

Affidavit of Vaughan Neil Strawbridge – 11 April 2014

No. of 20

Federal Court of Australia

District Registry: New South Wales

Division:

**IN THE MATTER OF OCEANLIX LIMITED (ADMINISTRATORS APPOINTED)
(RECEIVERS AND MANAGERS APPOINTED) ACN 077 104 404**

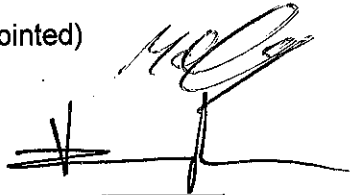
**VAUGHAN NEIL STRAWBRIDGE AND JASON MARK TRACY IN THEIR CAPACITY AS
JOINT AND SEVERAL ADMINISTRATORS OF OCEANLIX LIMITED (RECEIVERS AND
MANAGERS APPOINTED) ACN 077 104 404**

Plaintiffs

Affidavit of: **Vaughan Neil Strawbridge**
Address: c/o Deloitte, Level 9, 225 George Street, Sydney NSW 2000
Occupation: Official Liquidator
Date: 11 April 2014

I, **Vaughan Neil Strawbridge**, of c/o Deloitte, Level 9, 225 George Street, Sydney NSW 2000, being duly sworn say:

- 1. I am one of the plaintiffs (**Administrators**) in these proceedings, in my capacity as joint and several Administrator of Oceanlix Limited (Administrators Appointed)



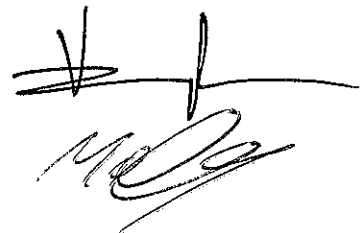
Filed on behalf of (name & role of party) Vaughan Neil Strawbridge and Jason Mark Tracy in their capacity as Joint and Several Administrators of Oceanlix Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 077 104 404, Plaintiffs
Prepared by (name of person/lawyer) Dominic Stephen Calabria
Law firm (if applicable) Bridges Lawyers
Tel 02 8272 7117 Fax 02 8272 7199
Email dcalabria@bridgeslawyers.com.au
Address for service Bridges Lawyers, Level 6, 1 Alfred Street Sydney NSW 2000
(include state and postcode)

(Receivers and Managers Appointed) ACN 077 104 404 ("**Oceanlinx**" or "**the Company**").

2. I am a partner of Deloitte. I am an Official and Registered Liquidator with more than 18 years experience in corporate insolvency.
3. I make this affidavit from:
 - (a) my own knowledge obtained in the course of my appointment as one of the Administrators of Oceanlinx;
 - (b) my examination of the books and records of Oceanlinx that have been made available to me;
 - (c) my discussions with, and from the information provided to me by, officers of Oceanlinx; and
 - (d) my discussions with, and from the information provided to me by, the Receivers and Managers of Oceanlinx, Mr Rahul Goyal and Ms Cassandra Matthews of Korda Mentha (**Receivers**), and their employees or representatives.
4. I make this affidavit in support of the applicant's application for declarations and orders pursuant to sections 447A, 447D, 439A and/or 1322 of the *Corporations Act 2001* (Cth) (**the Act**).
5. Exhibited to me at the time of swearing this affidavit and marked "**VNS-1**" is a bundle of documents. I will refer to the documents in this affidavit with reference to the tab number behind which they appear in VNS-1.

Appointment of Administrators at directors meeting

6. A search of the records maintained by the Australian Securities and Investments Commission in respect of Oceanlinx conducted on 10 April 2014 shows that as at 5 March 2014, the directors of Oceanlinx were Joaquim Rodrigues, Ali Baghaei and Tibor Vertes, and the secretaries were Colin Parbery and Thomas Denniss. The company search records that Colin Parbery ceased to be a secretary of Oceanlinx on 10 March 2014. Exhibited at **Tab 1** of Exhibit VNS-1 is a copy of the company search.
7. On 5 March 2014, a meeting of the directors of Oceanlinx was held ("**the 5 March 2014 Directors Meeting**"). The Minutes of Meeting of the 5 March 2014 Directors Meeting signed and dated on 18 March 2014 by Tibor Vertes ("**the 5 March 2014 Meeting Minutes**") record that each of Joaquim Rodrigues, Ali Baghaei, Tibor



Vertes and Colin Parbery were present. Exhibited at **Tab 2** of Exhibit VNS-1 is a copy of the 5 March 2014 Meeting Minutes.

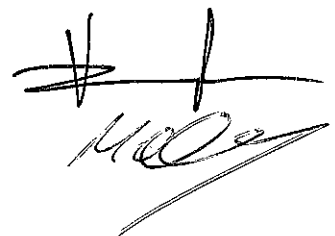
8. The 5 March 2014 Meeting Minutes record that it was resolved, with Joaquim Rodrigues abstaining from each of the votes:
 - (a) that it was the opinion of the board of directors that the Company was likely to become insolvent at some future time; and
 - (b) that Oceanlinx should appoint an Administrator under section 436A of the Act.
9. On 21 March 2014, an email was sent by Tibor Vertes to David Ross on behalf of Oceanlinx purporting to appoint David Ross and Brent Kijurina of Hall Chadwick Accountants as Joint and Several Administrators of Oceanlinx subject to the written consent of David Ross and Brent Kijurina. Exhibited at **Tab 3** of Exhibit VNS-1 is a copy of the email from Tibor Vertes to David Ross.

Removal of Administrators and Subsequent Appointment of New Administrators

10. On 2 April 2014, at the first meeting of creditors, David Ross and Brent Kijurina were removed as Administrators of Oceanlinx by a vote of the creditors of the Company, with myself and Jason Tracy appointed in their place. I refer to the company search at **Tab 1** of Exhibit VNS-1 on which the relevant notifications are shown.

Doubts regarding appointment

11. At the first meeting of creditors, at which I was present, Mr Thomas Russell, of ERA Legal, solicitor for Mr Baghaei, raised doubts regarding the validity of Messrs Ross and Kijurina's appointment. On Monday 7 April 2014, I met Mr Baghaei and he informed me that he did not believe that the resolutions as recorded in the 5 March 2014 Meeting Minutes were passed. Mr Baghaei stated that the Board of Directors only resolved that they should consider appointing an administrator and not, in fact, appoint one. However, I am informed by Mr Baghaei that he does not oppose the application to validate the Administrators' appointment. Exhibited at **Tab 4** of Exhibit VNS-1 is a copy of a letter sent from ERA Legal, the solicitors acting for Ali Baghaei, to the Administrators dated 10 April 2014.
12. Further, I am aware that there was no Consent to Act provided by Messrs David Ross and Brent Kijurina at the time of the 5 March 2014 Directors Meeting, although such a consent may have been provided subsequently.

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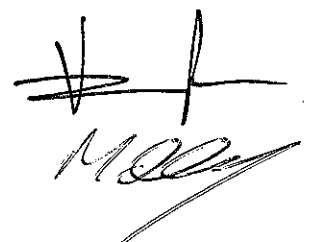
13. In light of the above matters, I have sufficient doubt that the board resolutions required by section 436A(1) of the Act were in fact made to require me to seek validation of the Administrators' appointment.

Business of the company

14. Oceanlinx is involved in the development of building and installing machinery that is capable of harnessing wave energy for the purposes of generating power, which can be transferred into electricity grids.
15. Oceanlinx relied upon funding and rebates, particularly from the Australian federal government, to finance its projects. The whole or the bulk of the Company's funding was provided through:
- (a) secured lending from Macquarie Bank Limited;
 - (b) loan notes from investors (**Second Ranking Secured Creditors**);
 - (c) equity funding from shareholders;
 - (d) AusIndustry by way of R&D Tax rebates for research and development expenses incurred in the previous financial year; and
 - (e) the Australian Renewable Energy Agency (**ARENA**).
16. The focus of the Company's business was the development and commissioning of a green wave powered generator off the coast of South Australia which cost the Company approximately \$10 million to develop (**Green Wave Generator**). In or about March 2014, and in the course of its commissioning, the Green Wave Generator sunk. This represented a significant loss of the Company's investment and jeopardised the future funding of the Company's research and development. Had the Green Wave Generator been successfully commissioned and connected to the grid, the Company would have received additional funding for its further operations.
17. Without access to sufficient funding to continue operations, in my opinion and based on my current understanding, at that time the Company was insolvent or was likely to become insolvent. In my opinion, absent further funding or sufficient payment under an insurance policy, the Company will remain insolvent.

Assets of the Company

18. As at February 2014, Oceanlinx had total assets in the sum of \$1,059,882.19. Exhibited at **Tab 5** of Exhibit VNS-1 is a copy of the Balance Sheet for Oceanlinx as

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at February 2014 (“**the February 2014 Balance Sheet**”), setting out the assets and liabilities of Oceanlinx.

19. The main assets of Oceanlinx comprise its intellectual property (being its registered patent, patents pending and other intellectual property relating to the wave powered generators it has been developing).
20. Upon successful registration for an R & D tax incentive with AusIndustry (**the Tax Rebate**) after the end of the Financial Year ending 2014, Oceanlinx may be entitled to a rebate of approximately \$3.2 million. The Tax Rebate represents payment, in part, of moneys already expended by the Company on eligible R&D projects. Exhibited at **Tab 6** of Exhibit VNS-1 is the most recent successful registration application for the Financial Year Ending 2013, which resulted in a rebate being paid to Oceanlinx.
21. Furthermore, I have been informed by Mr Goyal, one of the Receivers, that he is in discussions with Liberty International Underwriters in respect of a potential insurance claim regarding the Green Wave Generator (**the Insurance Claim**). The Insurance Claim, if successful, could be sufficient to substantially repay creditors or restore the Company to a position of solvency. Furthermore, it could be sufficient either to fix the Green Wave Generator or provide the Company with funds to build and commission another green wave generator.
22. In addition, the Company may be entitled to further funding from ARENA should the damaged generator be made operational again, although there is no guarantee that this will occur.

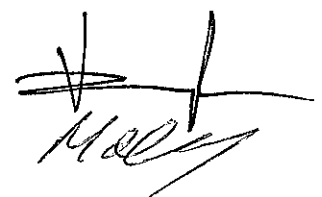
Liabilities of the Company

23. As at February 2014, Oceanlinx had total liabilities in the sum of \$7,674,930.62, as shown in the February 2014 Balance Sheet.

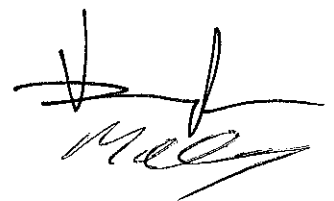
Creditors of the Company

24. Exhibited at **Tab 7** of Exhibit VNS-1 is a copy of the Creditor Listing as annexed to the Report to Creditors prepared by the previous Administrators on 25 March 2014. According to the Creditor Listing there are twelve secured creditors (**the Secured Creditors**) whose advised debts are in the sum of:

Name of Secured Creditor	Debt secured	Nature of security
Macquarie Bank Limited	\$2,620,515.07	All present and after



		<p>acquired property- no exceptions</p> <p>Intangible Property – Intellectual Property - Patent</p> <p>Intangible Property – General Intangible Property</p>
Coates Hire Operations Pty Ltd	\$142,719.71	Motor Vehicle and Other Goods
Acrow Formwork & Scaffolding Pty Ltd	\$18,867.10	Other Goods
Aggreko Generator Rentals Pty Ltd	\$824.38	Other Goods
Arrium Limited	\$1.00	Other Goods
Flexirent Capital Pty Ltd	\$1.00	Other Goods
Makinti Pty Ltd	\$1.00	All present and after acquired property- no exceptions
Peter Wang	\$1.00	
Senturion Steel Supplies Pty Ltd	\$1.00	
Southern Queensland Steel Pty Ltd	\$1.00	Other Goods
TTL Nominees Pty Ltd	\$1.00	All present and after acquired property- no exceptions

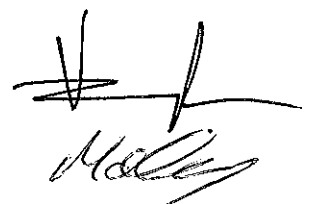


Windsor Group Holdings Pty Ltd	\$1.00	All present and after acquired property- no exceptions
TOTAL	\$2,782,934.26	

25. We have been informed by the Receivers that there are no leased goods or claims for retention of title and we have not been informed of any such claims from any creditors. Further, we have not received any requests for the return of any property. We have made telephone contact and we are in the process of sending letters to the secured creditors concerning their security.
26. There are five currently-employed employee creditors (**Employees**), one of whom is Mr Baghaei, whose debts are in the total sum of approximately \$130,000 (including unpaid superannuation, annual leave, long service leave and one month payment in lieu of notice).
27. There are approximately 59 unsecured creditors owed a total of \$2,843,616.80 including:
- (a) one lessor of leased premises at Suite 102 of 112-118 Talavera Road Macquarie Park NSW 2113, being Goodman Industrial Funds Management Limited (**Lessor**); and
 - (b) general trade creditors.
28. I have been informed by Mr Goyal, one of the Receivers, that there is a generator at Port Kembla which needs to be decommissioned (**Mark-1 Generator**). The Mark- 1 Generator is the subject of current discussions with NSW Maritime. However, I am not aware of there being any claim against the Company with respect to the Mark-1 Generator at this stage.
29. The advised liabilities may be revised upon receipt of further information.

Receivership

30. On 26 March 2014, Macquarie Bank Limited appointed the Receivers to Oceanlinx.

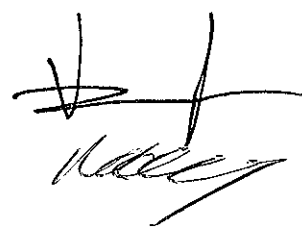


31. The assets and the undertakings of the company are currently subject to this appointment and the trading of the Company is at the Receivers' direction.
32. I have been informed by Mr Goyal that the Receivers' are currently taking steps:
- (a) to ensure the receipt of the Tax Rebate by the Company; and
 - (b) to pursue the Insurance Claim.
33. It is anticipated that the Tax Rebate will be sufficient to discharge the Company's debt to Macquarie Bank Limited such that the intellectual property of the Company may remain with the Company unencumbered or largely unencumbered.
34. Mr Goyal expects that the receipt of the Tax Rebate will not occur prior to the end of September 2014 and has indicated the Receivers' intention to remain managing the Company until this time. The Receivers are liaising with representatives of KPMG, who are the incumbent advisors for the R&D incentive review and the preparation and lodgement of the Company's tax return. The timeline for the submission and receipt of the Tax Rebate as conveyed to me by Mr Goyal is as follows:
- (a) preparation of the Company's annual accounts and tax returns for the financial year ending 30 June 2014;
 - (b) lodgment of the tax return in July 2014; and
 - (c) the Tax Rebate is expected to be paid in September 2014.
35. The Receivers have indicated that it is not their current intention to realise any of the Company's material assets prior to the payment of the Tax Rebate. They have also indicated their support for the Company remaining in voluntary administration during this period as the likelihood of the Company receiving the Tax rebate or further ARENA funding may be impaired if the Company is in liquidation due to eligibility requirements concerning the Company's "core activities". Exhibited at **Tab 8** of Exhibit VNS-1 is a copy of a letter from Baker & McKenzie, the solicitors acting for Macquarie Bank Limited, to Bridges Lawyers, the solicitors acting for the Administrators, dated 10 April 2014.

Steps taken in the administration

Circular to Creditors

36. On 25 March 2014, David Ross and Brent Kijurina sent a Report to Creditors ("**the Report to Creditors**"). A copy of the Report to Creditors is Exhibited at **Tab 9** of Exhibit VNS-1.
37. At the first Creditors Meeting on 2 April 2014 a committee of creditors was formed (**Committee of Creditors**).



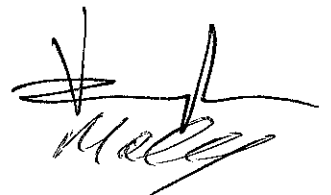
38. As stated above, Jason Tracy and I were appointed as Administrators on 2 April 2014. Since our appointment, we have conducted investigations, reviewed the books and records of Oceanlinx and liaised with the Receivers. In addition we have held meetings with the Australian resident directors and the staff of Oceanlinx.
39. In addition, on 3 April 2014, Jason Tracy and I sent the following circulars:
- (a) a Circular to Creditors (**the Circular to Creditors**); and
 - (b) a Circular to the Committee of Creditors (**the Circular to the Committee of Creditors**).

Proposed Deed of Company Arrangement

40. Mr Baghaei, the director of Oceanlinx, has informed me of his intention to propose a Deed of Company Arrangement for Oceanlinx (see the letter Exhibited at **Tab 4** of Exhibit VNS-1).
41. I anticipate that any DOCA proposal put forward for consideration will require, as a condition precedent, that the Company retain its intellectual property unencumbered or largely unencumbered.

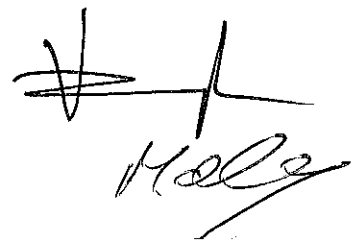
Extension of the Convening Period

42. In accordance with section 439A(5) of the Act, the convening period will end on 30 April 2014. The Report to Creditors and notice of the second meeting to be convened pursuant to section 439A of the Act will, therefore, be required to be sent on 30 April 2014 with the Second Creditors Meeting required to be held on or by 7 May 2014. However, I do not expect that, by that stage, I will be able to form an opinion about the Company's prospects as required by section 438A of the Act. Further time is required:
- (a) to ascertain the details of any proposed Deed of Company Arrangement;
 - (b) to assess and report on any such Deed proposal;
 - (c) to ascertain the likelihood of the Insurance Claim being successful;
 - (d) to determine what liabilities remain after the Tax Rebate is paid and taking into account the costs of the receivership; and
 - (e) to determine what funding or rebates may be available to the Company to support any Deed proposal or the Company's activities in the future.
43. The viability of any Deed of Company Arrangement proposed will depend, I anticipate, upon the Receivers retiring and the Company's intellectual property remaining unencumbered with the Company. I expect, therefore, that I will not be in a



position to determine whether the proposed Deed of Company Arrangement can be implemented until early October 2014. The nature of the assets and business of the Company are unique and peculiar. In my experience, to maximise the potential value of such assets, such a process would be optimally done over a period of time longer than the standard convening period. Further, by October 2014, I anticipate that the Administrators will know whether the Company has had the benefit of the Insurance Claim and Tax Rebate such that the Company may be in a position to be returned to its directors.

44. I therefore seek an extension of the convening period for a period of 180 days until 27 October 2014.
45. I anticipate that the proposed extension of the convening period will affect the following parties:
 - (a) the Employees will not have access to the Fair Entitlement Guarantee scheme until (and unless) the Company enters liquidation (presuming no Deed of Company Arrangement is entered into);
 - (b) the Lessor will be prevented from exercising property rights; and
 - (c) secured Creditors other than Macquarie Bank Limited.
46. I have been informed by the Receivers that, as and when employees are made redundant, the Receivers will pay them their entitlements subject to the Company being in sufficient funds and subject to related party limits with respect to Mr Baghaei.
47. In addition, my staff have spoken with John Gray, Senior Property Manager employed by the Lessor and he has not yet informed me of any opposition to the extension of the convening period. The Lessor is currently being paid rent and this shall continue whilst the Company is occupying the property.
48. As regards the secured creditors, other than Macquarie Bank, we have notified them of the proposed extension and to date we have not received any objections. We are still in the process of investigating the position of the secured creditors.
49. Caroline Chen, whose appointment to the Committee of Creditors was authorised by the Second Ranking Secured Creditors, has provided her consent on behalf of the Second Ranking Secured Creditors, by way of email to the Administrators, to the extension of the convening period. Exhibited at **Tab 10** of Exhibit VNS-1 is a copy of the email from Caroline Chen to the Administrators. Exhibited at **Tab 11** of Exhibit



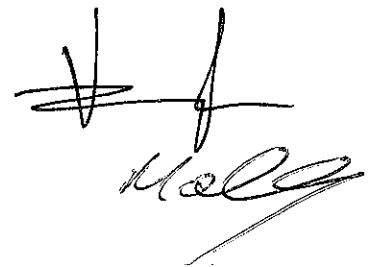
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VNS-1 are copies of the letters from the Second Ranking Secured Creditors authorising Caroline Chen to act on their behalf on the Committee of Creditors.

50. Should the extension be granted, it will:
- (a) ensure that the Receivers' efforts in obtaining the Tax Rebate and further funding to which the Company is entitled are not impeded;
 - (b) allow the Receivers the opportunity to pursue the Insurance Claim by which the damaged generator may be fixed and made operational again;
 - (c) provide sufficient time to determine whether the Company can be returned to its directors as a going concern or else its business and intellectual property sold as a going concern;
 - (d) place the Administrators in a position to be able to report to Creditors in accordance with our obligations under section 439A of the act and make a better informed recommendation as to the future of the Company;
 - (e) maximise the prospect of the Employees remaining in employment and the Lessor maintaining a tenant; and
 - (f) allow the possibility for the creditors to be paid either in full or to be paid a return that would be greater than in a liquidation scenario.
51. In light of the facts set out above, I believe that the benefits of the extension of the convening period far outweigh any potential adverse effect on creditors.

Notice and Service of documents

52. I have caused notice of my intention to seek an extension of the convening period to be served on the Creditors on 3 April 2014 including the Employees and the Lessor. The Circular to Creditors noted my intention to seek an extension of the convening period of up to 90 days and requested any creditors objecting to the application to contact Deloitte offices. To date, we have not received any notice of objection from any creditor.
53. I have convened a meeting of the Committee of Creditors to be held on Friday 11 April 2014 in order to discuss the proposed extension and to seek the views of the Committee. The proposed resolution for consideration by the Committee is as follows:




"The Committee of creditors provides its support for the Joint Administrators' application for an extension to the Convening Period for a period of between 90 and 180 days."

54. I will report to the Court the result of this meeting by way of an updating affidavit before the final hearing.
55. I propose to serve, by email transmission, each of the following affected parties with PDF copies of the Originating Process, this affidavit and any orders made:
- (a) the current directors of Oceanlinx;
 - (b) the Lessor;
 - (c) the Employees;
 - (d) each Secured Creditor; and
 - (e) each member of the Committee of Creditors.
56. I have been informed by Caroline Chen, one of the employees of Oceanlinx, of email addresses for each of the directors' email addresses. I have been provided with email addresses for the remaining affected parties and believe that email sent to the addresses listed will bring these matters to the attention of those parties. Exhibited at **Tab 12** of Exhibit VNS-1 is a list of the relevant parties and their email addresses.
57. I propose that a notice will be sent by post to all creditors advising them of these proceedings and referring them to the Deloitte website for a copy of the originating process, affidavit and any orders made. I do not have email addresses for the Creditors other than as listed above. In my opinion, the cost and effort of personal service of the relevant court documents on each of the creditors is not warranted, especially in circumstances where previous notice of the Administrators' intentions has been provided to all Creditors and the Committee of Creditors will be fully apprised of developments in these proceedings.

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Sworn by the deponent
at Sydney
in NSW
on 11 April 2014
before me:

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Signature of deponent



Signature of witness

Matthew John Peach, Solicitor