

IN THE MATTER OF THE WBHOI CREDITORS' TRUST ABN 70 402 125 406

EX PARTE

**SEAN HOLMES, SALVATORE ALGERI, JASON TRACY and DAVID ORR,**  
**in their capacities as joint and several trustees of the WBHOI Creditors' Trust**  
**(ABN 70 402 125 406)**

Plaintiffs

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ORIGINATING SUMMONS

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Date of Document: 26 August 2024

Filed on Behalf of: The Plaintiffs

Date of Filing: 26 August 2024

Prepared By:

King & Wood Mallesons  
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Reference: SJD: 608-0096069



Let all parties attend before the Supreme Court, Perth, on the \_\_\_\_\_ day of \_\_\_\_\_ 2024 at \_\_\_\_\_ o'clock in the \_\_\_\_\_ on the hearing of an application by the plaintiffs for the following relief:

**PROCEDURAL ORDERS**

**Notice of application**

- 1 An order that the plaintiffs are justified in serving this application on the beneficiaries (including persons claiming to be beneficiaries) of the WBHOI Creditors' Trust in the following manner:
  - (a) where the beneficiary (including a person claiming to be a beneficiary) or is a registered user on the "Halo Platform" (as defined in paragraph 22 of the affidavit of Sean Holmes affirmed on 26 August 2024) (**Halo**

**Platform**), by sending the summons to that beneficiary (or person claiming to be a beneficiary) via the Halo Platform;

- (b) where the beneficiary (or person claiming to be a beneficiary) is not a registered user on the Halo Platform, but the plaintiffs have an email address for that beneficiary (or person claiming to be a beneficiary), by notifying each such beneficiary (or person claiming to be a beneficiary) via email of the application and providing them with a link to the website maintained by the plaintiffs

<https://www.deloitte.com/au/en/services/financial-advisory/notices/wbho-australia-pty-ltd.html>, where they may download the summons; and

- (c) by placing a sealed copy of the summons on the website maintained by the plaintiffs at <https://www.deloitte.com/au/en/services/financial-advisory/notices/wbho-australia-pty-ltd.html>.

2 An order that the plaintiffs 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 beneficiaries (including persons claiming to be beneficiaries) of the WBHOI Creditors' Trust in the following manner:

- (a) where the beneficiary (or person claiming to be a beneficiary) is a registered user on the Halo Platform, by publishing a notice on the Halo Platform;

- (b) where the beneficiary (or person claiming to be a beneficiary) is not a registered user on the Halo Platform, but the plaintiffs have an email address for the beneficiary (or person claiming to be a beneficiary), by notifying each such beneficiary (or person claiming to be a beneficiary) via email of the making of the orders and providing a link to a website maintained by the plaintiffs at

<https://www.deloitte.com/au/en/services/financial-advisory/notices/wbho-australia-pty-ltd.html>, where the beneficiary (or person claiming to be a beneficiary) may download the orders and the summons; and

- (c) by placing sealed copies of the summons (as may be amended) and the orders on the website maintained by the plaintiffs at <https://www.deloitte.com/au/en/services/financial-advisory/notices/wbho-australia-pty-ltd.html>.

## **SUBSTANTIVE ORDERS**

### **Direction**

- 3 A direction pursuant to section 63 of the *Trustees Act 1925* (NSW) that the plaintiffs, in their capacities as joint and several trustees of the WBHOI Creditors' Trust, are, having regard to the plaintiffs' reliance on the opinions expressed in the expert report of Samuel Freeman dated 15 August 2024, justified in admitting for the amount of \$163,190,884.34 the proof of debt dated 30 April 2024 submitted by Probuild Construction (Aust) Pty Ltd (subject to deed of company arrangement) (ACN 095 250 945), for which an amount of \$163,190,936 was claimed.
- 4 Further or alternatively, a direction pursuant to section 92 of the *Trustees Act 1962* (WA) that the plaintiffs, in their capacities as joint and several trustees of the WBHOI Creditors' Trust, are, having regard to the plaintiffs' reliance on the opinions expressed in the expert report of Samuel Freeman dated 15 August 2024, justified in admitting for the amount of \$163,190,884.34 the proof of debt dated 30 April 2024 submitted by Probuild Construction (Aust) Pty Ltd (subject to deed of company arrangement) (ACN 095 250 945), for which an amount of \$163,190,936 was claimed.
- 5 Further or alternatively, a direction pursuant to the Court's inherent equitable jurisdiction that the plaintiffs, in their capacities as joint and several trustees of the WBHOI Creditors' Trust, are, having regard to the plaintiffs' reliance on the opinions expressed in the expert report of Samuel Freeman dated 15 August 2024, justified in admitting for the amount of \$163,190,884.34 the proof of debt dated 30 April 2024 submitted by Probuild Construction (Aust) Pty Ltd (subject to deed of company arrangement) (ACN 095 250 945), for which an amount of \$163,190,936 was claimed.

### **Costs and other orders**

- 6 An order that the plaintiffs' costs of and incidental to this application be paid out of the property of the WBHOI Creditors' Trust.
- 7 Such other orders as this honourable Court thinks fit.

Date: 26 August 2024

It is intended to serve this summons on the following persons:

- (a) the beneficiaries (including persons claiming to be beneficiaries) of the WBHOI Creditors' Trust; and
- (b) such other persons as this honourable Court thinks fit.

This summons is issued by King & Wood Mallesons, solicitors for the plaintiffs whose address for service is:

King & Wood Mallesons  
Level 30, QV.1 Building  
250 St Georges Terrace  
Perth WA 6000

Email: [sam.dundas@au.kwm.com](mailto:sam.dundas@au.kwm.com) and [zac.sharp@au.kwm.com](mailto:zac.sharp@au.kwm.com)



*King & Wood Mallesons*

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King & Wood Mallesons  
Solicitors for the plaintiffs



**SUPREME COURT  
OF WESTERN AUSTRALIA**

ABN: 70 598 519 443  
DAVID MALCOLM JUSTICE CENTRE  
28 BARRACK STREET  
PERTH WA 6000  
TELEPHONE: 9421 5333  
FACSIMILE: 9421 5353

**HOLMES  
SUPREME COURT MATTER No. PER CIV 2023 of 2024**

This application has been listed for Tuesday, 10 September 2024 at 09:45 AM at the Supreme Court, David Malcolm Justice Centre, 28 Barrack Street, PERTH.

All parties are required to attend the hearing date unless otherwise advised.

Issued by the Supreme Court of Western Australia  
30 August 2024

