomination & Voting)

# i Overview

The Deed Administrators of WBHO Australia Pty Ltd ACN 095 983 681 and certain subsidiaries (all Subject to Deed of Company Arrangement) (**Probuild Group** or Companies) will be using Deloitte's Halo platform as the primary tool for communicating with creditors and managing claims (known as proofs of debt).

The Deed Administrators have prepared this guide to assist you as a creditor or potential creditor to understand the steps that must occur to ensure you are appropriately registered and have lodged your claim in Halo. The next three pages set out an overview of these steps. Refer to the later sections of this guide for further details of the specific actions, screens in Halo and FAQs for each of these steps.

These are the key dates in relation to voting in Halo:

- Deadline for registering and submitting a claim in Halo **Monday, 11 December 2023, 5:00pm (AEDT)**
- Deadline for submitting proxy **Monday, 11 December 2023, 5:00pm (AEDT)**
- Voting closes **Live during the meeting of creditors**

## 1 Register in Halo

You'll need an email address and basic contact information to register at this page:

<https://aurestructuring.deloitte-halo.com/probuild/>

## 2 Add a claim

Adding a claim in Halo requires basic details of your claim, including:

- the company that owes you money;
- the claim type (e.g. financier, employee, subcontractor, trade supplier); and
- a description of the amount you are owed.

You can also upload additional documentation to support your claim for consideration by the Deed Administrators (e.g. copy of invoice). **Please only lodge 1 claim against the Company which you are a creditor of and attach all invoices to that claim.**

## 3 Be admitted for voting

Based on the nature of your claim, the Deed Administrators will evaluate your claim for admission for voting. This may include reviewing the details of your claim submitted, assessing supporting documentation submitted (if any) and asking you further questions about your claim (if necessary).

You will be notified by email when you have been admitted for voting. Otherwise you can check your admission status in the Halo system in the 'My Claims' dashboard in Halo at any time.

## 4 Appoint a proxy (required for organisational creditors, optional for individuals)

Once your claim has been admitted for voting, you can appoint a proxy. If you are not sure whether or not you need to appoint a proxy, refer to the FAQs at Section 4 of this guide.

You will need to have your proxy nomination completed by **Monday, 11 December 2023, 5:00pm (AEDT)**.

When appointing a proxy, you are appointing either (1) the Chairperson, (2) yourself or (3) someone else to vote on behalf of the creditor. If selecting someone else to represent you, you will need their email address so they can be registered in the Halo system. Selecting the **proxy option** is the first step of appointing a proxy.

You will also need to decide the **type of proxy** you are appointing. This is either (a) General Proxy or (b) Special Proxy. Refer to FAQs at Section 4 of this guide for further information on Proxy types.

To appoint a proxy, click 'Vote or Select Proxy' on your dashboard. If you are an organisation, the Proxy page will be displayed. If you are an individual, you will need to click the 'Nominate Proxy (Optional)' button. Here you will select the **proxy option** and the **type of proxy**. If selecting a Special proxy (displayed above), you will submit your vote (Step 5) with the nomination of your proxy and click 'Submit' to appoint your Proxy.

Nominate Proxy  
 Chairperson  Self  Other proxy (enter email address below)

Type of Proxy  
 General Proxy  Special Proxy

**Resolutions**  
Please vote 'For' one resolution below. In voting 'For' a resolution, you will be voting 'Against' the other resolutions proposed in the resolution group. Your vote cannot be submitted if you do not vote 'For' a resolution.

RESOLUTION GROUP #1 ANSWER  
[Text Input]

RESOLUTION #2 ANSWER  
[Text Input]

## 5 Cast your vote

If your claim has been admitted for voting, you can log into Halo and click **'Select Proxy or Vote'** on your 'My Claims' dashboard at this time. Once the voting event has started in Halo, there will be a yellow banner on your 'My Claims' dashboard which will say **'Select Proxy or Vote'**.

To vote, select the tick box for the creditor you are voting for, and click the **'Select Vote'** button. Choose your answer to the displayed resolution(s) and click **'Submit'**.

**Voting will close on the live during the meeting of creditors.**

**Resolutions**

Please vote 'For' one resolution below. In voting 'For' a resolution, you will be voting 'Against' the other resolutions proposed in the resolution group. Your vote cannot be submitted if you do not vote 'For' a resolution.

RESOLUTION GROUP #1 ANSWER  
[Text Input]

RESOLUTION #2 ANSWER  
[Text Input]

If you have been assigned a General proxy vote, the Vote will appear on your **'My Proxy'** Dashboard and will need to be actioned in order to vote. Please follow the above steps except click 'Start Voting' on your 'My Proxy dashboard' instead of 'My Claims dashboard'.

When votes are successfully submitted, the voting status is now displayed as **'Voted'**, the appointment of a general proxy is displayed as **'Proxy Selected'**, and the appointment of a special proxy is displayed as **'Proxy Voted'**. Once the general Proxy has exercised their vote, the voting status will change to **'Proxy Voted'**

<input type="checkbox"/>	V1213594C	Creditor 8	Entity A	Unsecured Customer	AUD 150,000.00	Admitted for [150,000.00]	VOTED
<input type="checkbox"/>	V1213596C	Creditor 10	Entity A	Unsecured Other	AUD 150,000.00	Admitted for [150,000.00]	PROXY VOTED
<input type="checkbox"/>	V1128018C	Creditor 10	Entity B	Unsecured Other	AUD 4,577.75	Admitted for [4,577.75]	PROXY SELECTED

**Note:**

This guide will only focus on how to nominate a proxy and cast your vote in the Halo platform.

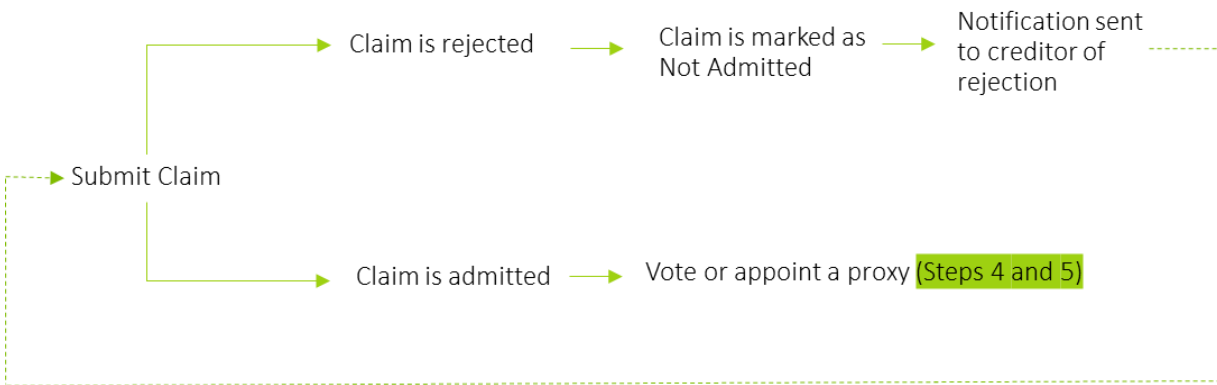
If you are looking for detailed guidance on registering as a user or lodging your claim, please refer to the Registration and Claim Lodgement Guide here: <https://aurestructuring.deloitte-halo.com/probuild/?Pg=6>.

If you encounter any issues with the Halo platform, please contact our team at [Prouild1@deloitte.com.au](mailto:Prouild1@deloitte.com.au).

# 3 Be admitted for voting

Based on the nature of your claim, the Deed Administrators will evaluate your claim for admission for voting. This will include reviewing the details of your claim submitted, assessing supporting documentation submitted (if any) and asking you further questions about your claim (if necessary).

## Admission Process



**Note – you are able to submit your vote even if the Administrators have not yet admitted your claim.**

You will be notified by email when the Deed Administrators have evaluated your submitted claim(s) and the admitted status of your submitted claims has changed. Otherwise, you can check your admission status in the Halo system in the 'My Claims' dashboard at any time.

## Admissions Statuses

Claims are presented in Halo with three admission statuses (labelled 1 to 3 in the image and described on next page):

<input type="checkbox"/>	VI213587C	Creditor 1	Number 1 Pty Ltd	Unsecured Trade Supplier	AUD 200,000.00	Submitted	1
<input type="checkbox"/>	VI213587C	Creditor 2	Number 1 Pty Ltd	Unsecured Trade Supplier	AUD 200,000.00	Admitted for [200,000.00]	2
<input type="checkbox"/>	VI213587C	Creditor 2	Number 2 Pty Ltd	Unsecured Trade Supplier	AUD 200,000.00	Not Admitted	3



1. **Submitted:** This status indicates that your claim has been registered in Halo and is under review for admission by the Deed Administrators. The Administrators may contact you via the Halo communication functions to ask you further details about your claim (if necessary) or request further supporting documentation in relation to your claims (if necessary).
2. **Admitted:** This status indicates that your claim has been reviewed and admitted for voting. The amount for which the claim has been admitted for voting will be displayed. Once admitted, the details of your claim (e.g. amount) cannot be changed until after the voting event.
3. **Not admitted:** The Deed Administrators may reject (not admit) your claim for voting purposes for a number of reasons including but not limited to the following:
  - The amount you have claimed is higher than the amount recorded as owing to you in the books and records of the Group and you have provided insufficient evidence to support your claim.
  - Where your claim includes amounts, which have been incurred post appointment and you have not provided sufficient supporting documentation to support this portion of your claim such as a contract with relevant terms. In such circumstances, the Deed Administrators may only admit your claim for the portion which relates to the period prior to the date of appointment until further supporting documentation is provided.
  - Your claim does not match the supporting evidence provided.
  - Your claim is not owed by any of the companies in the Group.
  - Your claim is a duplicate of another claim received by the Deed Administrators.
  - Your claim has been submitted after the claim submission deadline of **Monday, 11 December 2023, 5:00pm (AEDT)**.

Once the status of your claim has been changed to Not Admitted, you will not be able to change the details of your claim (e.g. amount).

However, you can continue to communicate with the Deed Administrators to understand the reasons for your claim not being admitted and, if time allows prior to the claim submission deadline, resubmit your claim or provide further information or documentation which may allow your claim to be admitted.

# 4 Appoint a proxy

Prior to voting you can appoint a proxy. A proxy is a document containing instructions to the Deed Administrators on who you want to represent you.

You aren't required to appoint a proxy unless the creditor you are representing is a company or organisation:

- A company needs to appoint a proxy as they need to appoint someone to vote on behalf of the company.
- If you are an individual and you want to give someone else your right to vote (e.g. a union representative or chairperson), you can appoint a proxy but it is not required in order for you to vote.

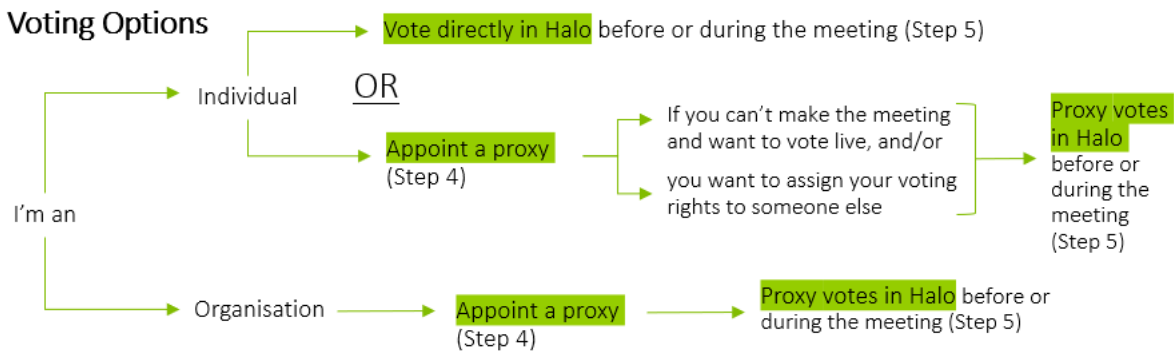
The following sets out the process for submitting a proxy, types of proxies (including some types of proxies which include your voting instructions) and how.

**The deadline for submitting a proxy nomination in Halo is Monday, 11 December 2023, 5:00pm (AEDT)**

**If you do not need to appoint a proxy (for example you are an employee or individual), you can skip to instruction at Step 5 to cast your vote.**

**Creditors will be notified when proxy forms become available to them in Halo.**

Once you have been admitted, there will be different pathways for you to nominate your proxy (if required) and lodge your vote in Halo:



When appointing a proxy, you will need to consider both the type of proxy you are nominating and your options as to who you can select as your proxy:

### Type of proxy

There are two kinds of proxies available, a general proxy and a special proxy:

- **General proxy** - allows the person holding the proxy to vote as they wish on a resolution and therefore you won't need to specify the answers to the resolutions. In Halo, nomination of a general proxy practically means that the voting for that creditor will be transferred or attached to the user account of the general proxy. As such, those who are appointed general proxies will need to vote as outlined in Step 5.
- **Special proxy** - directs the proxy holder to vote in a particular way. If appointing a special proxy, you will need to select and submit your vote with the proxy nomination.

### Proxy options (who)

In terms of your options on who to select as your proxy, Halo has three options (1) the Chairperson, (2) yourself or (3) someone else to vote on behalf of the creditor:

1. **The Chairperson** – if you would like to assign the Chairperson your vote, you are able to do this by selecting 'Chairperson' as your proxy option. The Chairperson will be one of the Deed Administrators. Part of their role is deciding whether to accept your claim for voting purposes, estimate the value of your claim (if required) and, if necessary, exercise their casting vote.
2. **Yourself** – if the creditor is a company and you are a duly authorised officer of the company (e.g. a director) you can appoint yourself as the proxy. If the 'Yourself' option is chosen, the details and email with which you signed up with Halo will be used.
3. **Someone else** - if you would like to appoint someone else as the proxy, you can enter the email of the person you would like to appoint in the field which appears when you click 'Other' as the proxy type. If you are selecting someone else to represent you, you will need their email address so they can be registered in the Halo system:
  - If that person is already registered on Halo, their registered Halo details will appear.
  - If they are not registered in Halo, an email invitation will be sent to them to register.

Please note that proxies are nominated at the creditor level. If there are multiple claims that have been registered in Halo under one creditor name, the proxy nominated will be applied to all of those claims.

If you have made an error in the nomination of your proxy, please contact the team at Prouild1@deloitte.com.au so they can assist you in resetting your proxy nomination. Once reset, you can re-nominate your proxy.

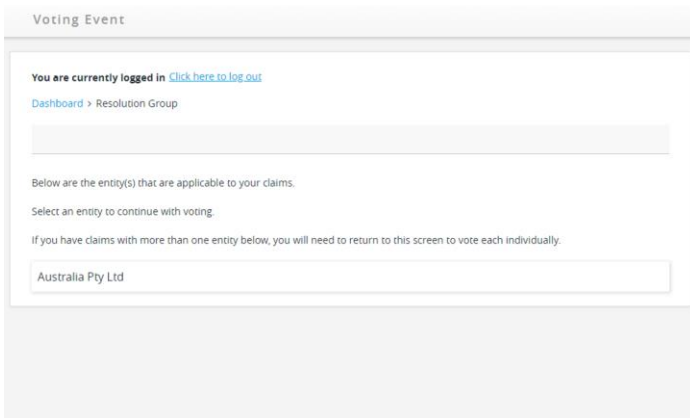
### Appoint a proxy – the process

- ✓ To appoint a proxy, click 'Vote or Select Proxy' on your 'My Claims' dashboard.

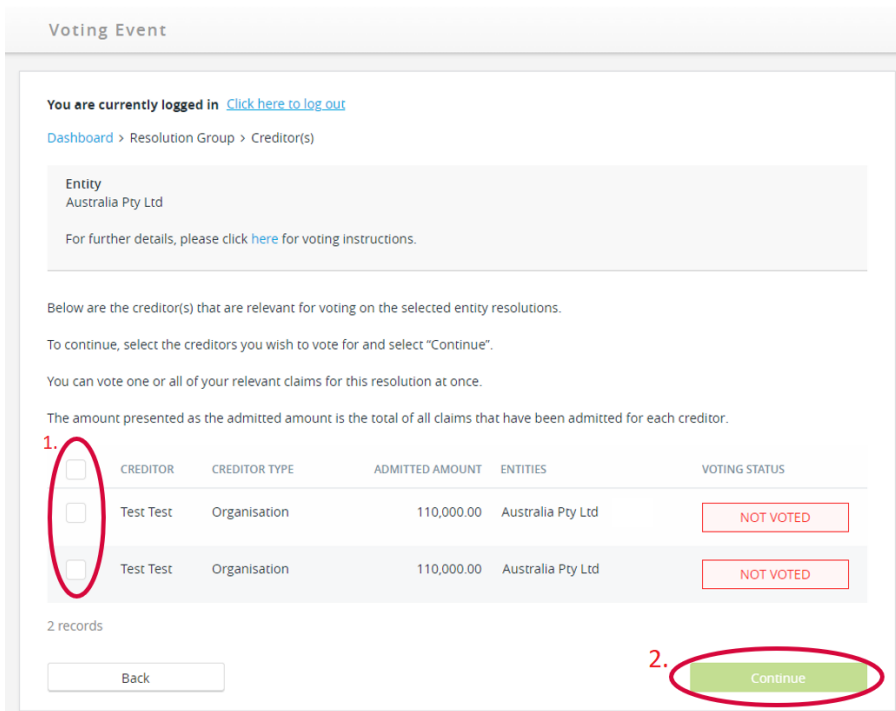
The screenshot shows the 'My Claims Dashboard' interface. At the top, there are navigation tabs for 'User Profile', 'My Meeting Dashboard', and 'My Claims Dashboard'. Below these is a yellow informational banner with the text: 'You must submit a claim to vote at the first meeting of creditors.', 'Voting will close live during the first meeting of creditors.', 'You will be notified by email when voting has opened in the Halo platform.', and 'Click here for an overview of voting process.' A button labeled 'Vote or Select Proxy' is circled in red within this banner. Below the banner is a search bar for 'Search Claim, Creditor' and two buttons: 'Grant Access' and 'Add Claim'. At the bottom, there is a table with 2 records. The table has columns for CLAIM ID, CREDITOR, DEBTOR ENTITY, CATEGORY TYPE, AMOUNT (EXCL GST), STATUS, and VOTING STATUS.

CLAIM ID	CREDITOR	DEBTOR ENTITY	CATEGORY TYPE	AMOUNT (EXCL GST)	STATUS	VOTING STATUS
AD119045C	Test	Test Pty Ltd	Unsecured Trade Supplier	AUD 100,000.00	AUD110,000.00 admitted for voting	NOT VOTED
AD119128C	Test	Test Pty Ltd	Secured Financier	AUD 100,000.00	AUD110,000.00 admitted for voting	NOT VOTED

- ✓ If you have multiple creditors who have claims in different companies, you will need to cast a vote / appoint a proxy per company. Please select the companies to appoint a proxy for first.



- ✓ Select the relevant creditor(s) to Nominate a proxy for and click 'Continue'.



- ✓ If you are an individual, click 'Nominate Proxy (Optional)' to be redirected to the 'Assign Proxy' page. If you are representing an organisation you will automatically be on the 'Assign Proxy' page.

Resolutions	Nominate Proxy (Optional)
-------------	---------------------------

You will then be directed to the following screen:

### Voting Event

You are currently logged in [Click here to log out](#)

[Dashboard](#) > [Resolution Group](#) > [Creditor\(s\)](#) > [Vote/Proxy](#)

Entity Australia Pty Ltd	Selected Creditors Test Test
-----------------------------	---------------------------------

**Example Resolutions:**

**Resolution 1 - That the meeting be held concurrently**

It is proposed that the meetings of the Group be held concurrently for convenience and efficiency as otherwise separate meetings would be required. As a consequence of the corporate structure, there are common interests between some creditors which support holding these meetings concurrently.

**Resolution 2- That a Committee of Inspection be appointed**

At the first meeting, creditors will consider whether a Committee of Inspection (COI) should be appointed for each of the Companies. The role of the COI is to consult with the Administrators about matters relevant to the administration and receive and consider reports from the Administrator. It may also approve the Administrators' fees. At times, the Administrator may call upon a COI for assistance. **It is a voluntary role and the COI are not remunerated for their time.**

All creditors that have a just estimate of their claim, as well as employees, are entitled to stand for COI membership to represent the interests of all creditors. However, to operate efficiently, the COI should not be too large. Further information regarding the COI is provided in the [ARITA Information Sheet: Committees of Inspection](#).

A 'proxy' is where a creditor authorises someone else to represent them at a Creditors' meeting and vote on their behalf. Refer to voting guide for more information on the role of proxies and proxy types.

Nominating a proxy is mandatory for creditors that are organisations and optional for creditors that are individuals.

There are two kinds of proxies, a General proxy and a Special proxy. A general proxy allows the person holding the proxy to vote how they want on a resolution, whereas a special proxy directs the proxy holder to vote in a particular way.

Nominate Proxy

Chairperson       Self       Other proxy (enter email address below)

Type of Proxy

General Proxy       Special Proxy

**Resolutions**

RESOLUTION #1

"That the first meeting of creditors be held concurrently."

---

RESOLUTION #2

"That a committee of inspection of the company be formed"

Example resolutions only – the actual resolutions may differ to those in the above image.

- ✓ Select your 'Proxy Option' of either: 'Chairperson', 'Self', or 'Other proxy'. If you are an individual, the 'Self' option will not be available.

Nominate Proxy

Chairperson  Self  Other proxy (enter email address below)

- ✓ If selecting 'Other Proxy', please enter the person you are appointing's email in the designated field. If the email is registered in Halo, their details will appear. If they are not registered, they will receive an email notifying them to register as they have been appointed as a Proxy.

- ✓ Select your 'Type of Proxy' of either 'General Proxy' or 'Special Proxy'.

Type of Proxy

General Proxy  Special Proxy

- ✓ If selecting 'Special Proxy', choose the answers to the displayed resolution(s).

Nominate Proxy

Chairperson  Self  Other proxy (enter email address below)

Proxy email address \*

Example.Email@Outlook.com

✓ Proxy is registered.

**Proxy Profile**

First Name  
Surname  
Email  
Representing an organization?  
Organisation

Type of Proxy

General Proxy  Special Proxy

**Resolutions**

RESOLUTION #1

ANSWER

RESOLUTION #2

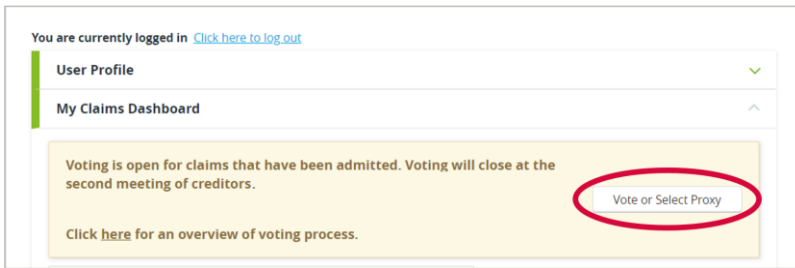
ANSWER

- ✓ After reviewing, click 'Submit' to finalise your proxy.

- ✓ After submitting, the relevant claims on your 'My Claims' dashboard will be displayed as 'Proxy Voted' for a Special Proxy, or 'Proxy Selected' for a General Proxy. After a General Proxy exercises their vote, the status too will change to 'Proxy Voted'.

<input type="checkbox"/>	VI213596C	Creditor 10	Entity A	Unsecured Other	AUD 150,000.00	Admitted for [150,000.00]	PROXY VOTED
<input type="checkbox"/>	VI128018C	Creditor 10	Entity B	Unsecured Other	AUD 4,577.75	Admitted for [4,577.75]	PROXY SELECTED

- ✓ To **view** your Proxy nomination, click 'Vote or Select proxy' on your 'My Claims Dashboard'



- ✓ Find the creditor which you want to view the Proxy for and click the 'Proxy Voted' or 'Proxy Selected' box to view your vote. The selected votes will then be displayed.

Creditor 11	Individual	150,000.00	Number 1 Pty Ltd	PROXY VOTED
Creditor 10	Individual	150,000.00	Number 1 Pty Ltd	PROXY SELECTED

## FAQs on appointing a proxy

### What is a proxy?

A proxy is a formal authorisation by a creditor, authorising someone else to represent them and vote on their behalf.

### Do I need a proxy?

You don't need to appoint a proxy unless the creditor you are representing is a company or organisation. A company needs to appoint a proxy as they need to appoint an individual who is an authorised officer to vote on behalf of the company. If you are an individual and you want to give someone else your right to vote (e.g. a union, chairperson), you can appoint a proxy.

### What is the difference between a special proxy and a general proxy?

There are two kinds of proxies, a general proxy and a special proxy. A general proxy allows the person holding the proxy to vote how they wish on a resolution, whereas a special proxy directs the proxy holder to vote in a particular way.

### Can I change my proxy?

If you have made an error, please contact the team at [Prouild1@deloitte.com.au](mailto:Prouild1@deloitte.com.au) and they will be able to assist you in resetting and then re-selecting your proxy.

### I'm an employee, do I need a proxy?

Employee creditors are individual creditors (i.e. not representing an organisation) so they are not required to nominate a proxy.

However, employees may wish to nominate their union representative, the Chairman, or another person as their special or general proxy.

### What happens if I have not nominated a proxy by the deadline of Monday, 11 December 2023, 5:00pm (AEDT)?

If you are a creditor that is a company or organisation, unfortunately you will not be able to cast your as a proxy is required.

If you are an individual creditor, you will still be able to submit your vote as proxies are not required for individual creditors.

### I have been assigned as a proxy, what do I do?

If you have been assigned as a proxy, you will need to cast the vote as in Step 5 Cast your Vote. If you have been assigned a proxy, the proxy(s) you have been nominated for will be displayed on 'My proxy' dashboard as opposed to 'My Claims' dashboard. If you have been assigned a special proxy, no action is required by you.

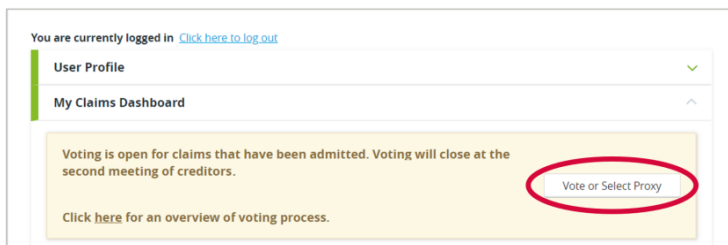


## 5 Cast your vote

Once the voting event has started in Halo, there will be a yellow banner on your **'My Claims'** dashboard which will say **'Start Voting'**. If your claim is admitted for voting, you can log into Halo and click **'Start Voting'** on your claims dashboard.

### Cast your vote – the process

- ✓ To cast your vote, click **'Vote or Select Proxy'** on your **'My Claims'** dashboard. If you have been appointed as a Proxy and need to cast a vote, you will click **'Vote'** on your **'My Proxy'** dashboard



- ✓ If you are voting for multiple creditors under multiple entities, select the relevant Resolution Group or single company you would like to vote for first.

The screenshot shows a form titled "Select a voting resolution group". Below the title, it says: "Below are the voting resolution group(s) that are applicable to your claims. Select a resolution group to continue with voting. If you have more than one voting group below, you will need to return to this screen to vote each individually." There are three input fields with the following text: "Australia Pty Ltd", "Organisation 1 Pty Ltd", and "Organisation 2 Pty Ltd".

- ✓ Select the creditor(s) you would like to cast a vote for and click **'Continue'**. You can vote all creditors at once for ease.

<input type="checkbox"/>	CREDITOR	CREDITOR TYPE	ADMITTED AMOUNT	ENTITIES	VOTING STATUS
<input type="checkbox"/>	Creditor 3	Organisation	150,000.00	No. 1 Pty Ltd	<input type="button" value="NOT VOTED"/>
<input checked="" type="checkbox"/>	Creditor 7	Individual	400,000.00	No. 2 Pty Ltd	<input type="button" value="NOT VOTED"/>

Buttons: Back, Continue

- ✓ Choose your answer to the displayed resolution(s) and click 'Submit'. A warning message will appear explaining that once a vote is submitted, it cannot be changed.

**Resolutions** Nominate Proxy (Optional)

Please vote 'For' one resolution below. In voting 'For' a resolution, you will be voting 'Against' the other resolutions proposed in the resolution group. Your vote cannot be submitted if you do not vote 'For' a resolution.

RESOLUTION GROUP #1 ANSWER

RESOLUTION GROUP #2 ANSWER

- ✓ Voting status will now be 'Voted' on relevant claims on your 'My Claims' dashboard.

<input type="checkbox"/>	VI213594C	Creditor 8	Entity A	Unsecured Customer	AUD 150,000.00	Admitted for [150,000.00]	<input checked="" type="checkbox"/> VOTED
--------------------------	-----------	------------	----------	--------------------	----------------	---------------------------	---

- ✓ To view your vote, click 'Vote' or 'Select proxy' on your 'My Claims Dashboard'

You are currently logged in [Click here to log out](#)

User Profile

My Claims Dashboard

Voting is open for claims that have been admitted. Voting will close at the second meeting of creditors.

Click [here](#) for an overview of voting process.

- ✓ Find the creditor which you want to view the vote for and click the 'Voted' box to view your vote. The selected votes will then be displayed.

Employee 5	Employee	50,000.00	Australia Pty Ltd	<input checked="" type="checkbox"/> VOTED
------------	----------	-----------	-------------------	---

- ✓ If you are voting for multiple Resolution Groups, you will need to click 'Vote or Select Proxy' when returned to the 'My Claims' dashboard from the first vote. If you have been appointed as a Proxy and need to cast another vote in another Resolution Group, you will click 'Vote' on your 'My Proxy' dashboard.

You are currently logged in [Click here to log out](#)

User Profile

My Claims Dashboard

Voting is open for claims that have been admitted. Voting will close at the second meeting of creditors.

Click [here](#) for an overview of voting process.

- ✓ Select the next relevant Resolution Group or single company you would like to vote for, then select creditors and resolution voting as per first Resolution Group above.

## Appendix E

Circulars to creditors dated 1 June 2023 and 22 June 2023 regarding the DOCA

1 June 2023

Tel: +61 3 9671 7000  
www.deloitte.com.au  
www.deloitte.com.au

## CIRCULAR TO CREDITORS

Dear Sir/Madam,

### **WBHO Australia Pty Ltd ACN 095 983 681 and certain subsidiaries listed in Appendix A (all Subject to Deed of Company Arrangement) (Probuild Group or Companies)**

#### **Application to amend the Deed of Company Arrangement**

I refer to our previous correspondence with respect to the voluntary administration of the entities listed in Appendix A and to the execution of the deed of company arrangement on 21 July 2022 (DOCA) in accordance with the resolutions of creditors of the Companies at the second meeting of creditors held on 30 June 2022 (**Second Meeting**).

The purpose of this circular is to:

- inform creditors that a creditor has filed an application to amend the DOCA, which has been filed in the Supreme Court of Queensland (Court) (DBC Application);
- explain the consequences of the DBC Application for all creditors;
- set out the Deed Administrators' intended response to the DBC Application, including the proposed alternative amendments to the DOCA being proposed by the Deed Administrators (**Deed Administrators' Application**); and
- seek creditors' views on the competing merits of the DBC Application and the Deed Administrators' Application.

#### **The DBC Application**

##### *Background*

On 17 March 2023, the deed administrators received correspondence from the solicitors acting on behalf of Destination Brisbane Consortium Integrated Resort Operations Pty Ltd as Trustee for the Destination Brisbane Consortium Integrated Resort Operating Trust QWB Residential Precinct Operations Pty Ltd as Trustee for the QWB Residential Precinct Operations Trust (together DBC), setting out DBC's concerns regarding the operation of the DOCA, and the potential impact the effectuation of the DOCA may have on an historic claim DBC's alleges against PCA (Qld) Pty Ltd (**PCQ**) arising out of PCQ's works on the Queens Wharf Development in Brisbane in 2020 (**DBC Claim**).

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organisation"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Liability limited by a scheme approved under Professional Standards Legislation.  
Member of Deloitte Asia Pacific Limited and the Deloitte organisation.

©2023 Deloitte Financial Advisory. Deloitte Touche Tohmatsu

**CONFIDENTIAL**

The deed administrators are continuing to investigate the DBC Claim, and have sought additional information from DBC to substantiate the DBC Claim.

DBC has expressed concern that, upon effectuation of the DOCA, the DBC Claim may be extinguished and PCQ will be released from the DBC Claim. PCQ is named as the insured under an insurance policy which may respond to indemnify PCQ in full, or partial, satisfaction of the DBC Claim. DBC alleges that if the DOCA effectuates as presently drafted, then DBC will not be able to obtain the proceeds of the insurance. DBC also asserts it was not aware of the second meeting of creditors and would have raised these concerns with the deed administrators.

For the avoidance of doubt, DBC has not submitted a proof of debt, and has deliberately chosen not to do so. DBC was not in attendance, and did not vote at, the second meeting of creditors. Without submitting a proof of debt, DBC would not have been entitled to vote at the second meeting of creditors in any event.

### *Application filed in the Queensland Supreme Court*

In its correspondence, DBC foreshadowed bringing an application in the Supreme Court of Queensland to amend the DOCA. DBC filed an originating application in the Supreme Court of Queensland on 31 March 2023, seeking orders which would have the effect of amending the DOCA to preserve the DBC Claim (**Application**). A copy of the Application has been provided with this circular at **Appendix B**.

Despite the deed administrators providing an undertaking which would have provided DBC with two months' notice of the final distributions of the Pool C and D funds being made, DBC filed the Application on an urgent basis, alleging there was a risk of the DOCA effectuating imminently. The deed administrators had hoped to resolve DBC's concerns without the need to litigate. However, the deed administrators were denied the opportunity to do so once DBC filed the Application.

### *Update as to timing of the effectuation of the DOCA*

The deed administrators also wish to advise that on 27 April 2023, they filed an application in the High Court of Australia, seeking leave to appeal and appealing the decision of the NSW Court of Appeal in Allianz Australia Insurance Ltd v Probuild Constructions (Aust) Pty Ltd [2023] NSWCA 56 (**Allianz Appeal**). The Allianz Appeal concerns a decision as to whether the deed administrators are entitled to a sum of approximately \$6.5m which they received as part of a broader settlement agreement in relation to a construction project in Melbourne. At first instance, the deed administrators were successful and were held to be entitled to the full amount. The NSW Court of Appeal overturned this decision and awarded Allianz approximately \$6.5m. The deed administrators are now seeking to have this decision overturned.

Given the Allianz Appeal may realise significant assets for the benefit of all creditors, the deed administrators will not effectuate the DOCA until the Allianz Appeal is finally determined, which may be at least 12 months' away.

Notwithstanding the above, the Application has been listed for trial before the Hon Justice Hindman at **9am on 16 June 2023 (Hearing Date)**.

### **The deed administrators' position**

#### *Attitude to the Application*

The deed administrators consider the Application is misconceived.

It is not, and was never, the Deed Administrators' intention to prejudice creditors who have legitimate claims against PCQ or any of the other Companies. The DOCA incorporates section 562 of the Corporations Act (at clause 8.5) and is expressed to preserve claims in respect of insurers at clause 15.3(b).

The Deed Administrators have made the distributions of the Pool A and B funds to the relevant creditors. At present, Effectuation of the DOCA will occur one month after the final distribution of the Pool C and D funds is made to the relevant parties. However, for the reasons outlined above this is unlikely to occur for some time, including by allowing the deed administrators to finalise recoveries, such as the Allianz Appeal.

As was made clear to creditors at the Second Meeting, the intention is for an application to deregister the Companies to be made shortly after the effectuation of the DOCA. Such an application cannot be made where the relevant Company is the subject of any legal proceedings. In any event, the final distribution of the Pool C and D funds will require any outstanding litigation against the Probuild Group to be determined so final distributions can be calculated. Since the DOCA was executed, a number of insured creditors have come forward, however, the deed administrators are confident the majority of these can be resolved within the same timeframe as the outstanding recoveries.

The deed administrators have formed a view that but for insured claim litigation against the DOCA companies (such as the DBC Claim), the DOCA would otherwise likely be able to effectuate by the end of 2024. However, these insured claims will now need to be resolved before effectuation occurs. As such, the deed administrators will incur further costs and expenses associated with keeping the DOCA on foot, and resolving the insured claim litigation (Holding Costs). The Holding Costs will diminish the remaining Pool C and D funds, from which final distributions to creditors will be made. Further, given the uncertainty as to the quantum and duration of the insurance litigation, the deed administrators will not be able to make any further distribution to creditors while they remain liable for the Holding Costs.

This is obviously prejudicial to the interests of those creditors who do not have insured claims and who will see their distributions diminished for the exclusive benefit of the small number of insured creditors. The deed administrators therefore propose an alternative suite of amendments to the DOCA which will better protect the interests of all creditors. The deed administrators propose to file an interlocutory application substantially in the form set out at **Appendix C (Deed Administrators' Application)**. The deed administrators' proposed amendments to the DOCA are set out in the marked-up version of the DOCA which appears at **Appendix D (Proposed Amended DOCA)**. The Proposed Amended DOCA may be further refined before the Deed Administrators' Application is filed, however will be substantially in the form of Appendix D, and will retain the key features set out below.

### *The Deed Administrators' Application*

The key mechanics of the Proposed Amended DOCA are (capitalised terms are as defined in the Proposed Amended DOCA):

- a) defined terms capturing all Insured Claims, not just the DBC Claim;
- b) a Longstop Date, being 21 July 2025, is three years from the date on which the DOCA was executed by the Deed Administrators and the DOCA companies;
- c) a payment mechanism whereby after the Longstop Date, Insured Creditors must fund the Holding Costs in accordance with their rateable share of the total quantum of Insured Claims (as notified by the Deed Administrators);
- d) providing for an Insured Creditor to be deemed to have waived any entitlement to the proceeds of any Applicable Insurance and consenting to discontinuing any proceedings they have against a DOCA company if they do not pay their share of the Holding Costs; and
- e) altering the effectuation mechanism to be triggered by the later of a month after the Final Distribution Date or the Determination Date (being the determination / resolution of all Insured Claims).

The benefits of the Proposed Amended DOCA include the following:

- a) the change to Effectuation will avoid DBC's concerns with the DOCA;
- b) Insured Creditors will have until 21 July 2025 to resolve their Insured Claims before they are liable for the Holding Costs (noting creditors were previously advised the DOCA may remain on foot for 12 months and effectuation was anticipated to occur in July 2023);

- c) if Insured Claims continue beyond the Longstop Date, the remaining creditors will no longer have to bear the Holding Costs (and have their distributions diminished), but the Insured Claims can still be prosecuted; and
- d) the Deed Administrators will be able to pay the remaining DOCA creditors a significant proportion of the anticipated final dividend after the Longstop Date, as Holding Costs will be met by Insured Creditors.

For these reasons, the Deed Administrators consider their Proposed Amended DOCA is a superior alternative to DBC's amendments. The deed administrators' proposal is also in the best interest of all creditors, and consistent with the broader objectives of Part 5.3A of the Corporations Act, including by maximising the return to creditors of the company.

*What if no orders are made?*

If the Application is unsuccessful, or the deed administrators' amendments are not made, it is likely the Probuild Group will still need to go through a winding-up process after the effectuation of the DOCA or delay effectuation indefinitely until all claims are resolved. This will be necessary to allow the Companies to be deregistered. A winding-up process or indefinite DOCA period will cost further money and will result in smaller returns to creditors.

For this reason, the deed administrators consider creditors should support the Deed Administrators' Application, as set out at Appendix C.

## **Creditors views**

If creditors believe they will be impacted by DBC's proposed amendments to the DOCA (at Appendix B) or the deed administrators' Proposed Amended DOCA (at Appendix D), they are encouraged to email the Deed Administrators at [probuild1@deloitte.com.au](mailto:probuild1@deloitte.com.au) as soon as possible.

The Deed Administrators will provide the court with a summary of the correspondence received from creditors at the Hearing Date, and provide an update to creditors after the Hearing Date.

Yours faithfully



**David Orr**

Joint and several deed administrator of the Probuild Group

Appendix A – List of companies in deed administration

Appendix B – DBC Application

Appendix C – Deed Administrators' Application

Appendix D – Deed Administrators' draft amended DOCA

**Appendix A – Entities subject to deed of company arrangement**

<b>Company</b>	<b>ACN</b>
ACN 098 866 794	ACN 098 866 794
Contexx Holdings Pty Ltd	ACN 144 707 022
Contexx Pty Ltd	ACN 147 249 796
PCA (QLD) Pty Ltd	ACN 141 148 245
Probuild Civil Pty Ltd	ACN 010 870 587
Probuild Constructions (Aust) Pty Ltd	ACN 095 250 945
Probuild Constructions (NSW) Pty Ltd	ACN 165 675 874
Probuild Constructions (QLD) Pty Ltd	ACN 166 966 034
Probuild Constructions (VIC) Pty Ltd	ACN 165 675 865
Probuild Constructions (WA) Pty Ltd	ACN 165 676 095
Prodev Investments 4 Pty Ltd	ACN 629 246 653
Prodev Murphy Pty Ltd	ACN 120 758 803
WBHO Australia Pty Ltd	ACN 095 983 681
WWBHO Construction Australia Pty Ltd	ACN 149 901 931



Appendix B – DBC's Application

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 4023 of 2023

IN THE MATTER OF **PCA (QLD) Pty Ltd (subject to Deed of Company Arrangement) ACN 141 148 245**

Applicants **Destination Brisbane Consortium Integrated Resort Operations Pty Ltd as trustee for The Destination Brisbane Consortium Integrated Resort Operating Trust and QWB Residential Precinct Operations Pty Ltd as trustee for the QWB Residential Precinct Operations Trust**

and

First Respondent **PCA (QLD) Pty Ltd (subject to Deed of Company Arrangement) ACN 141 148 245**

and

Second Respondent **Salvatore Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities as Deed Administrators of the Deed Companies**

**ORIGINATING APPLICATION**

**A. DETAILS OF APPLICATION**

This application is made under sections 445D, 450D, 445G, 447A, 447B and 440D of the *Corporations Act 2001* (Cth).

On the facts stated in the supporting affidavit, the applicant, applies for orders that:

1. Pursuant to:
  - (a) section 447A of the Act, Part 5.3A of the Act is to operate in relation to the Deed Companies, alternatively PCA, as if section 445G and section 445A of the Act provided that the DOCA may be varied by an order of the Court;



ORIGINATING APPLICATION  
Filed on behalf of the Applicant  
Form 4 Version 3, approved 8/10/2018  
Uniform Civil Procedure Rules 1999  
Rule 2.2  
UCPR Schedule 1A

Carter Newell Lawyers  
Level 13, 215 Adelaide Street  
BRISBANE QLD 4000  
Phone: 07 3000 8376  
Fax: 07 3000 8488  
Ref: DJR:SAE:166583  
Email: [djr@carternewell.com](mailto:djr@carternewell.com)

- (b) section 445G or section 445A as so varied and applied to the Deed Companies, alternatively PCA, the DOCA be amended in the terms set out in Annexure A; and
  - (c) section 447A of the Act, Part 5.3A of the Act is to operate in relation to the Deed Companies, alternatively PCA, such that the DOCA containing the amendments set out in Annexure A, is valid.
- 2. In the alternative to paragraph 1, pursuant to s 447A(1) of the Act, Part 5.3A of the Act is to operate in relation to the Deed Companies, alternatively PCA, as if the DOCA given effect to pursuant to section 444A and executed pursuant to section 444B was always constituted by the DOCA as amended in accordance with Annexure A.
- 3. In the alternative to paragraphs 1 and 2, pursuant to sections 445G of the Act (on the section 445G grounds):
  - (a) clauses 1.1, 1.5, 14.11, 15.1(a), 15.3, 15.4 and 15.5 of the DOCA are declared void as against DBC; and
  - (b) thereafter, the Deed Administrators having consented, the DOCA is varied as set out in Annexure A.
- 4. In the alternative to paragraphs 1 to 3:
  - (a) pursuant to s 447A of the Act, Part 5.3A of the Act is to operate in relation to the Deed Companies, alternatively PCA, as if section 445G(4) of the Act did not require the Deed Administrators' consent;
  - (b) pursuant to sections 445G(4) as amended (on the section 445G grounds):
    - (i) clauses 1.1, 1.5, 14.11, 15.1(a), 15.3, 15.4 and 15.5 of the DOCA are declared void;
    - (ii) thereafter, the DOCA is varied by the reinstatement of clauses 1.1, 1.5, 14.11, 15.3 and 15.5 varied in the manner set out at Annexure A.
- 5. In the alternative to paragraphs 1 to 4 e, pursuant to section 447A(1) of the Act, Part 5.3A of the Act operates in relation to the Deed Companies, alternatively PCA, as follows:

- (a) Section 444D(1) of the Act is varied so that the DOCA does not bind DBC to the extent that the DOCA does not release, extinguish or otherwise discharge the DBC Claim other than in accordance with subparagraph (c) below;
- (b) for the avoidance of doubt, section 444D(1), is varied as set out in subparagraph (a) hereof notwithstanding the terms of the DOCA and how the DOCA would otherwise operate, and including by operation of clauses 1.5, 14.11, 15.1(a), 15.2, 15.3(a), (c) & (d), 15.4, 15.5 and the definition of "Claim" and "Creditor" in clause 1.1 thereof;
- (c) the DBC Claim will be released and extinguished upon the first to occur of the following:
  - (A) where any judgment (other than an interim or interlocutory judgment), Court Order, settlement, compromise or other agreement with PCA in respect of DBC's Claim results in a net amount being payable by or on behalf of PCA to DBC:
    - (I) 28 days after all of the Insurance Proceeds, having been either received by PCA and paid to DBC or paid to DBC directly, provided that no appeal or review of a judgment has been filed within that 28 day period (and if any appeal or review is lodged within that 28 day period, then this clause shall apply to the outcome of that appeal or review); or
    - (II) 28 days after it has been determined by a judgment delivered by a court of competent jurisdiction (with all appeal rights either being exhausted by PCA or having lapsed on the part of the relevant Insurer) that even though the DBC Claim has resulted in an amount being payable by PCA to BC, each Insurer who PCA is, or may be entitled to be, indemnified under a contract of insurance in respect of the DBC Claim, is not liable to indemnify PCA; or
  - (B) where any judgment (other than an interim or interlocutory judgement) Court Order, settlement, compromise or other

agreement with PCA does not result in any net amount being payable by or on behalf of PCA to DBC:

- (I) in the case of a judgment, 28 days after that judgment is handed down, provided that no appeal or review of a judgment has been filed within that 28 day period (and if any appeal or review is lodged within that 28 day period, then this clause shall apply to the outcome of that appeal or review); or
  - (II) in the case of a settlement, compromise or other agreement, when that settlement compromise or other agreement takes effect.
- (d) Section 444H(1) of the Act is varied so that the DOCA releases PCA from the DBC Claim only so that satisfaction in respect of the DBC Claim is restricted to the Insurance Proceeds.
6. Within seven days of the making of any of the orders in paragraphs 1 to 5 above, the Second Respondent must:
- (a) cause notice of the making of the orders to be published in a national newspaper; and
  - (b) lodge a copy of the orders as made, including Annexure A, with ASIC.
7. Leave be granted pursuant section 440D of Act for DBC, to commence and proceed with proceedings against PCA, in respect of the claims and matters the subject of the draft claim and statement of claim exhibited to the affidavit of David Rodighiero to be sworn.
8. Such further or other order or direction as the Court considers appropriate.
9. The Second Respondent pay the applicants costs of the application.

**Definitions:**

**Act** means the *Corporations Act 2001* (Cth).

**Annexure A** means the document marked 'Annexure A' attached hereto.

**DBC** means the Applicants.

**DBC Claim** means any claim of the DBC Creditor (including but not limited to any claim for legal and other professional costs associated with pursuing or recovering any DBC Claim) against PCA and including (without limitation) any claim made by DBC against PCA in respect of or in connection with the alleged damage, destruction, interference, subsidence, movement or other impact to the REX during 2020.

**DBC Creditor** means the applicants.

**Deed Administrators** means Salvatore Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacity as joint and several voluntary administrators of the Deed Companies.

**Deed Companies** means the companies listed in Schedule 1 of the DOCA.

**DOCA** means the Deed of Company Arrangement dated 21 July 2022 between the companies listed at schedule 1 thereto, Salvatore Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacity as joint and several voluntary administrators of the Deed Companies and WBHO Constructions Pty Ltd, a company incorporated pursuant to the laws of South Africa with Registration Number 1983/011953/07.

**Insurance Proceeds** means any amount actually paid to or on behalf of and/or received by PCA after the 21 July 2022 by or from an Insurer (including but not limited to all indemnified amounts along with any legal and other adverse costs payable by PCA to any plaintiff).

**Insurer** means any insurers of PCA.

**PCA** means the First Respondent.


**REX** means the Riverside Expressway in Brisbane, Queensland.

**Section 445G(1) grounds** are the following specific grounds giving rise to doubt as to whether the DOCA was entered into in accordance with Part 5.3A of the Act or complies with Part 5.3A of the Act:

- (a) contrary to s 439A(1) of the Act, the Deed Administrators failed to properly convene the second meeting of creditors on 30 June 2022 by convening a meeting of creditors of PCA without giving notice of the meeting to DBC, a creditor of PCA;
- (b) contrary to rule 75-225 of the *Insolvency Practice Rules (Corporations)* 2016, the Deed Administrators failed to properly convene the second meeting of creditors on 30 June 2022 by giving notice of the meeting to as

many of the creditors of PCA as reasonably practicable because notice of the meeting was not given to DBC, a creditor of PCA;

- (c) contrary to s 438A(a) of the Act, the Deed Administrators failed to properly investigate PCA's business, property, affairs and financial circumstances, because they failed to make any or any adequate enquiries about the nature and quantum of DBC's claims against PCA and how those claims may impact the return to creditors under a deed of company arrangement or under liquidation;
- (d) contrary to s 439C of the Act, the resolution of creditors that PCA execute the DOCA did not occur at a properly convened meeting under s 439A for the reasons set out in paragraphs (a) and (b) above;
- (e) contrary to s 444A of the Act, the DOCA that was prepared was not as a result of a resolution of creditors at a properly convened meeting under s 439A for the reasons set out in paragraph (d) above; and
- (f) contrary to s 444B of the Act, the DOCA that was executed was not an instrument prepared under s 444A for the reasons set out in (e) above.

Signed   
 Description Carter Newell Lawyers  
 Solicitors for the Applicant  
 Dated 31 March 2023

## B. NOTICE TO RESPONDENTS(S)

TO: PCA (QLD) Pty Ltd (subject to Deed of Company Arrangement) 141 148 245  
 of: c/- Deloitte Financial Advisory  
 477 Collins Street  
 Melbourne VIC 3000  
 AND: Salvatore Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities  
 as Deed Administrators of the Deed Companies  
 of: c/- Deloitte Financial Advisory  
 477 Collins Street  
 Melbourne VIC 3000

This application will be heard by the Court at QEII Courts of Law Complex, 415 George Street, Brisbane Qld 4000 on: 20/04/23 at 10:00am.

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you. In addition you must before the day for hearing file a notice of appearance in this Registry. The notice should be in Form 4. You must serve a copy of it at the applicant's address for service shown in this application as soon as possible.

#### D. FILING

Date of filing: 31 MAR 2023



This originating application is filed by Carter Newell Lawyers for the applicant.

#### E. SERVICE

The applicant's address for service is:

Applicant's solicitors name: David Rodighiero  
 and firm name: Carter Newell Lawyers  
 Solicitor's business address: Level 13, 215 Adelaide Street, Brisbane Qld 4000  
 Address for service: Level 13, 215 Adelaide Street, Brisbane Qld 4000  
 Telephone: 07 3000 8376  
 Fax: 07 3000 8488  
 E-mail address (if any): djr@carternewell.com

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

1. PCA (Qld) Pty Ltd (subject to Deed of Company Arrangement) ACN 141 148 245
2. Salvatore Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities as Deed Administrators of the Deed Companies



## Annexure A

1. The definition of "Claim" in clause 1.1 of the DOCA be varied to read:

**Claim** means any action, demand, suit, proceeding, debt, claim, loss, damage or other liability (whether present or future, certain or contingent, ascertained or sounding only in damages) whatsoever and however incurred, arising directly or indirectly from any act or omission by the Deed Companies (or any one of them) or by any agreement, circumstance or event, occurring on or before the Appointment Date, but does not include an Excluded Claim or the DBC Claim.

2. The following additional definitions be inserted in clause 1.1 of the DOCA:

**DBC** means Destination Brisbane Consortium Integrated Resort Operations Pty Ltd (ACN 608 538 638) as trustee for The Destination Brisbane Consortium Integrated Resort Operating Trust and QWB Residential Precinct Operations Pty Ltd (ACN 608 792 329 ) as trustee for the QWB Residential Precinct Operations Trust

**DBC Creditor** means DBC.

**DBC Claim** means any claim of the DBC Creditor (including but not limited to any claim for legal and other professional costs associated with pursuing or recovering any DBC Claim) against PCA and including (without limitation) any claim made by DBC against PCA in respect of or in connection with the alleged damage, destruction, interference, subsidence, movement or other impact to the REX during 2020.

**Insurance Proceeds** means any amount actually paid to or on behalf of and/or received by PCA after the Commencement Date by or from an Insurer (including but not limited to all indemnified amounts along with any legal and other adverse costs payable by PCA to any plaintiff).

**Insurer** means any insurers of PCA.

**PCA** means PCA (QLD) Pty Ltd (subject to Deed of Company Arrangement) ACN 141 148 245.

**REX** means the Riverside Expressway in Brisbane, Queensland.

## 3. Clause 1.5 of the DOCA be varied to read:

*1.5 Bar to claims*

- (a) *Subject to section 444D of the Corporations Act, this Deed may be pleaded and tendered by:*
- (i) *the Deed Companies or the Deed Administrators against any person (other than the DBC Creditor) having or asserting a Claim released, discharged and extinguished by clause 15.3; and*
  - (ii) *the recipient of any release or covenant contained in this Deed;*

*as an absolute bar and defence to any legal proceeding brought or made at any time in respect of a claim, release or covenant as the case may be.*

- (b) *This Deed may only be pleaded and tendered by the Deed Companies or the Deed Administrators against the DBC Creditor following release and extinguishment of the DBC Claim in accordance with clause 15.3(f).*

## 4. Clause 14.11 be varied to read:

*A Creditor (other than the DBC Creditor) will be deemed to have abandoned its Claim if, before the payment of a final dividend from the relevant Pool, the Creditor:*

- (a) *fails to submit a formal proof of debt or claim in respect of its Claim; or*
- (b) *having submitted a formal proof of debt or claim in respect of its Claim which is rejected, that Creditor fails to appeal to the Court against the rejection, within the time allowed for such an appeal under the Regulations as if the proof were rejected in the liquidation of the Deed Companies.*

## 5. Clause 15.3(a) of the DOCA be varied to read:

- (a) *Subject to clause 15.3(e), Creditors must accept their entitlements under the Deed Fund (if any) in full satisfaction*

*and complete release and discharge of all Claims which they have, or claim to have, against the Deed Companies on or before the Appointment Date.*

6. Clause 15.3(b) of the DOCA be varied to read:

*(b) Notwithstanding any other provision of this Deed, except clause 15.2, this Deed does not affect any:*

*(i) rights of recourse Creditors may have in respect of bank guarantees, insurance bonds and other sureties and insurers; and*

*(ii) Claim of a Creditor against a Deed Company, which Claim, if not released, extinguished or abandoned by the operation of this Deed, may be responded to by any policy of insurance held at the relevant time.*

7. Clause 15.3(c) of the DOCA be varied to read:

*(c) Subject to clause 15.3(e) each Creditor must, if required by the Deed Companies or the Deed Administrators, execute any document that the Deed Companies or a Deed Administrator may require from time to time to give effect to the releases in clause 15.3(d).*

8. Clause 15.3(d) of the DOCA be varied to read:

*(d) Subject to clause 15.3(e), immediately upon and with effect from the Final Distribution Date, the Claims of all Creditors will be fully released and extinguished.*

9. Clause 15.3 be varied by inserting the following additional subclauses at the end of clause 15.3:

*(e) Subject to clause 15.3(f), clauses 10.3, 15.3(a), 15.3(c) and 15.3(d) do not apply in relation to the DBC Creditor and the DBC Claim.*

*(f) The DBC Claim will be released and extinguished upon the first to occur of the following:*

(i) *where any judgment (other than an interim or interlocutory judgment), Court Order, settlement, compromise or other agreement with PCA in respect of the DBC Claim results in a net amount being payable by or on behalf of PCA to DBC:*

(A) *28 days after all of the Insurance Proceeds, having been either received by PCA and paid to the DBC Creditor or paid to the DBC Creditor directly, provided that no appeal or review of a judgment has been filed within that 28 day period (and if any appeal or review is lodged within that 28 day period, then the provision of clause 15.3(f)(i) and 15.3(f)(ii) shall apply to the outcome of that appeal or review); or*

(B) *28 days after it has been determined by a judgment delivered by a court of competent jurisdiction (with all appeal rights either being exhausted by PCA or having lapsed on the part of the relevant Insurer) that even though the DBC Claim has resulted in an amount being payable by PCA to the DBC Creditor, each Insurer who PCA is, or may be entitled to be, indemnified under a contract of insurance in respect of the DBC Claim, is not liable to indemnify PCA; or*

(ii) *where any judgment (other than an interim or interlocutory judgement) Court Order, settlement, compromise or other agreement with PCA does not result in any net amount being payable by or on behalf of PCA to DBC:*

(A) *in the case of a judgment, 28 days after that judgment is handed down, provided that no appeal or review of a judgment has been filed within that 28 day period (and if any appeal or review is lodged within that 28 day period, then the provisions of clause 15.3(f)(i) and 15.3(f)(ii) shall apply to the outcome of that appeal or review); or*

*(B) in the case of a settlement, compromise or other agreement, when that settlement compromise or other agreement takes effect.*

- (g) The DBC Creditor must accept its rights under clause 15.3(f)(i) and 15.3(f)(ii) of this Deed in full satisfaction and complete discharge of the DBC Claim which will otherwise be non-recourse against the Deed Companies. For the avoidance of doubt, the Deed Companies shall be under no obligation to make any payment to the DBC Creditor (including but not limited to any claim for adverse legal and other professional costs arising out of or any way connected to the DBC Claim) other than from any Insurance Proceeds received by it in respect of the DBC Claim.*

Appendix C – The Deed Administrators' Application

*Execution Version*

# Deed of Company Arrangement

The companies listed at Schedule 1  
Deed Companies

Salvatore Algeri, Jason Tracy, Matthew Donnelly and David Orr in their  
capacities as joint and several voluntary administrators of the Deed  
Companies  
Deed Administrators

WBHO Construction (Pty) Ltd, a company incorporated pursuant to the  
laws of South Africa with Registration Number 1983/011953/07  
Proponent

Clayton Utz  
Level 15 1 Bligh Street  
Sydney NSW 2000  
GPO Box 9806  
Sydney NSW 2001  
Tel +61 2 9353 4000  
Fax +61 2 8220 6700  
[www.claytonutz.com](http://www.claytonutz.com)

Our reference 20556/19580/81021333

## Contents

<b>1.</b>	<b>Definitions and interpretation</b> .....	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation.....	87
1.3	Inconsistency .....	87
1.4	Business Days .....	98
1.5	Bar to claims .....	98
1.6	Prescribed Provisions .....	98
1.7	Required provisions .....	98
1.8	Deed components.....	98
<b>2.</b>	<b>Operation of this Deed</b> .....	<b>98</b>
2.1	Commencement Date.....	98
2.2	Interim effect.....	98
2.3	Termination.....	99
<b>3.</b>	<b>Objective and effect</b> .....	<b>109</b>
3.1	Objectives .....	109
3.2	Effect of the Deed on Officers of the Deed Companies .....	109
3.3	Effect of this Deed on Members .....	109
<b>4.</b>	<b>Conditions Precedent</b> .....	<b>1140</b>
4.1	Conditions.....	1140
4.2	Obligation to satisfy Conditions and transparency .....	1140
4.3	Waiver of Conditions .....	1140
4.4	Consequence of non-satisfaction of the Conditions .....	1140
4.5	Non-execution.....	1140
<b>5.</b>	<b>Pooling</b> .....	<b>1144</b>
5.1	Pooling .....	1144
5.2	Intercompany loan balances.....	1244
5.3	Books and records.....	1244
<b>6.</b>	<b>Deed Fund</b> .....	<b>1244</b>
6.1	Establishment of Deed Fund .....	1244
6.2	Accounts .....	1242
6.3	Monies held by Deed Administrators.....	1342
<b>7.</b>	<b>Cash Contribution</b> .....	<b>1342</b>
7.1	Contribution Amount.....	1342
7.2	Caulfield Contingent Payment .....	1342
7.3	Application of Initial Contribution Amount.....	1342
7.4	Transfer of Caulfield Contingent Amount .....	1443
7.5	Certificate of Satisfaction .....	1443
<b>8.</b>	<b>Distribution of Deed Fund</b> .....	<b>1443</b>
8.1	Pool A Fund .....	1443
8.2	Pool B Fund .....	1443
8.3	Pool C Fund and Pool D Fund.....	1544
8.4	Administrators' Liabilities and Deed Administrators' Liabilities.....	1544
8.5	Insured Claims.....	1544
8.6	Manner of distribution .....	1544
<b>9.</b>	<b>CBA Bank Guarantees</b> .....	<b>1645</b>
9.1	Guarantee Recovery Payment .....	1645
9.2	Assignment of Claims .....	1645
<b>10.</b>	<b>Termination of the Deed</b> .....	<b>1645</b>
10.1	Termination on effectuation of Deed .....	1645



10.2	Termination on failure of Deed .....	<a href="#">1645</a>
10.3	Notice of Effectuation of Deed .....	<a href="#">1645</a>
10.4	Effect of Termination .....	<a href="#">1645</a>
10.5	Severance .....	<a href="#">1746</a>
10.6	Consequences of Termination of the Deed for non-performance ...	<a href="#">1746</a>
10.7	Survival of clauses .....	<a href="#">1746</a>
10.8	Termination Amount Payable on Termination .....	<a href="#">1746</a>
<b>11.</b>	<b>Deed Administrators' appointment .....</b>	<b><a href="#">1746</a></b>
11.1	Appointment .....	<a href="#">1746</a>
11.2	Acceptance of appointment .....	<a href="#">1746</a>
11.3	Deed Administrators are agents .....	<a href="#">1746</a>
11.4	Joint and several .....	<a href="#">1847</a>
11.5	Deed Administrators' resignation .....	<a href="#">1847</a>
<b>12.</b>	<b>Powers of the Deed Administrators .....</b>	<b><a href="#">1847</a></b>
12.1	Powers .....	<a href="#">1847</a>
12.2	Solicitors, advisers and consultants .....	<a href="#">1948</a>
12.3	Creditors' meetings .....	<a href="#">2049</a>
12.4	Reporting .....	<a href="#">2049</a>
12.5	Books and records .....	<a href="#">2049</a>
12.6	Proponent's reporting obligations .....	<a href="#">2120</a>
<b>13.</b>	<b>Remuneration and indemnity .....</b>	<b><a href="#">2120</a></b>
13.1	Remuneration .....	<a href="#">2120</a>
13.2	No personal liability .....	<a href="#">2120</a>
13.3	Indemnity .....	<a href="#">2120</a>
13.4	Indemnity not to be affected or prejudiced .....	<a href="#">2224</a>
13.5	Satisfaction of Claims .....	<a href="#">2322</a>
13.6	Deed Administrators' lien .....	<a href="#">2322</a>
13.7	Insufficient funds .....	<a href="#">2322</a>
13.8	Priority .....	<a href="#">2322</a>
13.9	Statutory liability and indemnity .....	<a href="#">2322</a>
13.10	Deed Administrators' Liabilities if pooling does not occur .....	<a href="#">2322</a>
<b>14.</b>	<b>Making of claims by Creditors .....</b>	<b><a href="#">2422</a></b>
14.1	Proofs of debt .....	<a href="#">2422</a>
14.2	Request notice to Creditors .....	<a href="#">2422</a>
14.3	Determination .....	<a href="#">2423</a>
14.4	Adjudication of Claims .....	<a href="#">2423</a>
14.5	Admitted Employee Creditors .....	<a href="#">2523</a>
14.6	Claims against two or more Deed Companies .....	<a href="#">2523</a>
14.7	Intragroup Claims .....	<a href="#">2523</a>
14.8	Unclaimed moneys .....	<a href="#">2523</a>
14.9	Costs .....	<a href="#">2524</a>
14.10	Interest .....	<a href="#">2524</a>
14.11	Abandonment of Claims .....	<a href="#">2524</a>
14.12	Conversion of foreign currency .....	<a href="#">2624</a>
14.13	The whole of a Superannuation Contribution debt .....	<a href="#">2624</a>
14.14	Part of a Superannuation Contribution debt .....	<a href="#">2624</a>
<b>15.</b>	<b>Moratorium and release .....</b>	<b><a href="#">2625</a></b>
15.1	Binding effect .....	<a href="#">2625</a>
15.2	Moratorium .....	<a href="#">2725</a>
15.3	Release and discharge of Claims .....	<a href="#">2726</a>
15.4	Execution of all necessary documents .....	<a href="#">2826</a>
15.5	Bar to Creditors' Claims .....	<a href="#">2826</a>
<b>16.</b>	<b>Tax .....</b>	<b><a href="#">2826</a></b>
16.1	Interpretation .....	<a href="#">2826</a>
16.2	Reimbursements and similar payments .....	<a href="#">2827</a>

16.3	GST payable.....	<a href="#">2927</a>
16.4	Tax invoice.....	<a href="#">2927</a>
16.5	Variation to GST payable .....	<a href="#">2927</a>
16.6	Taxation obligations.....	<a href="#">2927</a>
<b>17.</b>	<b>Notices .....</b>	<b><a href="#">2927</a></b>
17.1	How to give notices .....	<a href="#">2927</a>
17.2	Change of details.....	<a href="#">2928</a>
17.3	Notice details .....	<a href="#">3028</a>
<b>18.</b>	<b>General.....</b>	<b><a href="#">3028</a></b>
18.1	Variation.....	<a href="#">3028</a>
18.2	Assignment.....	<a href="#">3029</a>
18.3	Further assurances.....	<a href="#">3029</a>
18.4	Governing law and jurisdiction.....	<a href="#">3129</a>
18.5	Waiver.....	<a href="#">3129</a>
18.6	Counterparts.....	<a href="#">3129</a>
18.7	Creditor's power of attorney.....	<a href="#">3129</a>
18.8	Joint Parties .....	<a href="#">3129</a>
18.9	Costs.....	<a href="#">3130</a>
18.10	Acknowledgement .....	<a href="#">3130</a>
18.11	Accumulative rights .....	<a href="#">3230</a>
18.12	Entire agreement .....	<a href="#">3230</a>
18.13	Further cooperation .....	<a href="#">3230</a>
18.14	Relationship of the parties .....	<a href="#">3230</a>
	<b>Schedule 1 - Deed Companies .....</b>	<b><a href="#">3634</a></b>

# Deed of Company Arrangement

---

## Date

## Parties

The companies listed at Schedule 1 (**Deed Companies**)

**Salvatore Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities as joint and several voluntary administrators of each of the Deed Companies of C/- Deloitte Financial Advisory, 477 Collins Street, Melbourne VIC 3000 (Deed Administrators)**

**WBHO Construction (Pty) Ltd**, a company incorporated pursuant to the laws of South Africa with Registration Number 1983/011953/07 of 53 Andries Street, Wynberg Sandton 2090, South Africa (**Proponent**)

## Background

- A. On 23 February 2022, Sal Algeri, Jason Tracy, David Orr and Matt Donnelly were appointed as joint and several voluntary administrators of the Deed Companies pursuant to section 436A of the Corporations Act.
- B. At a meeting held on 30 June 2022 and convened pursuant to section 439A of the Corporations Act (**Second Meeting**), the Creditors of the Deed Companies resolved under section 439C of the Corporations Act that the Deed Companies execute the deed of company arrangement proposed by the Proponent under section 444B(2) of the Corporations Act (**Section 439C Resolution**).
- C. The Deed Companies, the Deed Administrators and the Proponent have agreed to execute this Deed to give effect to the Section 439C Resolution.
- D. The Deed Administrators have consented to be the administrators of this Deed.
- E. Subject to the terms of this Deed, this Deed binds all Creditors of the Deed Companies, in accordance with section 444D of the Corporations Act and also binds the Deed Companies and their Officers and Members in accordance with section 444G of the Corporations Act.

## Operative provisions

---

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Deed:

**Administrators** means Sal Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities as joint and several voluntary administrators of the Deed Companies (and any successor to that office appointed pursuant to the Corporations Act) as set out in Schedule 1.

**Administrators' Liabilities** means the remuneration (as approved in accordance with the Corporations Act), costs, charges, liabilities and expenses (including legal expenses and claims made against the Administrators) of the Administrators.

**Admitted Claim** means a Claim admitted by the Deed Administrators after adjudication in accordance with this Deed.

**Admitted Creditor** means a Claim against the Deed Companies that is admitted by the Deed Administrators in accordance with the terms of this Deed.

**Admitted Employee Creditor** means an Employee Creditor who has an Admitted Claim.

**Admitted Insurance Bond Creditor** means an Insurance Bond Creditor who has an Admitted Claim.

**Admitted Small Creditor** means a Small Creditor who has an Admitted Claim.

**Admitted Unsecured Creditor** means an Unsecured Creditor who has an Admitted Claim.

[Applicable Insurance has the meaning given to it in the definition of Insured Claim.](#)

**Appointment Date** means 23 February 2022.

**ASIC** means the Australian Securities and Investments Commission.

**ATO GST Priority Amount** means the lesser of:

- (a) an amount equal to the Proceeds of Realisable Assets of Prodev 4 (prior to pooling of such assets in accordance with the terms of this Deed) less costs of realisation (including the Administrators' or Deed Administrators' fees and expenses) and any priority entitlements pursuant to section 556 of the Corporations Act; and
- (b) amounts owing to the Australian Taxation Office in respect of unpaid GST owed by the relevant tax group including Prodev 4.

**ATO Income Tax Priority Amount** means the lesser of:

- (a) an amount equal to the Proceeds of Realisable Assets of Northcoast Holdings (prior to pooling of such assets in accordance with the terms of this Deed) less costs of realisation (including the Administrators' or Deed Administrators' fees and expenses) and any priority entitlements pursuant to section 556 of the Corporations Act; and
- (b) amounts owing to the Australian Taxation Office in respect of unpaid income tax owed by the relevant tax group including Northcoast Holdings.

**BLU System** means the software platform owned and operated by the Proponent.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for business generally in Melbourne.

**Called Guarantees** means CBA Bank Guarantees, which have been called by the relevant holder and in respect of which the Proponent has paid an amount equivalent to the amount called to CBA.

**CBA** means Commonwealth Bank of Australia in its capacity as "Fronting Bank" under the CBA Facility Agreement.

**CBA Bank Guarantees** means bank guarantees issued under the CBA Facility Agreement.

**CBA Facility Agreement** means the Bank Guarantee Facility and Reimbursement Agreement dated 14 December 2017 between, among others, CBA and Probuild (as amended from time to time).

**CBA Guarantee Recovered Funds** means any amounts recovered by the Deed Companies in respect of the Called Guarantees but does not include amounts recovered in respect of the Curtin Uni Performance Guarantees.

**Caulfield Contingent Amount** means \$500,000 (GST inclusive, if any).

**Caulfield Conditions** means each of the conditions precedent contain in clause 7.2(a) of this Deed.

**Caulfield Satisfaction Date** means the date on which all of the Caulfield Conditions have been satisfied.

**Claim** means any action, demand, suit, proceeding, debt, claim, loss, damage or other liability (whether present or future, certain or contingent, ascertained or sounding only in damages) whatsoever and however incurred, arising directly or indirectly from any act or omission by the Deed Companies (or any one of them) or by any agreement, circumstance or event, occurring on or before the Appointment Date, but does not include an Excluded Claim.

**Commencement Date** means that date upon which each relevant party executes this Deed.

**Completion** means the date being 5 Business Days after the date that each of the Conditions are satisfied.

**Conditions** means each of the conditions precedent contained in clause 4 of this Deed.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Court** means the Federal Court of Australia or the Supreme Court of Victoria.

**CP Satisfaction Date** means the date that is no later than 8 weeks after the Commencement Date.

**Creditor** means a person who, or an entity that, has a Claim against a Deed Company.

**Curtin Uni Performance Guarantees** means:

- (a) bank guarantee G636680 issued by CBA in favour of Live-In Learning Custodians Pty Ltd guaranteeing an amount equal to \$504,043.28; and
- (b) bank guarantee G636676 issued by CBA in favour of National Australia Bank Limited guaranteeing an amount equal to \$7,956,892.67.

**Deed** means this Deed of Company Arrangement between the Parties.

**Deed Administrators' Liabilities** means the remuneration (as approved in accordance with the Corporations Act), costs, charges, liabilities and expenses (including legal expenses and claims made against the Deed Administrators) of the Deed Administrators.

**Deed Fund** has the meaning given to it in clause 6.1.

**Deed Period** means the period commencing on the Commencement Date and ending on the date this Deed Terminates.

**Determination Date** means the earliest date by which, in respect of all known Insured Claims, the following has occurred:

- (a) an insurer pays all amounts which it assumes liability for or agrees to pay or is found by a court to be liable to pay under the Applicable Insurance in respect of an Insured Claim;
- (b) the date on which the Insured Creditor or the relevant Deed Company exhausts all reasonably available remedies against the insurer; or

(c) [the date on which the insurer is found by a court to be not liable to pay under the Applicable Insurance.](#)

**Directors** has the meaning ascribed to that term in section 9 of the Corporations Act.

**Effectuation** means the date upon which effectuation of this Deed is to occur, being one month after the date that the final distribution is made from the Deed Fund and the Deed Administrators have attended to all matters necessary to certify that the Deed has been effectuated.

**Employee Creditor** means an employee Creditor with a Claim that, in a liquidation of the Deed Companies, would be entitled to priority of payment pursuant to sections 556(1)(e), (f) to (h) (inclusive), 560 or 561 of the Corporations Act and:

- (a) includes:
  - (i) an employee Creditor that would otherwise be an “excluded employee” pursuant to subsection (c) of the definition of “excluded employee” in section 556(2) of the Corporations Act; and
  - (ii) an employee Creditor that would otherwise be impacted by subsection (c) of the definition of “non-priority day” in section 556(2) of the Corporations Act; and
- (b) does not include an employee whose employment with a Deed Company was transferred to a third party prior to the Commencement Date.

**Enforcement Process** has the meaning ascribed to that term in section 9 of the Corporations Act.

**Excluded Assets** are:

- (a) any loans owing to any of the Deed Companies by Brad Duggan; and
- (b) CBA Guarantee Recovered Funds.

**Excluded Claim** means:

- (a) a Claim by any of the Deed Companies to receive a distribution in respect of an intercompany receivable;
- (b) a Claim by the Proponent to receive a distribution as an Admitted Creditor; or
- (c) a Claim by a relevant finance party or relevant guarantor under the CBA Facility Agreement to receive a distribution as an Admitted Creditor.

**Final Distribution Date** means the date upon which the final distribution is made to Creditors from the Deed Fund.

**Finance Party and Proponent Consent** means the agreement of the Proponent, relevant finance parties and relevant guarantors under the CBA Facility Agreement not to receive a distribution as an Admitted Creditor pursuant to the terms of this Deed.

**GST** has the meaning given to that term in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Guarantee Recovery Payment** means an amount equal to the CBA Guarantee Recovered Funds.

**Holding Costs** means all Deed Administrators' Liabilities incurred after the Longstop Date.

**Initial Contribution Amount** means \$9,080,000.

**Insured Claim** means a Claim where:

- (a) immediately prior to the appointment of the Administrators on the Appointment Date a Deed Company was named as an insured under a policy of insurance (not being a contract of reinsurance) (Applicable Insurance);
- (b) the relevant Deed Company is insured, whether fully or partially, against the Claim under the Applicable Insurance; and
- (c) in a winding up of the relevant Deed Company the Creditor would be entitled to proceeds of the Applicable Insurance in respect of their Claim in accordance with section 562 of the Corporations Act in accordance with clause 8.5 of this Deed.

**Insured Claim Contribution** means the amount payable to the Deed Administrators in accordance with clause 13.1(a).

**Insured Claim Contribution Default Notice** means a notice issued in accordance with clause 13.1(b).

**Insured Claim Election** means a notice to the Deed Administrators in their Insured Claim Notice that the Creditor irrevocably:

- (a) agrees to accept, in full satisfaction of their Insured Claim, any proceeds of Applicable Insurance to which they would be entitled under clause 8.5 of this Deed; and
- (b) waives any right to bring any claim or submit a proof of debt in addition to the proceeds of any Applicable Insurance they receive under clause 8.5 of this Deed.

**Insured Claim Notice** means a notice to the Deed Administrators of an Insured Claim which contains a reasonable estimate of the value [quantum?] of the Insured Claim, and may include an Insured Claim Election.

**Insured Claim Termination Notice** means a notice issued in accordance with clause 11.13(c).

**Insured Creditor** means a Creditor who has an Insured Claim and has provided the Deed Administrators with an Insured Claim Notice.

**Intragroup Claim** means all Claims as between each of the Deed Companies and the Proponent.

**Insolvency Practice Rules** means the *Insolvency Practice Rules (Corporations) 2016* (Cth).

**Insolvency Practice Schedule** means Schedule 2 of the Corporations Act.

**Insurance Bond Creditor** means AAI Limited t/as Vero Insurance, Allianz Australia Insurance Limited, Tokio Marine & Nichido Fire Insurance Co Limited C/- BCC Surety Pty Ltd and AIG Australia Limited.

**Longstop Date** means 21 July 2025.

**Members** means all the shareholders of the Deed Companies.

**Northcoast Holdings** means Northcoast Holdings Pty Ltd (Administrators Appointed) ACN 009 296 780.

**Officers** has the meaning ascribed to that term in section 9 of the Corporations Act.

**Operating Expenditure Amount** means a cash payment in the amount of \$580,000 payable by the Proponent in recognition of operating expenditure incurred or to be incurred by the Administrators or Deed Administrators (as applicable) that has, or will, provide a benefit to the Proponent.

**Parties** means the Deed Companies listed at Schedule 1, the Deed Administrators and the Proponent and **Party** means any one of them.

**Pool A Fund** means the Pool A Fund Amount, to be made available for distribution in accordance with clause 8.1.

**Pool A Fund Amount** means:

- (a) \$6,000,000 by way of cash payment by Proponent;
- (b) the Operating Expenditure Amount (subject to clause 7.3(b));
- (c) the Caulfield Contingent Amount (subject to satisfaction of the Caulfield Conditions);
- (d) Proceeds of the Realisable Assets; and
- (e) the SRG DOCA Distribution.

**Pool B Fund** means the Pool B Fund Amount, to be made available for distribution in accordance with clause 8.2.

**Pool B Fund Amount** means \$2,500,000.

**Pool C Fund** means the Pool C Fund Amount, to be made available for distribution in accordance with clause 8.3(a)(i).

**Pool C Fund Amount** means any amounts remaining in the Pool A Fund after the distributions have been made in accordance with clause 8.1(a).

**Pool D Fund** means the Pool D Fund Amount to be made available for distribution in accordance with clause 8.3(a)(ii).

**Pool D Fund Amount** means the Proceeds of the Realisable Assets from the Pool A Fund in an amount equal to the ATO GST Priority Amount and the ATO Income Tax Liability Amount.

**Pooled Companies** means the Deed Companies.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it.

**PPSR** means the register established pursuant to the PPSA and any regulations made pursuant to it.

**Prescribed Provisions** means the provisions set out in Schedule 8A to the Regulations.

**Probuild** means Probuild Constructions (Aust) Pty Ltd (Administrators Appointed) ACN 095 250 945.

**Proceeds** means, in relation to a Realisable Asset, the proceeds from the sale or other dealing with a Realisable Asset excluding GST.

**Prodev 4** means Prodev Investments 4 Pty Ltd (Administrators Appointed) ACN 629 246 653.



**Proponent Bank Account** means the following AUD bank account operated by the Proponent:

Account name: Korda Client ADM  
 BSB: 013 040  
 Account number: 837288181

**Realisable Assets** means all assets of the Deed Companies, with the exception of the Excluded Assets, which will be available to be realised by the Deed Administrators to form the Pool A Fund, Pool C Fund and Pool D Fund (as applicable).

**Regulations** means the *Corporations Regulations 2001* (Cth).

**Related Party** means a Related Body Corporate or Related Entity (as those terms are defined in the Corporations Act) of a Deed Company.

**Second Meeting** has the meaning given to that term in Recital B.

**Section 439C Resolution** has the meaning given to that term in Recital B.

**Security** means a mortgage, charge, pledge, lien, security interest, title retention, preferential right, trust arrangement, contractual right of set-off and any other encumbrance, security agreement or arrangement in favour of any person, including any Security Interest (as that term is defined in section 12 of the PPSA).

**Small Creditor** means a Creditor with a total Claim not exceeding \$25,000 (inclusive of GST).

**SRG Assignment Consent** means the consent of the Proponent and the relevant finance parties under the CBA Facility Agreement to assign their interests in the SRG DOCA Distribution to the Deed Fund.

**SRG DOCA Distribution** means any entitlement of the relevant finance parties under the CBA Facility Agreement and the Proponent to receive a distribution under the deed of company arrangement entered into by, among others, SRG Global Infrastructure Pty Ltd (formerly WBHO Infrastructure Pty Ltd).

**Superannuation Contribution** has the meaning given to that term in section 556(2) of the Corporations Act.

**Superannuation Guarantee Charge** has the meaning given to that term in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Termination** means the termination of this Deed pursuant to clause 10.

**Termination Amount** means \$8,500,000.

**Trust Account** means the following AUD bank account operated by the Deed Administrators:

Account name: Probuild Constructions (Aust) Pty Ltd DOCA Trust  
 BSB: 014-002  
 Account number: 838464677

**Unsecured Creditor** means an unsecured Creditor who is not:

- (a) a Small Creditor;

- (b) an Insurance Bond Creditor;
- (c) a Related Party; or
- (d) if they are a Small Creditor, has not submitted a proof of debt in respect of the Pool B Fund.

## 1.2 Interpretation

In this Deed:

- (a) headings and the table of contents are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "**includes**" in any form is not a word of limitation; and
- (k) a reference to "**AUD**" or "**\$**" is a reference to Australian currency.

## 1.3 Inconsistency

- (a) If there is any inconsistency between the provisions of this Deed and the Corporations Act, the Regulations, the Insolvency Practice Schedule, or the Insolvency Practice Rules, this Deed prevails to the extent permitted by law.
- (b) If there is any inconsistency between this Deed and the constitution of the Deed Companies or any other obligations binding on the Deed Companies, then this Deed prevails to the extent of that inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency.

## 1.4 Business Days

Except where otherwise expressly provided, if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, that act, matter or thing will be done on the immediately succeeding Business Day.

## 1.5 Bar to claims

Subject to section 444D of the Corporations Act, this Deed may be pleaded and tendered by:

- (a) the Deed Companies or the Deed Administrators against any person having or asserting a Claim released, discharged and extinguished by clause 15.3; and
- (b) the recipient of any release or covenant contained in this Deed,

as an absolute bar and defence to any legal proceeding brought or made at any time in respect of a claim, release or covenant as the case may be.

## 1.6 Prescribed Provisions

- (a) Subject to clause 1.6(b), the Prescribed Provisions are deemed to be incorporated in and form part of this Deed, save that to the extent of any inconsistency between the terms of this Deed and the Prescribed Provisions, the terms of this Deed will prevail.
- (b) Clause 3 (*Termination of deed where arrangement fails*) and clause 11 (*Committee of inspection*) of the Prescribed Provisions are excluded in their entirety from the terms of this Deed.

## 1.7 Required provisions

To the extent that the Corporations Act requires any provision to be included in this Deed which is not expressly included in this Deed, such provision will be deemed to be included in this Deed.

## 1.8 Deed components

This Deed includes any Schedule.

---

## 2. Operation of this Deed

### 2.1 Commencement Date

This Deed will commence and take effect on the Commencement Date.

### 2.2 Interim effect

To the extent that a person would be bound by this Deed if it had already been executed, the person must not, at any time after the Section 439C Resolution is passed but before this Deed is executed, do anything inconsistent with the terms of this Deed, except with the leave of the Court.

### 2.3 Termination

This Deed continues until it is terminated in accordance with this Deed.

---

### **3. Objective and effect**

#### **3.1 Objectives**

- (a) The purpose and objective of the arrangements set out in this Deed, amongst other matters, are to provide:
  - (i) a better return than liquidation for all Creditors;
  - (ii) a quicker return for Employee Creditors than liquidation;
  - (iii) a quicker return for Small Creditors than liquidation; and
  - (iv) continued access and ongoing support available to the Deed Administrators in respect of the BLU System.

#### **3.2 Effect of the Deed on Officers of the Deed Companies**

- (a) The Directors of the Deed Companies will remain in office throughout the Deed Period unless they resign or are removed by the Deed Administrators in accordance with this Deed.
- (b) During the Deed Period, unless authorised in writing by the Deed Administrators, the Directors and Officers of the Deed Companies cannot perform or exercise, and must not purport to perform or exercise, a right, function or power as a Director or Officer of the Deed Companies.
- (c) For the avoidance of doubt, the Directors of the Deed Companies will not pass a resolution to place the Deed Companies into voluntary administration or take any step to wind up the Deed Companies except with the written approval of the Deed Administrators.
- (d) While they remain Directors of the Deed Companies, the Directors of the Deed Companies will not be relieved of their statutory duties as Directors of the Deed Companies and for the avoidance of doubt, the Deed Administrators will not be responsible for such statutory obligations during the Deed Period.
- (e) During the Deed Period, the Directors of the Deed Companies must:
  - (i) co-operate with and assist the Deed Administrators in the performance by the Deed Administrators of their obligations under this Deed;
  - (ii) carry out and perform such operations, functions, powers and other matters as may be delegated to them by the Deed Administrators; and
  - (iii) perform their obligations pursuant to the Deed.

#### **3.3 Effect of this Deed on Members**

- (a) Until this Deed Terminates, any Member, and any Creditor holding any Security over any shares in the Deed Companies must not without the prior written consent of the Deed Administrators deal with, or attempt to deal with any shares in the Deed Companies or exercise shareholder rights over any shares in the Deed Companies in a way that is contrary to this Deed or the purpose of the Deed.
- (b) The Deed Administrators must not, and must not allow:
  - (i) the shares in the Deed Companies to be transferred; or

- (ii) further shares of any class to be issued in the Deed Companies.

---

## **4. Conditions Precedent**

### **4.1 Conditions**

The following Conditions must be satisfied by the CP Satisfaction Date:

- (a) execution of this Deed by each Party;
- (b) the provision of the Finance Party and Proponent Consent; and
- (c) the provision of the SRG Assignment Consent.

### **4.2 Obligation to satisfy Conditions and transparency**

- (a) To the extent that it is within the relevant Party's control, that Party must use reasonable endeavours to ensure that the Conditions are satisfied as soon as possible and prior to the CP Satisfaction Date.
- (b) On and from the Commencement Date, the Parties must respond promptly to all reasonable requests for information from any other Party in relation to the status and expected timing for satisfaction of the Conditions.

### **4.3 Waiver of Conditions**

The Conditions in clauses 4.1 may only be waived or amended in writing by all of the Parties.

### **4.4 Consequence of non-satisfaction of the Conditions**

- (a) In the event:
  - (i) one or more of the Conditions is not satisfied, or waived or amended in accordance with clause 4.3, by the CP Satisfaction Date; or
  - (ii) the Deed Administrators and the Proponent are of the opinion that one or more of the Conditions are incapable of being satisfied by the CP Satisfaction Date,  
  
then:
    - (iii) the Parties will cease to be bound by this Deed on and from the CP Satisfaction Date and will have no liability under it; and
    - (iv) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Deed Companies.

### **4.5 Non-execution**

If this Deed is not executed in accordance with clause 4.1(a) on or prior to the expiration of 15 Business Days (or such further period as the Court allows) after the Section 439C Resolution is passed, then this Deed will terminate automatically.

---

## **5. Pooling**

### **5.1 Pooling**

- (a) Upon satisfaction of the Conditions, for the purposes of this Deed:

- (i) the Assets of the Pooled Companies and any other amounts received by the Pooled Companies during the Deed Period will be pooled;
- (ii) the Pooled Companies will be treated as a single company (namely, as if the Pooled Companies were Probuild); and
- (iii) a Creditor of a Pooled Company will be treated as a Creditor of the Pooled Companies as a whole.

## 5.2 Intercompany loan balances

- (a) Immediately upon pooling taking place in accordance with clause 5.1 of this Deed:
  - (i) each debt payable by a Pooled Company to any Pooled Company is satisfied or extinguished; and
  - (ii) each Claim that a Pooled Company has against any Pooled Company, including a Claim against the Proponent is satisfied or extinguished.

## 5.3 Books and records

The books and records of each Deed Company transfers to Probuild upon pooling.

---

# 6. Deed Fund

## 6.1 Establishment of Deed Fund

- (a) On payment of the Initial Contribution Amount the following funds are established, which together constitute the Deed Fund:
  - (i) Pool A Fund;
  - (ii) Pool B Fund;
  - (iii) Pool C Fund; and
  - (iv) Pool D Fund.
- (b) The Deed Fund will comprise funds to discharge the following:
  - (i) Administrators' Liabilities;
  - (ii) Deed Administrators' Liabilities; and
  - (iii) Admitted Claims.
- (c) The Excluded Assets are excluded from the Deed Fund.
- (d) The money in the Deed Fund from time to time is held by the Deed Administrators on trust for the benefit of those so entitled and will be distributed in accordance with this Deed.

## 6.2 Accounts

The Deed Administrators may establish any interest bearing accounts controlled by the Deed Administrators and held with an "authorised deposit taking institution" (as that term is defined in the *Banking Act 1959* (Cth)) that they consider appropriate.

### 6.3 Monies held by Deed Administrators

The Deed Administrators are entitled to use the Deed Fund to make distributions in accordance with clause 8.

---

## 7. Cash Contribution

### 7.1 Contribution Amount

The Proponent must pay or procure the payment of the Initial Contribution Amount to the Trust Account operated by the Deed Administrators within 4 Business Days of the Commencement Date.

### 7.2 Caulfield Contingent Payment

- (a) The Proponent agrees to transfer the Caulfield Contingent Amount to the Trust Account to be applied to the Pool A Fund on the satisfaction of the following conditions:
- (i) practical completion of the project known as "Caulfield Village Precinct 2 North" (**Caulfield Village Project**);
  - (ii) entry into a deed of release by the Administrators or Deed Administrators (as relevant) releasing BPG Caulfield Village Pty Limited in respect of all claims in connection with the Caulfield Village Project;
  - (iii) return of bank guarantees (reference numbers G666422 and G666423) by BPG Caulfield Village Pty Limited in connection with the Caulfield Village Project totalling \$9,559,881 in return for a settlement payment by the Proponent of not more than \$5,700,000; and
  - (iv) BPG Caulfield Village Pty Limited to replace cash security deposits held by Glen Eira City Council in the amount of \$300,000 and Department of Transport in the amount of \$400,000 and procure the return of these deposits to the Administrators or Deed Administrators.
- (b) Subject to clause 7.2(a), the Proponent must pay or procure the payment of the Caulfield Contingent Amount to the Trust Account operated by the Deed Administrators within 5 Business Days of the Caulfield Satisfaction Date.

### 7.3 Application of Initial Contribution Amount

- (a) On the date that is 10 weeks from the Commencement Date, the Deed Administrators will apply the Initial Contribution Amount strictly in accordance with this Deed as follows:
- (i) \$6,580,000 to the Pool A Fund to form part of the Pool A Fund Amount; and
  - (ii) \$2,500,000 to the Pool B Fund to form the Pool B Fund Amount.
- (b) The Deed Administrators acknowledge that the Initial Contribution Amount includes the Operating Expenditure Amount and is only payable upon receipt of an invoice from the Deed Administrators or Administrators (as applicable).

## 7.4 Transfer of Caulfield Contingent Amount

Subject to satisfaction of the Caulfield Conditions, the Deed Administrators will apply the Caulfield Contingent Amount strictly in accordance with this Deed to the Pool A Fund to form part of the Pool A Fund Amount.

## 7.5 Certificate of Satisfaction

- (a) Within 3 Business Days of receiving payment in full of the Initial Contribution Amount in accordance with clause 7.1, the Deed Administrators shall provide the Proponent with a certificate in writing stating all non-contingent financial obligations of the Proponent under this Deed have been satisfied.
- (b) Within 3 Business Days of receiving payment in full of the Caulfield Contingent Amount (subject to satisfaction of the Caulfield Conditions) in accordance with clause 7.2, the Deed Administrators shall provide the Proponent with a certificate in writing stating all financial obligations of the Proponent under the Deed have been satisfied.

---

## 8. Distribution of Deed Fund

### 8.1 Pool A Fund

- (a) Subject to clause 8.4, on or after the date that is 10 weeks from the Commencement Date, the Deed Administrators must pay or procure the payment of the Pool A Fund as follows:
  - (i) first, in payment of the Administrators' Liabilities (to the extent not already paid in full);
  - (ii) second, in payment of each Admitted Employee Creditor in full;
  - (iii) third, once the distributions in 8.1(a)(i) and 8.1(a)(ii) have been made in full, from the Proceeds of the Realisable Assets, to the Pool D Fund in an amount that is equal to the ATO GST Priority Amount plus the ATO Income Tax Liability Amount; and
  - (iv) fourth, to the extent that the payments made in accordance with clause 8.1(a)(i), 8.1(a)(ii) and 8.1(a)(iii) are less than the total value of the Pool A Fund, any excess funds will be made available to the Pool C Fund.

### 8.2 Pool B Fund

- (a) Within 45 Business Days of Admitted Employee Creditors having been paid in full in accordance with clause 8.1(a)(ii), the Deed Administrators must distribute or procure the distribution of the Pool B Fund as follows:
  - (i) first, in payment of each Admitted Small Creditor on a pro-rata basis; and
  - (ii) second, to the Pool A Fund to the extent that:
    - A. Admitted Small Creditors have been paid in full; and
    - B. any residual funds remain in the Pool B Fund.



### 8.3 Pool C Fund and Pool D Fund

- (a) Subject to clause 8.4, the Deed Administrators must distribute or procure the distribution of the Pool C Fund and Pool D Fund, including by way of interim distributions, as follows:
- (i) In respect of the Pool C Fund:
    - A. first, in payment of the Deed Administrators' Liabilities; and
    - B. second, in payment of each Admitted Unsecured Creditor and Insurance Bond Creditor on a pro rata basis.
  - (ii) In respect of the Pool D Fund:
    - A. first, in payment of an Admitted Claim of the Australian Taxation Office in respect of GST liabilities up to the ATO GST Priority Amount; and
    - B. second, in payment of an Admitted Claim of the Australian Taxation Office in respect of income liabilities up to the ATO Income Tax Liability Amount.
- (b) The Deed Administrators must not make any distributions from the Pool C Fund and the Pool D Fund until the Pool B Fund has been distributed in full in accordance with clause 8.2.

### 8.4 Administrators' Liabilities and Deed Administrators' Liabilities

Notwithstanding any other term of this Deed, the Deed Administrators may draw:

- (a) the Administrators' Liabilities from Pool A at any time on or after the Commencement Date; and
- (b) the Deed Administrators' Liabilities, but only in relation to third party costs and liabilities, not related to remuneration, from Pool A or Pool C from time to time.

### 8.5 Insured Claims

Subject to the terms of this Deed, section 562 of the Corporations Act is to be incorporated into this Deed as if references to a liquidator were references to the Deed Administrators and with any other amendments as necessary in the context of this Deed.

### 8.6 Manner of distribution

Subject to the other provisions of this Deed:

- (a) distributions may be paid by the Deed Administrators from the Deed Fund in a manner (including by way of interim distribution) and at the time determined by the Deed Administrators in their absolute discretion;
- (b) the Deed Administrators may declare and pay distributions from different Pools at different times;
- (c) the Deed Administrators need not pay a distribution to an Admitted Creditor if the amount due to them in respect of the distribution would be less than \$25.00; and
- (d) the Deed Administrators may pay distributions to Admitted Creditors by electronic funds transfer.

---

## 9. CBA Bank Guarantees

### 9.1 Guarantee Recovery Payment

- (a) The Parties acknowledge that as at the Commencement Date, the Proponent has made payments to CBA equal to the value of the Called Guarantees.
- (b) The Deed Administrators agree to pay to the Proponent any CBA Guarantee Recovered Funds by way of the Guarantee Recovery Payment immediately on receipt of any CBA Guarantee Recovered Funds.

### 9.2 Assignment of Claims

- (a) The Deed Administrators agree to assign, transfer or otherwise convey the rights and interests of the Deed Companies in respect of the CBA Bank Guarantees, including any Called Guarantees to the Proponent on the Proponent's request.

---

## 10. Termination of the Deed

### 10.1 Termination on effectuation of Deed

The Deed will Terminate immediately on Effectuation, unless terminated earlier in accordance with this Deed.

### 10.2 Termination on failure of Deed

This Deed automatically Terminates upon the happening of any one of the following events:

- (a) the Court makes an order terminating this Deed under section 445D of the Corporations Act;
- (b) by a resolution of the Creditors passed at a meeting convened pursuant to Division 75-10 of the Insolvency Practice Schedule; or
- (c) the creditors of the Deed Companies pass a resolution terminating this Deed in accordance with sections 445C(b) of the Corporations Act, in the event that any of the Conditions are not satisfied (or waived or amended in accordance with clause 4.3) on or before the CP Satisfaction Date in accordance with clause 4.4.

### 10.3 Notice of Effectuation of Deed

Upon Termination in accordance with clause 10.1, the Deed Administrators or one of them must immediately certify, in writing that the terms of this Deed have been fulfilled and, as soon as practicable, must lodge with ASIC a notice substantially in the following form in respect of the Deed Companies:

'We, [***name of administrators***] of [***address***] as administrators of the deed of company arrangement executed on [date], CERTIFY that the deed has been wholly effectuated in respect to [***name of Deed Companies***].'

and the execution of the notice terminates this Deed and all Claims of Creditors of the Deed Companies will be extinguished, discharged and released if not extinguished or released earlier under the Deed.

### 10.4 Effect of Termination

In accordance with section 445H of the Corporations Act, the Termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.

## 10.5 Severance

If any part of this Deed is or becomes illegal, ineffective, invalid or unenforceable, that part will be severed from this Deed and that severance will not affect the effectiveness, validity or enforceability of the remaining part of this Deed.

## 10.6 Consequences of Termination of the Deed for non-performance

Upon Termination of the Deed under clause 10.2, unless the Deed Administrators and the Proponent consider it appropriate to convene a further meeting of Creditors pursuant to Division 75-10 of the Insolvency Practice Schedule to consider a variation of the Deed:

- (a) the Deed Companies will be taken to have passed special resolutions under section 491 of the Corporations Act that each the Deed Companies be voluntarily wound up and that the Deed Administrators be the Deed Companies' liquidators; and
- (b) the Deed Companies will be wound up.

## 10.7 Survival of clauses

Despite any other provision of this Deed, clauses 1 (*Definitions and interpretation*), 10 (*Termination of the Deed*), 13 (*Remuneration and indemnity*), [14 \(\*Making of Claims by Creditors\*\)](#), 15 (*Moratorium and release*), 16 (*Tax*), 17 (*Notices*) and 18 (*General*) survive the Termination of this Deed.

## 10.8 Termination Amount Payable on Termination

- (a) Notwithstanding clause 10.7, if this Deed is Terminated or terminates for whatever reason prior to the Deed Administrators having completed (or substantially completed as agreed and determined by the Proponent acting reasonably) distribution of the Pool B Fund, the Deed Administrators must promptly pay into the Proponent Bank Account the Termination Amount.
- (b) For the avoidance of doubt, the Termination Amount will not be payable by the Deed Administrators to the Proponent if this Deed is Terminated or terminates for whatever reason following the distribution of the Pool B Fund.

# 11. Deed Administrators' appointment

## 11.1 Appointment

On the Commencement Date, the Deed Administrators are appointed joint and several administrators of the Deed.

## 11.2 Acceptance of appointment

The Deed Administrators:

- (a) accept the appointment as administrators of the Deed; and
- (b) agree to act as administrators of the Deed during the Deed Period or until the Deed Administrators retire or are removed from office in accordance with the Deed or the Corporations Act.

## 11.3 Deed Administrators are agents

In exercising the powers conferred by the Deed and carrying out the duties arising under the Deed, the Deed Administrators will act as agent for and on behalf of the Deed Companies.

## 11.4 Joint and several

The rights, powers and privileges of the Deed Administrators may be exercised by them jointly and severally.

## 11.5 Deed Administrators' resignation

Any Deed Administrator may resign at any time by giving not less than 28 days' prior written notice to each of the Parties unless that resignation would result in there being no remaining Deed Administrator in which event the Deed Administrator must:

- (a) convene meetings of Creditors of the Deed Companies in accordance with clause 12.3 for the purpose of nominating a replacement deed administrator;
- (b) assign to a replacement deed administrator nominated by the Creditors the Deed Administrators' rights, title and benefit under this Deed subject to any accrued rights, indemnities or liens the Deed Administrators may have as at the date of the assignment; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 11.5(b).

---

## 12. Powers of the Deed Administrators

### 12.1 Powers

- (a) For the purposes of administering this Deed, the Deed Administrators shall have all of the powers set out in this Deed, in the Prescribed Provisions and as otherwise provided to deed administrators by the Act, Regulations or generally at law or in equity.
- (b) The powers of the Deed Administrators shall include:
  - (i) the power to remove from office a Director or company secretary in accordance with the terms of this Deed;
  - (ii) to convene and hold meetings of Creditors in accordance with clause 12.3;
  - (iii) to adjudicate Claims in accordance with this Deed;
  - (iv) to insure property of the Deed Companies;
  - (v) to repair, renew or enlarge property of the Deed Companies;
  - (vi) to administer the assets available for the payments of Claims or Creditors in accordance with the provisions of this Deed;
  - (vii) to bring, prosecute and defend in the name and on behalf of the Deed Companies or in the name of the Deed Administrator any actions, suits or proceedings (subject to obtaining the prior written consent of the Proponent, unless such action, suit or proceeding has been commenced by or involves a claim against the Proponent);
  - (viii) to refer to arbitration any question affecting the Deed Companies (subject to obtaining the prior written consent of the Proponent, unless such question directly relates to the rights or obligations of the Proponent);

- (ix) to make payments to any Secured Creditor of the Deed Companies and any person who is the owner or lessor of property possessed used or occupied by Deed Companies in accordance with this Deed;
  - (x) to make interim or other distributions of the Proceeds of the realisation of the assets available for the payment of Claims of Creditors in accordance with this Deed;
  - (xi) to permit any person authorised by the Deed Administrator to operate any account in the name of the Deed Companies;
  - (xii) to do all acts and execute in the name and on behalf of the Deed Companies all deeds, receipts and other documents, using the Deed Companies' common or official seal when necessary subject to and in accordance with the provisions of this Deed;
  - (xiii) subject to the *Bankruptcy Act 1966*, to prove in the bankruptcy of any contributory or debtor of the Deed Companies or under any deed executed under that act;
  - (xiv) subject to the Corporations Act, to prove in the winding up of any contributory or debtor of the Deed Companies or under any scheme of arrangement entered into, or deed of company arrangement executed, under the Corporations Act;
  - (xv) to defend an application for the winding up of the Deed Companies;
  - (xvi) subject to the terms of this Deed, to compromise any debts or claims brought by or against the Deed Companies on such terms as the Deed Administrator thinks fit and to take security for the discharge of any debt forming part of the property of the Deed Companies;
  - (xvii) to do anything that is incidental to exercising a power set out in this clause 12.1;
  - (xviii) the power to access, control and retain custody of the books and records of the Deed Companies for the purposes of administering this Deed; and
  - (xix) to do anything else that is necessary or convenient for the purpose of administering this Deed.
- (c) Where a right, power, privilege, authority or discretion is conferred on the Deed Administrators (whether by this Deed, the Corporations Act or otherwise), the Deed Administrators may exercise that right, power, privilege, authority or discretion in such manner as they, in their absolute discretion, consider fit.

## 12.2 Solicitors, advisers and consultants

- (a) The Deed Administrators may engage the services of their partners, employees, directors, officers, contractors, advisers, delegates, solicitors and consultants to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this Deed and the Deed Companies will pay such Deed Administrators' Liabilities, including costs of any solicitors and consultants engaged by the Deed Administrators up to the maximum amount of the Deed Administrators' Liabilities.
- (b) The Deed Administrators may delegate their powers under this clause 12 including by way of appointing agents and authorising such agents to act on behalf of the Deed Administrators or the Deed Companies.

### 12.3 Creditors' meetings

The Deed Administrators may convene a meeting or meetings of Creditors at any time, and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 of Part 3 of the Insolvency Practices Rules applies, with such modifications as are necessary, to meetings of Creditors held under this Deed as if references to the 'external administrator' or chairperson, as the case may be, were references to the Deed Administrators.

### 12.4 Reporting

- (a) Except as required by law, the Deed Administrators are not required to report to Creditors. However, the Deed Administrators will advise all Creditors of the date of the Termination of this Deed and may, in their absolute discretion, otherwise report to Creditors during the Deed Period at such times as the Deed Administrators consider appropriate and on matters which the Deed Administrators consider ought to be brought to the attention of Creditors.
- (b) The Deed Administrators are required to report generally on a collective basis the status of realisations of the Deed Companies' assets (including all funds and recoveries under its control) to Creditors from time to time.

### 12.5 Books and records

- (a) The Administrators and Deed Administrators must provide or procure that the Proponent be provided with access to any financial or other records of the Deed Companies and any other information as requested by the Proponent from time to time, including any records or information being held by third parties.
- (b) On the Commencement Date, the Proponent agrees to provide access to the BLU System to the Deed Administrators and the Deed Administrators' staff to the extent required for the Deed Administrators to fulfil their obligations under this Deed, subject to the conditions set out in clause 12.5(c) below.
- (c) The Proponent will provide access to the BLU System as contemplated by clause 12.5(b):
  - (i) by granting one user licence to the Deed Administrators for the operation and control of the BLU System on the basis that the ongoing use will be subject to the Deed Administrators and their staff complying with all security requirements as specified by the Proponent from time to time during the Deed Period; and
  - (ii) until the earlier of:
    - A. the date this Deed Terminates; and
    - B. 24 months after the Commencement Date.
- (d) For the avoidance of doubt:
  - (i) access to the BLU System as contemplated by clause 12.5(b) and 12.5(c) is only being granted to the Deed Companies; and
  - (ii) the Proponent may revoke the Deed Administrators and the Deed Administrators' staff's access to the BLU System in the event the Deed Administrators or their staff fail to comply with the conditions set out in clause 12.5(b) of this Deed.

## 12.6 Proponent's reporting obligations

The Proponent is required to prepare any financial or other reporting it requires in respect of the Deed Companies to the extent necessary to comply with its own reporting obligations.

---

## 13. Remuneration and indemnity

### 13.1 Remuneration

- (a) The Deed Administrators, their partners and employees will be remunerated by the Deed Companies in respect of the Deed Administrators' Liabilities at the hourly rates charged from time to time by the firm of which the Deed Administrators are partners or employees as set out in the report to Creditors issued with their notice of the meeting of Creditors.
- (b) The Deed Administrators' may draw the Deed Administrators' Liabilities from the Deed Fund in accordance with the terms of this Deed.
- (c) The Deed Administrators are entitled to be reimbursed from the Deed Fund in respect of all Deed Administrators' Liabilities in accordance with the terms of this Deed.
- (d) Subject to clause 8.3(a)(i) and 8.4(b), the Deed Administrators may draw the Deed Administrators' Liabilities at the end of each month.

### 13.2 No personal liability

Subject to the Corporations Act and to the extent permitted by law, the Deed Administrators will not be personally liable for:

- (a) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Deed Administrators in administering this Deed or exercising their duties and obligations under this Deed;
- (b) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Deed Companies; or
- (c) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities suffered or sustained or incurred by any directors, officers or Creditors of the Deed Companies.

### 13.3 Indemnity

- (a) The Deed Administrators and Administrators (whether or not they are still acting in either capacity and whether or not the Deed remains on foot) are entitled to be indemnified out of the assets of the Deed Companies up to the maximum amount of the Deed Administrators' Liabilities (in the case of the Deed Administrators) and the maximum amount of the Administrators' Liabilities (in the case of the Administrators) for:
  - (i) as to the Deed Administrators in their capacities as Deed Administrators:
    - A. the Deed Administrators' right to remuneration and reimbursement under the Deed and otherwise at law and in equity; and

- B. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, in connection with or incidental to any debts incurred by the Deed Companies, the Deed Administrators or the Deed Administrators' partners or employees in the course of the administration of this Deed; and
  - C. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) against the Deed Administrators or the Deed Administrators' partners or employees, arising out of, or in connection with or incidental to the Deed Administrators' administration of this Deed;
- (ii) as to the Deed Administrators in their former capacities as Administrators of the Deed Companies:
- A. the Administrators' right of remuneration and reimbursement as voluntary administrators of the Deed Companies pursuant to Part 5.3A of the Corporations Act; and
  - B. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, or in connection with or incidental to any debts incurred by the Deed Companies, the Administrators or the Administrators' partners or employees in the course of the administration of the Deed Companies; and
  - C. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) against the Administrators or the Administrators' partners or employees, arising out of, or in connection with or incidental to the Administrators' administration of the Deed Companies.
- (b) The Deed Administrators are not entitled to an indemnity out of the assets of the Deed Companies against any claims arising out of any fraudulent or negligent act or omission by the Deed Administrators or the Deed Administrators' partners or employees.

### **13.4 Indemnity not to be affected or prejudiced**

The indemnities under clause 13.3 will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Administrators or Deed Administrators and extends to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Deed Administrators, the approval or execution of the Deed or otherwise;
- (b) affect or prejudice all or any rights that the Deed Administrators may have against the Deed Companies or any person to be indemnified against the Costs, charges, expenses and liabilities incurred by the Deed Administrators by or incidental to the exercise or performance of any of the powers or authorities conferred on the Deed Administrators by this Deed or otherwise; or



- (c) be affected by the removal of the Deed Administrators and the appointment of a replacement deed administrator or the termination of this Deed for any reason.

### 13.5 Satisfaction of Claims

The Deed Administrators are entitled to exercise the Deed Administrators' right of indemnity conferred by clause 13.3(a) whether or not the Administrators have paid or satisfied the Claims.

### 13.6 Deed Administrators' lien

Until this Deed Terminates, the Deed Administrators are entitled to exercise a lien on all property and assets of the Deed Companies to secure the Administrators' right of indemnity under clause 13.3(a) of this Deed and otherwise at law and equity.

### 13.7 Insufficient funds

The Deed Administrators are not obliged to take any action under this Deed in the event there are insufficient funds to pay the Administrators' Liabilities or Deed Administrators' Liabilities.

### 13.8 Priority

The Deed Administrators' right of indemnity under clause 13.3 and their lien under clause 13.6 have priority over the Claims of Creditors to the extent set out in this Deed.

### 13.9 Statutory liability and indemnity

Nothing in this Deed will affect or limit the operation of Subdivision B of Division 9 of Part 5.3A of the Corporations Act, which is to apply with all necessary modifications to the Administrators' voluntary administration of the Deed Companies and Deed Administrators' subsequent administration of this Deed.

### 13.10 Deed Administrators' Liabilities if pooling does not occur

If this Deed Terminates prior to pooling occurring in accordance with clause 5.1, the Deed Administrators' right of indemnity under clause 13.3 and lien under clause 13.6 with respect to the Deed Administrators' Liabilities will attach to and be recoverable from the assets and property of the respective Deed Companies in proportion to their estimated realisable value as at the Commencement Date.

### 13.11 Insured Claim Contribution

- (a) On and from the Longstop Date, each Insured Creditor must pay the Holding Costs on a pari passu basis (assessed by reference to the total quantum of Insured Claims as set out in the Insured Claim Notices) as notified by the Deed Administrators, in their absolute discretion, from time to time (Insured Claim Contribution).
- (b) If any Insured Creditor fails to pay an Insured Claim Contribution within 5 Business Days of the date of the notice issued in accordance with clause 13.11(a), the Deed Administrators may issue a default notice requiring payment of any outstanding Insured Claim Contribution Amount within 20 Business Days (Insured Claim Contribution Default Notice).
- (c) If any Insured Creditor fails to comply with an Insured Claim Contribution Default Notice, the Deed Administrators may issue a notice to the Insured Creditor, in their absolute discretion (Insured Claim Termination Notice).
- (d) If any Insured Creditor is issued with a valid Insured Claim Termination Notice, the Insured Creditor is deemed to have irrevocably:

- (i) [waived any entitlement in accordance with clause 8.5 of this Deed;](#)
- (ii) [consented to orders dismissing, discontinuing or otherwise permanently bringing to an end, any proceeding in any court or tribunal, in any jurisdiction, in respect of an Insured Claim against a Deed Company, with no order as to the Insured Creditor's costs; and](#)
- (iii) [authorised the Deed Administrators to execute, in the name of the Insured Creditor, any document required to give effect to this clause 13.11\(d\).](#)

## 14. Making of claims by Creditors

### 14.1 Proofs of debt

Creditors who have submitted a proof of debt to the Administrators before the Commencement Date are taken to have submitted a final proof of debt in respect of their Claims with the Deed Administrators on the basis of that proof of debt.

### 14.2 Request notice to Creditors

- (a) To the extent that clause 14.1 does not adequately address the Claims to be paid under this Deed, or in the Deed Administrators' discretion, the Deed Administrators may ask the Creditors to formally submit a proof of debt for their Claims within 14 days of such request. Any such request notice to Creditors will comply with Regulation 5.6.48 of the Regulations, with such modifications as the Deed Administrators may deem necessary, including:
  - (i) references to the 'liquidator' to be read as references to the Deed Administrators; and
  - (ii) references to a 'creditor' to be read as references to a Creditor.
- (b) For the purposes of this clause 14.2 and Regulation 5.6.39 of the Regulations, the Deed Administrators may fix different times for lodgement of proofs of debt for Creditors.

### 14.3 Determination

- (a) The Deed Administrators will determine (including by adjudicating on those formal proofs of the Claims that have been submitted in accordance with paragraph 14.1 and 14.2) the amount required to satisfy the relevant Creditor's entitlement to receive a distribution from the Deed Fund in accordance with this Deed.
- (b) Subject to any appeal rights under the Corporations Act, any determination by the Deed Administrators in accordance with clause 14.3 is final and binding.

### 14.4 Adjudication of Claims

Regulations 5.6.53 to 5.6.56 of the Regulations will apply to the adjudication of Claims with such modifications as the Deed Administrators may deem necessary, including:

- (a) references to the 'liquidator' to be read as references to the Deed Administrators; and
- (b) references to a 'creditor' to be read as references to a Creditor.

## 14.5 Admitted Employee Creditors

In accordance with section 444DA of the Corporations Act, the Deed Administrators are to apply the Deed Fund so that an Admitted Employee Creditor will be entitled to a priority at least equal to what they would have been entitled if the Deed Fund were applied in accordance with sections 556, 560 and 561 of the Corporations Act.

## 14.6 Claims against two or more Deed Companies

If a Creditor is a Creditor of two or more Deed Companies in respect of Claims that arise from a common underlying obligation or in connection with the same underlying transaction (for example, where one Deed Company is a guarantor, indemnifier or co-obligor of an obligation or debt owing by another Deed Company) that Creditor is only entitled to receive a distribution under this Deed for one of those Claims, and where they are for different amounts, for the largest Claim.

## 14.7 Intragroup Claims

The Deed Administrators agree:

- (a) they will not pursue any Intragroup Claims of any kind other than those expressly dealt with under the terms of this Deed; and
- (b) immediately upon and with effect from the date that the Pool B Fund is distributed and the Termination Amount is no longer payable by the Deed Administrators to the Proponent in accordance with clause 10.8, all such Intragroup Claims are otherwise extinguished and released.

For the avoidance of doubt, this clause 14.7 includes any Claims against the Proponent.

## 14.8 Unclaimed moneys

If the Deed Administrators have under their control any assets being distributed that have remained unclaimed for more than 6 months after the day when the amount payable to an Admitted Creditor became payable or transferable, the Deed Administrators may pay or transfer those assets to ASIC to be dealt with under Part 9.7 of the Corporations Act or any other relevant statutory authority, and the Deed Administrators will cease to be under any further obligation or liability in respect of them.

## 14.9 Costs

Any costs or expenses incurred by a Creditor in seeking to prove a Claim will be borne by the respective Creditor and will not form part of the Creditor's Claim.

## 14.10 Interest

Interest shall not accrue, and shall not be payable, in respect of any Claims of any Creditor.

## 14.11 Abandonment of Claims

A Creditor will be deemed to have abandoned its Claim if, before the payment of a final dividend from the relevant Pool, the Creditor:

- (a) fails to submit a formal proof of debt or claim in respect of its Claim; ~~or~~
- (b) having submitted a formal proof of debt or claim in respect of its Claim which is rejected, that Creditor fails to appeal to the Court against the rejection, within the time allowed for such an appeal under the Regulations as if the proof were rejected in the liquidation of the Deed Companies; or

~~(b)~~(c) [the Creditor is an Insured Creditor who has provided an Insured Claim Election.](#)

## 14.12 Conversion of foreign currency

Conversion of foreign currency debts into Australian currency shall be converted in accordance with the “general rate sheet of historical foreign exchange rates provided by the Reserve Bank of Australia on the Relevant Date.”

## 14.13 The whole of a Superannuation Contribution debt

- (a) In accordance with sections 444DB(1) and 444DB(2) of the Corporations Act, the Deed Administrators must determine that the whole of a Claim by way of a Superannuation Contribution is not admissible to proof against a Deed Company if:
- (i) a Claim by way of Superannuation Guarantee Charge:
    - A. has been paid; or
    - B. is, or is to be, admissible to proof against that Deed Company; and
  - (ii) the Deed Administrators are satisfied that that Superannuation Guarantee Charge is attributable to the whole of the first mentioned Claim.
- (b) If the Deed Administrators determine, under clause 14.13(a), that the whole of the first mentioned Claim is not admissible to proof against the Deed Company, the whole of the Claim is extinguished.

## 14.14 Part of a Superannuation Contribution debt

- (a) In accordance with sections 444DB(3) and 444DB(4) of the Corporations Act, the Deed Administrators must determine that a particular part of a Claim by way of a Superannuation Contribution is not admissible to proof against a Deed Company if:
- (i) a Claim by way of Superannuation Guarantee Charge:
    - A. has been paid; or
    - B. is, or is to be, admissible to proof against that Deed Company; and
  - (ii) the Deed Administrators are satisfied that the Superannuation Guarantee Charge is attributable to that part of the first-mentioned Claim.
- (b) If the Deed Administrators determine, under clause 14.14(a), that a part of the first mentioned Claim is not admissible to proof against the Deed Company, that part of the Claim is extinguished.

---

## 15. Moratorium and release

### 15.1 Binding effect

Without limiting sections 444D and 444G of the Corporations Act this Deed binds:

- (a) each Creditor in relation to Claims arising on or before the Appointment Date; and
- (b) each Member and Officer of the Deed Companies.

## 15.2 Moratorium

- (a) While this Deed remains in force, no Creditor, in relation to that Creditor's Claim, or Officer or Member, may:
- (i) make or concur in an application for an order to wind up the Deed Companies;
  - (ii) proceed with such an application made before this Deed became binding on such person;
  - (iii) begin, revive or continue or take any further steps in any action, suit, mediation or proceeding against the Deed Companies or in relation to any of its property;
  - (iv) begin, revive or continue or take any further steps in respect of any Enforcement Process in relation to the Deed Companies' property;
  - (v) commence, continue or take any additional step in any arbitration against the Deed Companies or to which the Deed Companies are a party;
  - (vi) exercise any right of set-off or defence, cross-claim or cross action to which that Creditor would not have been entitled had the Deed Companies been wound up on the Appointment Date;
  - (vii) take any action whatsoever to seek to recover any part of its Claim from the Deed Companies; or
  - (viii) otherwise enforce any right it may have or acquire against the Deed Companies,

except, in the case only of clauses 15.2(a)(iii) and 15.2(a)(iv), with the consent in writing of the Deed Administrators or the leave of a Court and in accordance with such terms (if any) as a Court imposes.

- (b) For the purposes of this clause 15.2, "**property**" includes property used or occupied by, or in the possession of, the Deed Companies except if the Administrators have issued a notice under section 443B of the Corporations Act in relation to that property.
- (c) A person who is an Officer or a Member of a Deed Company shall not, during the term of the Deed Period exercise any rights it has or may have as an Officer or a Member (as applicable) of that Deed Company.

## 15.3 Release and discharge of Claims

- (a) Creditors must accept their entitlements under the Deed Fund (if any) in full satisfaction and complete release and discharge of all Claims which they have, or claim to have, against the Deed Companies on or before the Appointment Date.
- (b) Notwithstanding any other provision of this Deed except for clause 15.2, this Deed does not affect any rights of recourse Creditors may have in respect of bank guarantees, insurance bonds, other sureties and insurers.
- (c) Each Creditor must, if required by the Deed Companies or the Deed Administrators, execute any document that the Deed Companies or a Deed Administrator may require from time to time to give effect to the releases in clause 15.3(d).

(d) Immediately upon and with effect from ~~the Final Distribution Date~~ Effectuation, the Claims of all Creditors will be fully released and extinguished.

(e) Notwithstanding any other provision of this Deed, Effectuation will not occur until the Determination Date has occurred in respect of all Insured Claims other than those in respect of which an Insured Claim Termination Notice has been issued.

## 15.4 Execution of all necessary documents

Each Creditor must, if required by the Deed Administrators, execute and deliver to the Deed Administrators such form of acknowledgement or release of any Claim as reflects the release and discharge of that Claim pursuant to clause ~~15.3~~ 15.3.

## 15.5 Bar to Creditors' Claims

Subject to section 444D of the Corporations Act, this Deed may be pleaded by the Deed Companies or the Deed Administrators against any Creditor as an absolute bar and defence to any Claim to the extent that the Deed Companies' liability has been released and discharged in relation to that Claim pursuant to clause 15.3.

---

## 16. Tax

### 16.1 Interpretation

The Parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 16 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 16;
- (c) unless otherwise expressly stated, all consideration to be provided under any other provision of this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 16;
- (d) a reference to the GST payable by an entity or the input tax credit entitlements of an entity will include a reference to the GST payable or input tax credit entitlements of the representative member of any GST group to which that entity may belong;
- (e) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts; and
- (f) if any value added tax, goods and services tax or other similar tax is payable pursuant to a law of another jurisdiction on any supply made under or in connection with this Deed, then the provisions of this clause 16 apply as if references to a word or expression defined in the GST Act were to the corresponding concepts in the law of that other jurisdiction.

### 16.2 Reimbursements and similar payments

Any reimbursement or similar payment required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates plus an amount calculated in accordance with clause 16.3 where applicable.

### 16.3 GST payable

If GST is payable in relation to a supply made by a party (**Supplier**) under or in connection with this Deed then the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the amount of GST payable in relation to the supply at the same time as the other consideration is to be provided for that supply.

### 16.4 Tax invoice

The Supplier must issue a valid tax invoice to the Recipient for any taxable supply it makes under this Agreement, except where the Recipient is required to issue the tax invoice.

### 16.5 Variation to GST payable

If the GST payable in relation to a supply made under or in connection with this Deed varies from the additional amount paid by the Recipient under clause 16.3 then the Supplier must promptly issue an adjustment notice to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 16.3.

### 16.6 Taxation obligations

The Deed Administrators must ensure that the Deed Companies meet all of their taxation obligations as and when they fall due throughout the Deed Period.

---

## 17. Notices

### 17.1 How to give notices

- (a) Any notice to a party under the provisions of this Deed is valid and effective if delivered personally, by courier or e-mail, to or, if given by registered mail, postage prepaid, addressed to, the details for that party specified in clause 17.3 and is deemed to have been given on the date of delivery personally or by courier or e-mail if so delivered prior to 5:00 pm (Sydney time) and otherwise on the next calendar day, or on the fifth Business Day after such letter has been mailed, as the case may be.
- (b) Any notice provided for in this Deed may be waived in writing by the party entitled to receive such notice, either before or after the event.
- (c) A notice in connection with this Deed must be:
  - (i) in writing in English; and
  - (ii) signed by the party or its agent.
- (d) Where two or more persons comprise a party, notice to or by one is effective notice to and by all.

### 17.2 Change of details

- (a) A party may at any time change its contact details by notice to each other party.
- (b) If details are so changed, this clause applies as if those changed details were set out in the 'Parties' section of this Deed.

## 17.3 Notice details

### Administrators

Name: Salvatore Algeri, Jason Tracy, Matthew Donnelly and David Orr in their capacities as joint and several voluntary administrators of the Deed Companies

Address: C/- Deloitte Financial Advisory Pty Ltd,  
477 Collins Street,  
Melbourne VIC 3000

Email: saalgeri@deloitte.com.au

For the attention of: Salvatore Algeri

### Deed Companies

Name: The companies as listed in Schedule 1

Address: C/- Deloitte Financial Advisory Pty Ltd,  
477 Collins Street,  
Melbourne VIC 3000

Email: saalgeri@deloitte.com.au

For the attention of: Salvatore Algeri

### Proponent

Name: WBHO Construction (Pty) Ltd

Address: 53 Andries Street, Wynberg Sandton 2090, South Africa

Email: Charles-henwood@wbho.co.za

For the attention of: Charles Henwood

---

## 18. General

### 18.1 Variation

- (a) Subject to the provisions of the Corporations Act, this Deed may only be varied:
- (i) by a resolution passed at a meeting of the Creditors convened in accordance with Division 75-10 of the Insolvency Practice Schedule, but only if the variation is not materially different from a proposed variation set out in a notice of meeting; and
  - (ii) with written agreement of the Parties.
- (b) Nothing in any variation of this Deed shall limit the operation of sections 445D and 445E of the Corporations Act.

### 18.2 Assignment

Rights arising out of or under this Deed are not assignable by a party, except if the assignor is required to make the assignment pursuant to clause 11.5(b) or makes the assignment with the prior written consent of the other parties.

### 18.3 Further assurances

Each party and each person bound by this Deed must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.



## 18.4 Governing law and jurisdiction

This Deed is governed by the law in force in Victoria and the Parties submit to the non-exclusive jurisdiction of the Courts of Victoria and any Court which may hear appeals from those Courts.

## 18.5 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

## 18.6 Counterparts

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one and the same instrument.
- (c) A party may execute this Deed by signing any counterpart.
- (d) Without limitation, the Parties agree that their communication of an offer or acceptance of this Deed, including exchanging counterparts, may be by any electronic method that evidences each Parties' execution of this Deed.

## 18.7 Creditor's power of attorney

Each Creditor irrevocably appoints each of the Deed Administrators jointly and severally as its attorney to execute any document to give effect to the releases in clause 15.

## 18.8 Joint Parties

If two or more parties are included within the same defined term in this Deed:

- (a) liability of those parties under this Deed is a joint liability of all of them and a several liability of each of them;
- (b) a right given to those parties under this deed is a right given severally to each of them; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

## 18.9 Costs

- (a) Each party must pay its own costs of negotiating, preparing and executing this Deed.
- (b) The Administrators' costs of and incidental to the preparation and execution of this Deed are taken to be costs, charges and expenses incurred by the Deed Administrators in connection with or incidental to the administration of this Deed,

## 18.10 Acknowledgement

The Parties acknowledge that the terms set out in this Deed are subject to the obligations the Administrators and Deed Administrators have to Creditors under law and statute.

**18.11 Accumulative rights**

The rights, power and remedies provided by this Deed are accumulative and do not exclude any rights, powers, authorities, discretions or remedies provided by law.

**18.12 Entire agreement**

This Deed contains everything that the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party before this Deed was executed.

**18.13 Further cooperation**

Each party must do anything (including executing a document) another party reasonably requires in writing to give full effect to this Deed.

**18.14 Relationship of the parties**

This Deed does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties.

**EXECUTED** as a deed.

**The Deed Companies**

**SIGNED, SEALED AND DELIVERED** for  
 and on behalf of **WBHO Australia Pty Ltd** )  
**(Administrators Appointed) ACN 095 983** )  
**681; WBHO Construction Australia Pty** )  
**Ltd (Administrators Appointed) ACN 149** )  
**901 931; Northcoast Holdings Pty Ltd** )  
**(Administrators Appointed) ACN 009 296** )  
**780; Probuild Constructions (Aust) Pty** )  
**Ltd (Administrators Appointed) ACN 095** )  
**250 945; Probuild Civil Pty Ltd (formerly** )  
**Probuild Civil (QLD) Pty Ltd** )  
**(Administrators Appointed) ACN 010 870** )  
**587; PCA (QLD) Pty Ltd (Administrators** )  
**Appointed) (formerly Probuild** )  
**Constructions (QLD) Pty Ltd) ACN 141** )  
**148 245; Probuild Constructions (NSW)** )  
**Pty Ltd (Administrators Appointed) ACN** )  
**165 675 874; Probuild Constructions** )  
**(VIC) Pty Ltd (Administrators Appointed)** )  
**ACN 165 675 865; Probuild** )  
**Constructions (WA) Pty Ltd** )  
**(Administrators Appointed) ACN 165 676** )  
**095; Probuild Constructions (QLD) Pty** )  
**Ltd (Administrators Appointed) ACN 166** )  
**966 034; ACN 098 866 794 Pty Ltd** )  
**(Administrators Appointed) (formerly** )  
**Probuild Constructions (NSW) Pty Ltd)** )  
**ACN 098 866 794; Contexx Holdings Pty** )  
**Ltd (Administrators Appointed) ACN 144** )  
**707 022; Contexx Pty Ltd (Administrators** )  
**Appointed) ACN 147 249 796; Prodev** )  
**Murphy Pty Ltd (Administrators** )  
**Appointed) ACN 120 758 803; Prodev** )  
**Investments 4 Pty Ltd (Administrators** )  
**Appointed) ACN 629 246 653 and Monaco** )  
**Hickey Pty Ltd (Administrators** )  
**Appointed) ACN 144 945 611 by its one of** )  
 its joint and several voluntary )  
 administrators: )  
 )

.....  
 Signature of Administrator

.....  
 Name of Administrator (block letters)

.....  
 Signature of witness

.....  
 Name of witness (block letters)

By signing this document the witness states  
 that they witnessed the signature of the  
 signatory over audio visual link in  
 accordance with s12 of the *Electronic  
 Transactions (Victoria) Act 2000* (Vic).

**Deed Administrators**

**SIGNED, SEALED AND DELIVERED** )  
by **SALVATORE ALGERI** in his )  
capacity as joint and several voluntary )  
administrator of the Deed Companies in )  
the presence of: )

..... )  
Signature of witness )

..... )  
Name of witness (block letters) )

By signing this document the witness )  
states that they witnessed the signature )  
of the signatory over audio visual link in )  
accordance with s12 of the *Electronic* )  
*Transactions (Victoria) Act 2000 (Vic).* )

.....  
Signature of SALVATORE ALGERI

**SIGNED, SEALED AND DELIVERED** )  
by **JASON TRACY** in his capacity as )  
joint and several voluntary )  
administrator of the Deed Companies in )  
the presence of: )

..... )  
Signature of witness )

..... )  
Name of witness (block letters) )

By signing this document the witness )  
states that they witnessed the signature )  
of the signatory over audio visual link in )  
accordance with s12 of the *Electronic* )  
*Transactions (Victoria) Act 2000 (Vic).* )

.....  
Signature of JASON TRACY

**SIGNED, SEALED AND DELIVERED** )  
by **DAVID ORR** in his capacity as joint )  
and several voluntary administrator of )  
the Deed Companies in the presence )  
of: )

..... )  
Signature of witness )

..... )  
Name of witness (block letters) )

By signing this document the witness )  
states that they witnessed the signature )  
of the signatory over audio visual link in )  
accordance with s12 of the *Electronic )  
Transactions (Victoria) Act 2000 (Vic).* )

..... )  
Signature of DAVID ORR )

**SIGNED, SEALED AND DELIVERED** )  
by **MATTHEW DONNELLY** in his )  
capacity as joint and several voluntary )  
administrator of the Deed Companies in )  
the presence of: )

..... )  
Signature of witness )

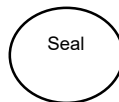
..... )  
Name of witness (block letters) )

By signing this document the witness )  
states that they witnessed the signature )  
of the signatory over audio visual link in )  
accordance with s12 of the *Electronic )  
Transactions (Victoria) Act 2000 (Vic).* )

..... )  
Signature of MATTHEW DONNELLY )

**Proponent**

**SIGNED, SEALED AND DELIVERED** )  
by **WBHO CONSTRUCTION (PTY)** )  
**LTD** in the presence of: )



..... )  
Signature of witness )

..... )  
Name of witness (block letters) )

..... )  
Signature of authorised signatory )

..... )  
Name of authorised signatory )

**Schedule 1 - Deed Companies**

1. WBHO Australia Pty Ltd (Administrators Appointed) ACN 095 983 681
2. WBHO Construction Australia Pty Ltd (Administrators Appointed) ACN 149 901 931
3. Northcoast Holdings Pty Ltd (Administrators Appointed) ACN 009 296 780
4. Probuild Constructions (Aust) Pty Ltd (Administrators Appointed) ACN 095 250 945
5. Probuild Civil Pty Ltd (formerly Probuild Civil (QLD) Pty Ltd (Administrators Appointed) ACN 010 870 587
6. PCA (QLD) Pty Ltd (Administrators Appointed) (formerly Probuild Constructions (QLD) Pty Ltd) ACN 141 148 245
7. Probuild Constructions (NSW) Pty Ltd (Administrators Appointed) ACN 165 675 874
8. Probuild Constructions (VIC) Pty Ltd (Administrators Appointed) ACN 165 675 865
9. Probuild Constructions (WA) Pty Ltd (Administrators Appointed) ACN 165 676 095
10. Probuild Constructions (QLD) Pty Ltd (Administrators Appointed) ACN 166 966 034
11. ACN 098 866 794 Pty Ltd (Administrators Appointed) (formerly Probuild Constructions (NSW) Pty Ltd) ACN 098 866 794
12. Contexx Holdings Pty Ltd (Administrators Appointed) ACN 144 707 022
13. Contexx Pty Ltd (Administrators Appointed) ACN 147 249 796
14. Prodev Murphy Pty Ltd (Administrators Appointed) ACN 120 758 803
15. Prodev Investments 4 Pty Ltd (Administrators Appointed) ACN 629 246 653
16. Monaco Hickey Pty Ltd (Administrators Appointed) ACN 144 945 611

**SUPREME COURT OF QUEENSLAND**

Registry: Brisbane  
No 4023 of 2023

**IN THE MATTER OF PCA (QLD) PTY LTD (SUBJECT TO DEED OF  
COMPANY ARRANGEMENT)**

**ACN 141 148 245**

Applicants: **DESTINATION BRISBANE CONSORTIUM INTEGRATED  
RESORT OPERATIONS PTY LTD AS TRUSTEE FOR THE  
DESTINATION BRISBANE CONSORTIUM INTEGRATED  
RESORT OPERATING TRUST and another  
(according to the attached Schedule)**

Respondents **PCA (QLD) PTY LTD (SUBJECT TO DEED OF COMPANY  
ARRANGEMENT) and others  
(according to the attached Schedule)**

**INTERLOCUTORY APPLICATION**

**A DETAILS OF INTERLOCUTORY APPLICATION**

This interlocutory application is made under section 447A of the *Corporations Act 2001* (Cth).

On the facts stated in the supporting affidavit(s), the respondents apply for the following relief:

- 1 An order pursuant to rule 62(2) of the Uniform Civil Procedure Rules 1999 (Qld) that the parties listed in the schedule as the Third to Seventeenth Respondents be joined as the Third to Seventeenth Respondents to the proceeding (referred to, together with the First Respondent, as the **Deed Companies**).
- 2 An order pursuant to:
  - (a) section 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**), Part 5.3A of the Corporations Act is to operate in relation to the Deed Companies, as if sections 445A and 445G of the Corporations Act provided that the DOCA may be varied by an order of the Court;

---

**INTERLOCUTORY APPLICATION**  
Filed on behalf of the Respondent(s)  
Form 3 - R. 2.2

---

King & Wood Mallesons  
Level 33, Waterfront Place, 1 Eagle Street,  
Brisbane Qld 4000  
T +61 7 3244 8000  
F +61 7 3244 8999  
Ref: SJK/PXM:603-0072630

- (b) sections 445A and 445G of the Corporations Act as so varied and applied to the Deed Companies by order 2(a), the DOCA be amended to be in the form of the DOCA as set out in Annexure A; and
- (c) section 447A of the Act, Part 5.3A of the Corporations Act is to operate in relation to the Deed Companies, such that the DOCA in the form set out in Annexure A, is valid.

3 An order that the second respondents (**Deed Administrators**) take all reasonable steps to cause notice of the Court's orders to be given, within two (2) business days of the making of the orders, to:

- (a) creditors (including person or entities claiming to be creditors) of each of the Deed Companies, in the following manner:
  - (i) where the creditor is a registered user on the Halo Platform, by publishing a notice on the Halo Platform;
  - (ii) where the creditors is not a registered user on the Halo Platform but the administrators have an email address for the creditor, by notifying each such creditor, via email, of the making of the orders and providing a link to a website where the creditor may download the orders an the amended originating process; and
  - (iii) by placing scanned, sealed copied of the interlocutory process (as may be amended) and the orders on the website maintained by the second respondents at  
<https://www2.deloitte.com/au/en/pages/finance/articles/wbho-australia-pty-ltd.html>; and
- (b) the Australian Securities and Investments Commission.

4 An order that any person who can demonstrate sufficient interest has liberty to apply to vary or discharge any orders made pursuant to paragraph 2 above, on three (3) business days' written notice to the Deed Administrators and the Court.

5 An order that the Deed Administrators have liberty to apply on three (3) business days' notice to the Court in relation to any variation or discharge of the Court's orders.



- 6 An order that the Deed Administrators' costs of and incidental to this application be costs in the deed administration of each of the Deed Companies, jointly and severally.
- 7 Such further or other order or direction as this honourable Court considers appropriate.

Date:

.....  
King & Wood Mallesons  
Solicitors for the Respondents

This application will be heard by the Supreme Court at Law Courts Complex, George Street, Brisbane at 9am on 16 June 2023.

**B NOTICE TO RESPONDENT(S) (IF ANY)**

TO: DESTINATION BRISBANE CONSORTIUM c/o Carter Newell Lawyers,  
INTEGRATED RESORT OPERATIONS PTY Level 13, 215 Adelaide  
LTD AS TRUSTEE FOR THE Street, Brisbane, Qld, 4000  
DESTINATION BRISBANE CONSORTIUM  
INTEGRATED RESORT OPERATING  
TRUST

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the Applicant(s) in this proceeding, file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Applicant(s) in the originating application.

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

**C FILING**

This interlocutory application is filed by King & Wood Mallesons for the respondents.

## **D SERVICE**

The respondents' address for service is King & Wood Mallesons, Level 33 Waterfront Place, 1 Eagle Street, Brisbane Queensland 4000, DX 311 Brisbane. Telephone: +61 7 3244 8000, Facsimile: +61 7 3244 8999.

It is intended to serve a copy of this interlocutory application on each respondent (being the applicant by the principal proceeding).

**Note:** *An address for service must include a telephone number, fax number, email address, and document exchange address where appropriate.*

## SCHEDULE OF PARTIES

First Applicant	<b>DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATIONS PTY LTD AS TRUSTEE FOR THE DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATING TRUST PCA (QLD) PTY LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Second Applicant	<b>QWB RESIDENTIAL PRECINCT OPERATIONS PTY LTD AS TRUSTEE FOR THE QWB RESIDENTIAL PRECINCT OPERATIONS TRUST</b>
And First Respondent	<b>PCA (QLD) PTY LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Second Respondents	<b>SALVATORE ALGERI, JASON TRACY, DAVID ORR AND MATTHEW DONNELLY IN THEIR CAPACITIES AS JOINT AND SEVERAL DEED ADMINISTRATORS OF THE DEED COMPANIES</b>
Third Respondent	<b>WBHO AUSTRALIA PTY LTD ACN 095 983 681 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Fourth Respondent	<b>WBHO CONSTRUCTION AUSTRALIA PTY LTD ACN 149 901 931 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Fifth Respondent	<b>PROBUILD CONSTRUCTIONS (AUST) PTY LTD ACN 095 250 945 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Sixth Respondent	<b>PROBUILD CIVIL PTY LTD (FORMERLY PROBUILD CIVIL (QLD) PTY LTD) ACN 010 870 587 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Seventh Respondent	<b>PROBUILD CONSTRUCTIONS (NSW) PTY LTD ACN 165 675 874</b>

Eighth Respondent	<b>(SUBJECT TO DEED OF COMPANY ARRANGEMENT) PROBUILD CONSTRUCTIONS (VIC) PTY LTD ACN 165 675 876 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Ninth Respondent	<b>PROBUILD CONSTRUCTIONS (WA) PTY LTD ACN 165 676 095 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Tenth Respondent	<b>PROBUILD CONSTRUCTIONS (QLD) PTY LTD ACN 166 966 034 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Eleventh Respondent	<b>ACN 098 866 794 PTY LTD (FORMERLY PROBUILD CONSTRUCTIONS (NSW) PTY LTD ACN 098 866 794 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Twelfth Respondent	<b>CONTEXX HOLDINGS PTY LTD ACN 144 707 022 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Thirteenth Respondent	<b>CONTEXX PTY LTD ACN 147 249 796 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Fourteenth Respondent	<b>PRODEV MURPHY PTY LTD ACN 120 758 903 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Fifteenth Respondent	<b>PRODEV INVESTMENTS 4 PTY LTD ACN 629 246 653 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Sixteenth Respondent	<b>ACP VENTURE INVESTMENTS PTY LTD ACN 631 304 651 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Seventeenth Respondent	<b>MONACO HICKEY PTY LTD ACN 144 945 611 (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>

## **Annexure A**

A copy of the Respondents' proposed amended deed of company arrangement starts on the next page.

DRAFT

Appendix D – The Proposed Amended DOCA

22 June 2023

## CIRCULAR TO CREDITORS

Dear Sir / Madam

**WBHO Australia Pty Ltd ACN 095 983 681 and certain subsidiaries listed in Appendix A  
(all Subject to Deed of Company Arrangement)  
(Probuild Group or Companies)**

### Application to amend the Deed of Company Arrangement

I refer to our previous correspondence with respect to the voluntary administration of the entities listed in Appendix A and to the circular to creditors dated 1 June 2023 and issued 2 June 2023 (**1 June Circular**). Unless otherwise defined capitalised terms in this circular have the meaning given to them in the 1 June Circular.

The purpose of this circular is to provide an update to creditors regarding the DBC Application and the Deed Administrators' Application in Queensland Supreme Court Proceedings No BS4023 of 2023 (**Queensland Proceedings**).

### Adjournment of the Hearing Date

Since the 1 June Circular, the deed administrators have received correspondence from both the solicitors for another creditor (**Werribee Claimant**) with a potentially insured claim against the Company (the **Werribee Claim**), and the solicitors for WBHO Construction (Pty) Ltd, the DOCA proponent (**Proponent**). Both the Werribee Claimant and the Proponent now wish to be heard in relation to the Queensland Proceedings.

Following conferral between the parties, the parties agreed to adjourn the Hearing Date to 1 September 2023 (**Revised Hearing Date**). The parties agreed an adjournment was necessary to:

- 1 allow further time for the parties to confer regarding the substance of the Queensland Proceedings and potential amendments to the DOCA;
- 2 allow further time for other interest parties to come forward and seek to be heard in the Queensland Proceedings; and
- 3 allow sufficient time for the parties to prepare before the Revised Hearing Date.

### Orders made in the Queensland Proceedings

On 13 June 2023, the parties attended a review hearing before the Hon Justice Hindman. On 20 June 2023, Hindman J made orders setting out a revised timetable for the Queensland Proceedings, a copy of these orders as agreed between the parties is included in **Appendix B** to this circular (**Orders**). The

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organisation"). DTTL (also referred to as "Deloitte Global") and each of its member firms and their affiliated entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

substantive hearing is now listed on 1 September 2023. We will upload a copy of the extracted orders when they are provided by the Court.

## Appearances by creditors

In particular, the deed administrators wish to draw creditors' attention to order 3 of the Orders. This order states:

*By 4pm on 30 June 2023, any party who wishes to be heard in relation to the applicants' originating application dated 31 March 2023 or any further amended originating application, or in relation to the first and second respondents' interlocutory application dated 7 June 2023 or any amended interlocutory application, is to file a notice of appearance in the proceeding as a further respondent.*

Therefore, if you wish to be heard in relation to the Queensland Proceedings, you will need to file a notice of appearance by no later than **4pm on 30 June 2023**. If you do not do so, the Court may make orders that may impact you, even in your absence. Before choosing to file a notice of appearance, the deed administrators strongly recommend taking independent legal advice.

## Creditors' views

If creditors do not wish to file a notice of appearance, but still wish to express their views on the Queensland Proceedings, they are encouraged to email the deed administrators at [probuid1@deloitte.com.au](mailto:probuid1@deloitte.com.au) as soon as possible, and in any event, by no later than 4pm AEST on 30 August 2023.

The deed administrators will provide the court with a summary of the correspondence received from creditors at the Revised Hearing Date, and provide an update to creditors after the Revised Hearing Date.

## Further queries

In the event you have any queries regarding the contents of this circular, or the administration in general, please do not hesitate to contact us at [probuid1@deloitte.com.au](mailto:probuid1@deloitte.com.au).

Yours faithfully



**Sal Algeri**

Joint and Several Deed Administrator

Appendix A – List of companies in deed administration

Appendix B – Minute of orders dated 20 June 2023



**Appendix A – Entities subject to Deed of Company Arrangement**

<b>Company</b>	<b>ACN</b>
ACN 098 866 794 Pty Ltd	ACN 098 866 794
Contexx Holdings Pty Ltd	ACN 144 707 022
Contexx Pty Ltd	ACN 147 249 796
Monaco Hickey Pty Ltd	ACN 144 945 611
Northcoast Holdings Pty Ltd	ACN 009 296 780
PCA (QLD) Pty Ltd	ACN 141 148 245
Probuild Civil Pty Ltd	ACN 010 870 587
Probuild Constructions (Aust) Pty Ltd	ACN 095 250 945
Probuild Constructions (NSW) Pty Ltd	ACN 165 675 874
Probuild Constructions (QLD) Pty Ltd	ACN 166 966 034
Probuild Constructions (VIC) Pty Ltd	ACN 165 675 865
Probuild Constructions (WA) Pty Ltd	ACN 165 676 095
Prodev Investments 4 Pty Ltd	ACN 629 246 653
Prodev Murphy Pty Ltd	ACN 120 758 803
WBHO Australia Pty Ltd	ACN 095 983 681
WBHO Construction Australia Pty Ltd	ACN 149 901 931

## Appendix F

## Detailed Administrators' Receipts and Payments to 31 October 2023

	VA Period							VA Total	DOCA Period	Combined total
	23 Feb 2022 to 21 Jul 2022								22 Jul 2022 to 31 Oct 2023	23 Feb 2022 to 31 Oct 2023
	Probuild Constructions (Aust) Pty Ltd	Monaco Hickey Pty Ltd	PCA (QLD) Pty Ltd	WBHO Australia Pty Ltd	Probuild Civil Pty Ltd	Northcoast Holdings Pty Ltd	Prodev Investment s 4 Pty Ltd		Pooled DOCA	Total for all entities
<b>\$'000</b>										
<b>Opening cash at Bank</b>	<b>34,698</b>	<b>1,344</b>	<b>27</b>	<b>165</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>36,235</b>	<b>53,659</b>	<b>36,235</b>
<b>Receipts</b>										
Project related income	90,559	646	203	-	-	-	-	91,408	4,045	95,453
Sale of Plant & Equipment	10,957	-	706	-	-	47	460	12,171	129	12,300
Pre-Appointment Debtors	1,588	-	35	-	-	-	-	1,623	10,402	12,024
Bond & Bank Guarantee returns	165	-	3,396	-	-	-	-	3,561	1,567	5,127
Insurance Policy Refunds	539	62	-	-	-	-	-	601	738	1,339
Pre-Appointment Refund	528	-	-	-	-	-	-	528	-	528
Other Income	1,504	-	257	-	-	-	-	1,762	260	2,021
Bank Interest / fees	5	-	-	-	-	-	-	5	404	409
Net GST received relating to VA period	-	-	-	-	-	-	-	-	605	605
DOCA Contribution	-	-	-	-	-	-	-	-	9,080	9,080
<b>Total Receipts</b>	<b>105,845</b>	<b>708</b>	<b>4,597</b>	<b>-</b>	<b>-</b>	<b>47</b>	<b>460</b>	<b>111,657</b>	<b>27,229</b>	<b>138,886</b>
<b>Payments</b>										
Project suppliers & subcontractors	(66,346)	-	-	-	-	-	-	(66,346)	(5,030)	(71,376)
ASA Project Funds Transfer	(5,644)	-	-	-	-	-	-	(5,644)	(4,122)	(9,766)
Insurance	(6,388)	(42)	-	-	-	-	-	(6,430)	(157)	(6,587)
Employee Costs	(6,742)	(266)	-	-	-	-	-	(7,008)	(472)	(7,480)
Taxes and other government charges	(1,891)	(81)	16	-	-	-	-	(1,956)	-	(1,956)
Site closure costs	(3,371)	(43)	(203)	-	-	-	-	(3,618)	(52)	(3,670)
Professional fees	(900)	-	-	-	-	-	-	(900)	(450)	(1,349)
Intercompany loan	1,947	-	(443)	(1)	-	-	-	1,503	-	1,503
Head office and other costs	(3,374)	(86)	(1)	-	-	-	-	(3,462)	(1,203)	(4,664)
Transfer of Cash Retentions	-	-	-	-	-	-	-	-	(13,722)	(13,722)
Court Ordered Settlement Payment	-	-	-	-	-	-	-	-	(6,363)	(6,363)
Legal fees	(351)	-	(22)	-	-	-	-	(373)	(7,603)	(7,976)
Voluntary Administrators' Remuneration	-	-	-	-	-	-	-	-	(13,656)	(13,656)
Voluntary Administrators' Expenses	-	-	-	-	-	-	-	-	(298)	(298)
Deed Administrators' Remuneration	-	-	-	-	-	-	-	-	(3,848)	(3,848)
Deed Administrators' Expenses	-	-	-	-	-	-	-	-	(14)	(14)
Priority Creditor Distribution	-	-	-	-	-	-	-	-	(16,266)	(16,266)
Unsecured Creditor Distribution	-	-	-	-	-	-	-	-	(1,765)	(1,765)
<b>Total Payments</b>	<b>(93,060)</b>	<b>(517)</b>	<b>(654)</b>	<b>(1)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(94,233)</b>	<b>(75,022)</b>	<b>(169,254)</b>
<b>Movement</b>	<b>12,785</b>	<b>191</b>	<b>3,943</b>	<b>(1)</b>	<b>-</b>	<b>47</b>	<b>460</b>	<b>17,425</b>	<b>(47,793)</b>	<b>(30,368)</b>
<b>Closing cash at bank</b>	<b>47,483</b>	<b>1,535</b>	<b>3,970</b>	<b>164</b>	<b>1</b>	<b>47</b>	<b>460</b>	<b>53,660</b>	<b>5,867</b>	<b>5,867</b>

Note: closing cash at bank includes c. \$1.6m of funds held in the NSW retention trust account

# Appendix G

## ARITA Information Sheet: Approving Remuneration



### Information sheet: Approving remuneration of an external administrator

If you are a creditor in a liquidation, voluntary administration or deed of company arrangement you may be asked to approve the external administrator's remuneration. An external administrator can be a liquidator, voluntary administrator or deed administrator. The process for approving the remuneration for each of these is the same.

This information sheet gives general information to help you understand the process of approving an external administrator's remuneration and your rights in this process. The following topics are covered in this information sheet:

- About external administrations
- External administrator's remuneration and costs
- Calculating remuneration
- Information you will receive
- Approving remuneration
- Who may approve remuneration
- Deciding if remuneration is reasonable
- What can you do if you decide the remuneration is unreasonable?
- Reimbursement of out of pocket costs
- Queries and complaints
- More information.

#### About external administrations

If a company goes into liquidation, voluntary administration or enters into a deed of company arrangement, an independent person is appointed to oversee the administration. They are called an external administrator and include a liquidator, voluntary administrator and deed administrator, depending on the type of administration involved. In this information sheet they are simply referred to as an external administrator.

The duties of an external administrator are specified in legislation and they must adhere to certain standards while conducting the administration.

All external administrators are required by law to undertake certain tasks which may not benefit creditors directly (e.g. investigating whether any offences have been committed and reporting to the Australian Securities and Investments Commission (ASIC)).

#### External administrator's remuneration and costs

External administrators are entitled to be paid for the necessary work they properly perform in the administration.

An external administrator is entitled:

- to be paid reasonable remuneration, for the work they perform, once this remuneration has been approved,
- to be paid for internal disbursements they incur in performing their role (these costs do need approval), and
- to be reimbursed for out-of-pocket costs incurred in performing their role (these costs do not need approval).



Common internal disbursements are stationery, photocopying and telephone costs.

Commonly reimbursed out-of-pocket costs include:

- legal fees
- a valuer's, real administration agent's and auctioneer's fees
- postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the amount of an external administrator's remuneration and costs, as these will generally be paid from the administration before any payments are made to creditors.

Remuneration and internal disbursements must be approved in accordance with the Corporations Act and Insolvency Practice Rules (Corporations) before it can be paid.

If there is a shortfall between the external administrator's remuneration and the assets available from the administration, in certain circumstances the external administrator may arrange for a third party to pay the shortfall. As a creditor, you will be provided details of any such arrangement.

If there are not enough assets to pay the external administrator's remuneration and costs, and there is no third party payment arrangement, the external administrator remains unpaid.

### Calculating remuneration

An external administrator may calculate their remuneration using one (or a combination) of a number of methods, such as:

- on the basis of time spent working on the administration, according to hourly rates
- a quoted fixed fee, based on an estimate of the costs
- a percentage (usually of asset realisations), or
- a contingent basis on a particular outcome being achieved.

Charging on the basis of time spent is the most common method used. External administrators have a set of hourly rates that they will seek to charge. These rates are set to reflect the seniority, skills and experience of staff and, where applicable, the complexity and risks of the bankruptcy. They cover staff costs and overheads.

If remuneration is being charged on a time basis, the external administrator must keep time sheets noting the number of hours spent on the tasks performed.

Creditors have a right to question the external administrator about the remuneration and the rates to be charged. They also have a right to question the external administrator about the fee calculation method used and how the calculation was made. The external administrator must justify why the chosen fee calculation method is appropriate for the administration.

### Information you will receive

There are different types of remuneration reports that you may receive during the course of an external administration. The following table details the reports and when you might receive them.



Document	Information it contains	When you will receive it
Initial Remuneration Notice (IRN)	<ul style="list-style-type: none"> <li>• A brief explanation of the types of methods that may be used to calculate fees.</li> <li>• The external administrator's chosen fee calculation method(s) and why it is appropriate.</li> <li>• Details of the external administrator's rates, including hourly rates if time spent basis is used.</li> <li>• An estimate of the external administrator's remuneration.</li> <li>• The method that will be used to calculate disbursements.</li> </ul>	<p>Voluntary Administration – with the notice of first meeting.</p> <p>Creditors' voluntary liquidation – within 10 business days of appointment.</p> <p>Court liquidation – within 20 business days of appointment.</p>
Remuneration Approval Report (RAR)	<ul style="list-style-type: none"> <li>• A summary description of the major tasks performed, or likely to be performed.</li> <li>• The costs associated with each of those major tasks and the method of calculation.</li> <li>• The periods at which the external administrator proposes to withdraw funds from the administration for remuneration.</li> <li>• An estimated total amount, or range of total amounts, of the external administrator's remuneration.</li> <li>• An explanation of the likely impact of that remuneration on the dividends (if any) to creditors.</li> <li>• Where internal disbursements are being claimed, the external administrator will report to creditors on the amount and method of calculation of these disbursements.</li> </ul>	<p>Sent at the same time as:</p> <ul style="list-style-type: none"> <li>• the notice to creditors of the meeting at which approval of remuneration will be sought; or</li> <li>• the notice to creditors of the proposal without a meeting by which approval of remuneration will be sought</li> </ul> <p>If approval of remuneration is not being sought, a RAR will not be provided.</p>

### Approving remuneration

The meeting of creditors (or committee of inspection) gives a chance for those participating to ask questions about the external administrator's remuneration. Fees are then approved by a vote of the creditors. Alternatively, the external administrator may seek approval of remuneration via a proposal without a meeting. Whichever method is used, the external administrator must provide the same report to creditors about their remuneration (Remuneration Approval Report).

Creditors may be asked to approve remuneration for work already performed and/or remuneration estimate for work not yet carried out. If the work is yet to be carried out, the external administrator must set a maximum limit (cap) on the future remuneration approval. For example, 'future remuneration is approved, calculated on hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X'.



If the remuneration for work done then exceeds this figure, the external administrator will have to ask the creditors to approve a further amount of remuneration, after accounting for the amount already incurred.

If an external administrator can't get the creditors' approval, an application can be made to the Court to determine their remuneration.

When there are limited funds available in the administration, or the external administrator's remuneration is below a statutory threshold, an external administrator is entitled to draw a one-off amount of up to that threshold plus GST, without creditor approval. This amount is currently \$5,000 (indexed).

### Who may approve remuneration?

#### Committee of inspection approval

A committee of inspection will generally only be established where there are a large number of creditors and/or complex matters which make having a committee desirable. Committee members are chosen by a vote of all creditors and work with the external administrator to represent the creditors' interests.

If there is a committee, the external administrator will ask it to approve the remuneration. A committee makes its decision by a majority in number of its members present in person at a meeting, but it can only vote if a majority of its members attend.

In approving the remuneration, it is important that committee members understand that they represent all the creditors, not just their own individual interests.

#### Creditors' approval

Creditors approve remuneration by passing a resolution at a creditors' meeting. Creditors may vote according to their individual interests.

To approve an external administrator's remuneration, a resolution is put to the meeting to be decided on the voices or by a 'poll' (if requested by the external administrator or a person participating and entitled to vote at the meeting). A poll requires a count of each vote and its value to be taken and recorded for each creditor present and voting.

A proxy is a document whereby a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a general proxy or a special proxy. A general proxy allows the person holding the proxy to vote how they want on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator is only able to vote on remuneration if they hold a special proxy.

There are provisions for a resolution to be passed by creditors without a meeting. This still requires a majority in value and number of creditors voting to vote in favour of the resolution. Creditors representing at least 25% in value of those responding to the external administrator's proposal can object to the proposal being resolved without a meeting of creditors.



### Deciding if remuneration is reasonable

If you are asked to approve an external administrator's remuneration, your task is to decide if the amount of remuneration is reasonable, given the work carried out in the administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the remuneration claimed is reasonable:

- the method used to calculate remuneration
- the major tasks that have been performed, or are likely to be performed, for the remuneration
- the remuneration/estimated remuneration (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the administration
- the amount of remuneration (if any) that has previously been approved
- if the remuneration is calculated, in whole or in part, on a time basis:
  - the period over which the work was, or is likely to be performed
  - if the remuneration is for work that has already been carried out, the time spent by each level of staff on each of the major tasks
  - if the remuneration is for work that is yet to be carried out, whether the remuneration is capped.

ARITA's Code of Professional Practice ('the Code') outlines the steps external administrators should take to make sure they fulfil their responsibilities to creditors when asking creditors to approve remuneration, including when those creditors are acting in their capacity as committee members. The Code is available on the ARITA website at [www.arita.com.au](http://www.arita.com.au).

If you need more information about remuneration than is provided in the external administrator's report, you should let them know before the meeting at which remuneration will be voted on.

### What can you do if you think the remuneration is unreasonable?

If you think the remuneration being claimed is unreasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve remuneration. You may also choose to not vote on the resolution (abstain).

You also have the power to put a resolution to the meeting. For example, you could put forward a resolution to change the way the external administrator charges for remuneration, or the periods at which the external administrator may withdraw funds. Any amending resolution must occur before the vote being taken on the resolution to approve remuneration. If the amended proposal is passed, the resolution is binding on the external administrator. However, such an amendment may result in the external administrator seeking to be replaced by another external administrator.

If the external administrator is seeking approval of remuneration via a resolution without a meeting and more than 25% in value of the creditors responding object using the form provided by the external administrator, the proposal will not pass. If the external administrator wants the proposal passed, a meeting will need to be convened and any creditor entitled to participate in the meeting has the right, before the vote is taken, to put a resolution to the meeting as mentioned above.



A creditor may apply to Court for a review of an external administrator's remuneration. Creditors also have the power to appoint, by resolution, a reviewing liquidator to review any remuneration approved within the six months and any disbursements incurred in the 12 months before the reviewing liquidator's appointment. The cost of a reviewing liquidator is paid from the assets of the external administration. An individual creditor may also appoint a reviewing liquidator with the external administrator's consent. An individual creditor seeking the appointment of a reviewing liquidator must pay the cost of the reviewing liquidator.

### Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the administration; as careful as if they were incurring the expenses on their own behalf. Their report on remuneration sent to creditors must also include information on the out-of-pocket costs of the administration (disbursements).

Where these out-of-pocket costs are internal disbursements paid to the external administrator's firm (for example photocopying and phone calls) the external administrator must request creditor approval of these amounts. The external administrator may also ask for approval of internal disbursements in advance. If they do so, they will set the rates for those disbursements and a cap on the maximum amount that can be drawn.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' or committee meeting. If you are still concerned, you have the right to seek the appointment of a reviewing liquidator (refer above).

### Queries and complaints

You should first raise any queries or complaints with the external administrator or their firm.

If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ARITA at [www.arita.com.au](http://www.arita.com.au) or with ASIC at [www.asic.gov.au](http://www.asic.gov.au). ARITA is only able to deal with complaints in respect of their members.

### More information

The [ARITA website](http://www.arita.com.au) contains the ARITA Code of Professional Practice which is applicable to all its members. ARITA also provides general information to assist creditors at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC includes information on its website which may assist creditors. Go to [www.asic.gov.au](http://www.asic.gov.au) and search for 'insolvency information sheets'.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.





Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/au/about](http://www.deloitte.com/au/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

The entity named herein is a legally separate and independent entity. In providing this document, the author only acts in the named capacity and does not act in any other capacity. Nothing in this document, nor any related attachments or communications or services, have any capacity to bind any other entity under the 'Deloitte' network of member firms (including those operating in Australia).

#### About Deloitte

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's approximately 200,000 professionals are committed to becoming the standard of excellence.

#### About Deloitte Australia

In Australia, the member firm is the Australian partnership of Deloitte Touche Tohmatsu. As one of Australia's leading professional services firms, Deloitte Touche Tohmatsu and its affiliates provide audit, tax, consulting, and financial advisory services through approximately 6000 people across the country. Focused on the creation of value and growth, and known as an employer of choice for innovative human resources programs, we are dedicated to helping our clients and our people excel. For more information, please visit our web site at [www.deloitte.com.au](http://www.deloitte.com.au).

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Touche Tohmatsu Limited

© 2023 Deloitte Touche Tohmatsu