

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

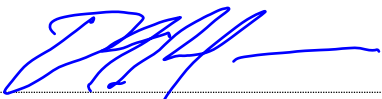
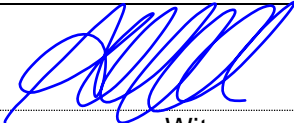
NUMBER: 4023 of 2023

IN THE MATTER OF	<b>PCA (QLD) Pty Ltd (subject to Deed of Company Arrangement) ACN 141 148 245</b>
Applicant	<b>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</b>
	and
First Respondent	<b>PCA (QLD) Pty Ltd (subject to Deed of Company Arrangement) ACN 141 148 245</b>
	and
Second Respondent	<b>Salvatore Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities as Deed Administrators of the Deed Companies</b>

**AFFIDAVIT OF DAVID JOHN RODIGHIERO**

**David John Rodighiero** of Carter Newell Lawyers, Level 13, 215 Adelaide Street, Brisbane Qld 4000, Partner, states on oath:

1. I am a partner of Carter Newell Lawyers and I have conduct of this matter on behalf of 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 (**DBC**).

	Page 1	
Deponent		Witness

AFFIDAVIT  
Filed on behalf of the Applicant  
Form 46, Version 1  
Uniform Civil Procedure Rules 1999  
Rule 431

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

2. Sarah Ewing, Senior Associate at Carter Newell, assists me in the conduct of this matter.
3. In the body of this affidavit, I refer to a number of documents by reference to exhibit DJR2 and a page number. Exhibit DJR2 is a paginated bundle of material. In making this affidavit, I have reviewed Carter Newell's files in this matter and an electronic copy of exhibit DJR2.

### **Service of Originating Application and Commercial List Application**

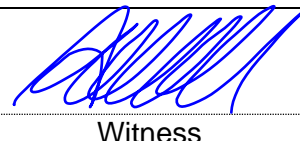
4. On 31 March 2023, I sent an email to solicitors for the respondents, King & Wood Mallesons (**KWM**). That email attached a letter from Carter Newell to KWM, a copy of the Originating Application filed in this proceeding and a copy of my affidavit sworn on 30 March 2023. Copies of my email dated 31 March 2023 and the letter to King and Wood Mallesons are at pages 1 to 4 of exhibit **DJR2**.
5. On 3 April 2023, I emailed a letter to the Associate to Justice Applegarth (copied to solicitors for the respondents), along with a copy of the Originating Application filed in this proceeding and the Applicant's outline of submissions. Copies of my email and letter are at pages 5 to 8 of exhibit **DJR2**.
6. On 5 April 2023, I sent a further letter to KWM in relation to this proceeding. A copy of my letter is at pages 9 to 11 of exhibit **DJR2**.
7. By my letter of 5 April 2023, I informed solicitors for the respondents that paragraph 7 of the Originating Application erroneously made reference to leave being sought under s440D instead of s444E(3) of the *Corporations Act 2001* (Cth) and stated that the applicants would seek the Court's leave to amend the Originating Application to correct this error. At pages 12 to 23 of exhibit **DJR2** is a copy of the amended Originating Application.
8. On 5 April 2023 I received an email from the Associate to Justice Applegarth. A copy of that email is at pages 24 to 27 of exhibit **DJR2**.
9. On 6 April 2023 I received an email from the Associate to Justice Hindman in respect of the timing of a review in this proceeding. I responded to that email on 6 April 2023. Copies of those emails are at pages 28 to 30 of exhibit **DJR2**.

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Page 2



Deponent



Witness

10. On 11 April 2023, I caused an email to be sent to KWM in relation to the email from the Associate to Justice Applegarth of 5 April 2023. A copy of the email to KWM is at pages 31 to 35 of exhibit **DJR2**.
11. When I did not receive an email response or other communication from solicitors for the respondents by 4:30pm on 11 April 2023, I sent an email to the Associate to Justice Hindman and advised that counsel for the applicants were available to attend a review on Thursday 13 or Friday 14 April 2023, but that I had not received confirmation from solicitors for the respondents as to their availability on those days. A copy of the email is at pages 36 to 38 of exhibit **DJR2**.
12. On 12 April 2023, I sent a further email to KWM in relation to the directions made by Justice Applegarth on 5 April 2023. I received a response to that email at 8:59am on 12 April 2023. A copy of those emails are at pages 39 to 45 of exhibit **DJR2**.
13. At 9:04am on 12 April 2023, I caused an email to be sent to the Application List Manager, the Civil List Manager and the Associate to Justice Hindman (copied to solicitors for the respondents). A copy of that email is at page 46 of exhibit **DJR2**.
14. At 9:08am Sarah Ewing sent a further email to KWM in relation to the proposed review before Justice Hindman. A copy of that email is at pages 47 to 54 of exhibit **DJR2**.

**The contents of this affidavit are true, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge.**

**I understand that a person who provides a false matter in an affidavit commits an offence.**

I state that:


- A. This affidavit was made in the form of an electronic document.
- B. This affidavit was electronically signed.

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Deponent

Page 3

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Witness

**SWORN** by:

David Rodighiero

Full name of deponent

at BRISBANE

Place where deponent is located

Signature of deponent

Date

**BEFORE ME:**

Amy Heselwood

Full name of Witness

Lawyer

Type of witness

Signature of witness

Date

Carter Newell Lawyers

Name of law practice

***SPECIAL WITNESS to complete – tick as applicable***

- ☒ I am a special witness under the *Oaths Act 1867*.  
(see section 12 of the *Oaths Act 1867*)
- ☒ This affidavit was made in the form of an electronic document.
- ☒ I electronically signed this affidavit.

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**

Applicant

**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**

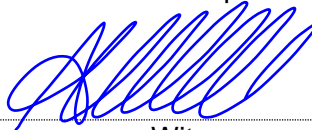
and

Second Respondent

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

**CERTIFICATE OF EXHIBIT**

Exhibit **DJR2** to the affidavit of **David John Rodighiero** sworn 13 April 2023.

  
Deponent  
Witness  
Lawyer

---

CERTIFICATE OF EXHIBIT  
Filed on behalf of the Applicant  
Form 47, Version 2  
Uniform Civil Procedure Rules 1999  
Rule 435

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)

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**

Applicant **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**

**INDEX OF EXHIBITS**

Index of exhibits to the affidavit of **David John Rodighiero** sworn 13 April 2023.

No.	Description	Date	Page
1.	Email and letter from Carter Newell to King & Wood Mallesons	31.03.2023	1 - 4
2.	Email and letter from Carter Newell to Associate to Justice Applegarth	03.04.2023	5 - 8
3.	Letter from Carter Newell to King & Wood Mallesons	05.04.2023	9 - 11
4.	Draft Amended Originating Application	Undated	12 - 23
5.	Email from Associate to Justice Applegarth to Parties	05.04.2023	24 - 27
6.	Email exchange between Associate to Justice Hindman and Carter Newell	06.04.2023	28 - 30

INDEX OF EXHIBITS  
Filed on behalf of the Applicant  
Uniform Civil Procedure Rules 1999  
Rule 435

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

No.	Description	Date	Page
7.	Email from Carter Newell to King & Wood Mallesons	11.04.2023	31 - 35
8.	Email from Carter Newell to Associate to Justice Hindman	11.04.2023	36 - 38
9.	Email exchange between Carter Newell and King & Wood Mallesons	12.04.2023	39 - 45
10.	Email from Carter Newell to the Application List Manager, the Civil List Manager and Associate to Justice Hindman	12.04.2023	46
11.	Further email exchange between Carter Newell and King & Wood Mallesons	12.04.2023	47 - 54

## DJR2

**From:** David Rodighiero  
**Sent:** Friday, 31 March 2023 5:04:56 PM  
**To:** Lethlean, Sarah (AU);Kinsey, Samantha (AU);Mackenzie, Patrick (AU)  
**Cc:** John Grant;Sarah Ewing  
**Subject:** In the matter PCA (Qld) Pty Ltd (subject to DOCA) | CN Ref: 166583 [CNE-Matters.FID447873]  
**Attachments:** 20230331 Ltr CN to KWM.PDF, 20230331 Originating Application (sealed).PDF, 20230330 Affidavit of D Rodighiero (DJR1) (sealed).PDF, PCA - outline of submissions - 31 March 2023.pdf

Partner: David Rodighiero  
Phone: +61 7 3000 8376  
Email: [djrcarternewell.com](mailto:djr@carternewell.com)  
Fax: +61 7 3000 8488  
Our ref: DJR:SAE:166583

31 March 2023

King & Wood Mallesons  
Level 27, Collins Arch  
447 Collins Street  
Melbourne VIC 3000

**EMAIL:** [Sarah.Lethlean@au.kwm.com](mailto:Sarah.Lethlean@au.kwm.com)  
[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)  
[Patrick.Mackenzie@au.kwm.com](mailto:Patrick.Mackenzie@au.kwm.com)

Dear Colleagues

**PRINCIPAL:** 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)

**CONTRACTOR:** PCA (QLD) Pty Ltd (ABN 75 141 148 245) (subject to Deed of Company Arrangement) (PCA)

**DEED ADMINISTRATORS:** David Orr, Salvatore Algeri, Jason Tracey and Matthew Donnelly (Deed Administrators)

**AGREEMENT:** Queen's Wharf Brisbane Works Package [QWI1C03] Demolition, Shoring and Excavation Construction Contract as amended

Please find **attached** our correspondence of 31 March 2023 and attachments.

Kind regards,

David





**David Rodighiero**

Partner

E [djrr@carternewell.com](mailto:djr@carternewell.com)

D +61 (0) 7 3000 8376

M +61 (0) 412 189 388

Brisbane • Sydney • Melbourne



31 March 2023

King & Wood Mallesons  
Level 27, Collins Arch  
447 Collins Street  
Melbourne VIC 3000

EMAIL: [Sarah.Lethlean@au.kwm.com](mailto:Sarah.Lethlean@au.kwm.com)  
[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)  
[Patrick.Mackenzie@au.kwm.com](mailto:Patrick.Mackenzie@au.kwm.com)

Dear Colleagues

**PRINCIPAL:** 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)

**CONTRACTOR:** PCA (QLD) Pty Ltd (ABN 75 141 148 245) (subject to Deed of Company Arrangement) (PCA)

**DEED ADMINISTRATORS:** David Orr, Salvatore Algeri, Jason Tracey and Matthew Donnelly (Deed Administrators)

**AGREEMENT:** Queen's Wharf Brisbane Works Package [QWI1C03] Demolition, Shoring and Excavation Construction Contract as amended

1. We refer to previous correspondence in relation to the Probuild Group Deed of Company Arrangement (**DOCA**) signed on 21 July 2022.
2. Now **attached** are:
  - (a) Originating Application filed 31 March 2023;
  - (b) Affidavit of David Rodighiero sworn 30 March 2023 in support of the Originating Application; and
  - (c) Submissions in support of the Originating Application.

Would you kindly advise of whether you have instructions to accept service of the attached documents on behalf of the Deed Administrators and PCA.

3. Amendments have been made to a number of paragraphs of the Originating Application since a draft was provided to you on 22 March 2023.
4. The application has been listed for hearing on **20 April 2023**. In circumstances where you have been aware of the proposed application since 22 March 2023, we are instructed to progress it to hearing without further delay. If however the hearing date is not convenient to you and your counsel, would you please provide us with alternate dates that would be suitable. We also remain open to considering any amendments to the DOCA that your clients would consent to.

5. The registry has listed the application for a 2 hour hearing. Counsel for the applicant consider that 3 hours is likely required for hearing the application. We intend to liaise with the listing clerk early next week to have additional time allocated for the hearing. Would you please advise of whether you consider the three hour hearing estimate to be sufficient.
6. We would also be grateful if you could advise of whether your clients wish to file any affidavit material in reply to our clients' material and if so when you anticipate you will be in a position to file that material and when your clients written submissions can be served.
7. Finally, a number of paragraphs of the affidavit have been sworn on the basis of information provided by employees of DBC. We appreciate that objection could be taken to our clients' reliance on these paragraphs, in circumstances where the Originating Application seeks final relief. The affidavit was prepared in this way to minimise the time and expense incurred in respect of this application. We would be grateful if you would advise, by Thursday, 6 April 2023, of whether your client intends to object to our client relying on the paragraphs of the affidavit that were sworn on information and belief. If your client intends to object we will file and serve further affidavits providing direct evidence of the matters raised in the objectionable paragraphs.
8. We look forward to hearing from you.

Yours faithfully,



**CARTER NEWELL**

**From:** David Rodighiero  
**Sent:** Monday, 3 April 2023 4:20:27 PM  
**To:** Associate.ApplegarthJ@courts.qld.gov.au  
**Cc:** Kinsey, Samantha (AU);Lethlean, Sarah (AU);Mackenzie, Patrick (AU);Sarah Ewing;John Grant  
**Subject:** BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]  
**Attachments:** 20230403 Letter CN to SC.PDF, 20230331 Outline of submissions.PDF, 20230331 Originating Application (sealed).PDF

3 April 2023

Dear Associate,

**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 v PCA (Qld) Pty Ltd (subject to Deed of Company Arrangement) & Anor  
Proceeding BS4023 of 2023**

Please find **attached** our correspondence in this matter.

We act for the applicants and confirm that the solicitors for the respondents are copied to this email.

If you have queries or require any further assistance please let us know.

Your faithfully,

David

**Carter  
Newell**  
**LAWYERS**

**David Rodighiero**  
Partner  
E [djir@carternewell.com](mailto:djr@carternewell.com)  
D +61 (0) 7 3000 8376  
M +61 (0) 412 189 388

Brisbane • Sydney • Melbourne



3 April 2023

Associate to the Honourable Justice Peter Applegarth AM  
Supreme Court of Queensland  
QEL Courts of Law Complex  
415 George Street  
BRISBANE QLD 4000

**BY EMAIL:** Associate.ApplegarthJ@courts.qld.gov.au

Dear Associate

**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 v PCA (Qld) Pty Ltd (subject to Deed of Company Arrangement) & Anor  
Proceeding BS4023 of 2023**

1. We act for the Applicants in proceeding number 4023 of 2023, recently filed with the Court.
2. The solicitors for the Respondents are copied to this letter.
3. This letter is provided pursuant to paragraphs 16 to 18 of Practice Direction 1 of 2023.
4. Our clients request that the matter be placed on the Commercial List and allocated to a Commercial List Judge.
5. In accordance with paragraph 18 of the Practice Direction:

- (a) The contact details of the parties are:

**Applicants**

Contact : David Rodighiero  
Address: Level 13, 215 Adelaide Street  
BRISBANE QLD 4000  
Phone: (07) 3000 8376  
Email: [djrcarternewell.com](mailto:djr@carternewell.com)

**Respondents**

Contact: Samantha Kinsey  
Address: Level 27, Collins Arch  
447 Collins Street  
Melbourne VIC 3000  
Phone: (03) 9643 4155  
Email: [samantha.kinsey@au.kwm.com](mailto:samantha.kinsey@au.kwm.com)

- (b) A concise description of the nature of the dispute and the main issues that are expected to arise, are as follows:
- (i) The Applicants ("DBC") is a consortium developing the Queens Wharf precinct in Brisbane ("Project").

- (ii) The First Respondent ("**PCA**") was engaged by the DBC to undertake work on the Project.
- (iii) DBC contends that it has claims against PCA arising out of that work.
- (iv) PCA is bound by a deed of company arrangement dated 21 July 2022 ("**DOCA**").
- (v) The Second Respondents are the deed administrators of the DOCA, and which binds several companies within a group, of which PCA is one.
- (vi) On the grounds explained in DBC's submissions dated 31 March 2023 (a copy of which are **attached**) (and in the affidavit of DBC's solicitor, David Rodighiero, sworn 30 March 2023), DBC contends that it is entitled to orders by which the operation of the DOCA is varied, so that its claims against PCA are not released, and DBC is entitled to prosecute those claims by proceedings in this Honourable Court, and to obtain satisfaction on any judgment or compromise, from the proceeds of insurance policies in favour of PCA.
- (vii) The orders sought are set out in the Originating Application that has been filed, a copy of which is **attached** hereto.
- (viii) The issues that are expected to arise include the following:
  - (A) Whether the DOCA has the preclusive effects for which DBC contends, or instead preserves DBC's rights to obtain satisfaction from insurance proceeds, as the Respondents have so far contended;
  - (B) Whether the Court should exercise powers conferred by s447A of the *Corporations Act 2001* (Cth) ("Act") to modify the operation of Part 5.3A of the Act, so that the DOCA is amended in the manner sought in the Application, and which is likely to raise a range of issues, addressed in DBC's written submissions;
  - (C) Whether the Court should give leave to DBC to proceed against PCA; and
  - (D) What directions should be made for the publication of any orders that may be made.
- (c) It is considered that the Application raises issues that may be of some general importance, where a creditor asserts the existence of an insured claim and wishes to vary a deed of company arrangement binding the debtor company, on the basis that the deed operates in a manner at variance to that which would apply in a liquidation.
- (d) DBC intends to file a further affidavit, exhibiting a claim and statement of claim by DBC against PCA (which is in the process of being prepared), and addressing any matters raised by the Respondents in correspondence after 30 March 2023. This affidavit is expected to be filed within the next two weeks.
- (e) It is presently anticipated that DBC and the Respondents will be able to agree directions for the filing of any submissions, or evidence, on which the Respondents may wish to rely. This matter is currently listed for two (2) hours on 20 April 2023. The Applicants consider that the hearing is likely to take three (3) hours. The views of the Respondents have been sought as to the Applicants' time estimate of three hours, and to confirm that the date listed for the hearing of the Application is convenient to the Respondents. At the date of this letter the respondents have yet to confirm their views.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'C. Newell', with a stylized flourish at the end.

**CARTER NEWELL**

Cc Samantha Kinsey  
[samantha.kinsey@au.kwm.com](mailto:samantha.kinsey@au.kwm.com)

5 April 2023

King & Wood Mallesons  
Level 27, Collins Arch  
447 Collins Street  
Melbourne VIC 3000

**EMAIL:** [Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)  
[Patrick.Mackenzie@au.kwm.com](mailto:Patrick.Mackenzie@au.kwm.com)  
[Sarah.Lethlean@au.kwm.com](mailto:Sarah.Lethlean@au.kwm.com)

Dear Samantha, Patrick and Sarah,

**Destination Brisbane Consortium Integrated Resort Operations Pty Ltd as trustee & Anor v PCA (QLD) Pty Ltd (subject to a Deed of Company Arrangement) & Ors (Supreme Court of Queensland, BS4023/2023)**

1. We refer to your letter dated 24 March 2023 and to our letter dated 31 March 2023 serving the Originating Application, affidavit in support and outline of submissions, seeking the relief previously outlined regarding amending the Probuild deed of company arrangement signed on 21 July 2022 (**DOCA**).

#### **Proposed amendments to the DOCA**

2. As foreshadowed, the Originating Application seeks orders amending the DOCA in terms of Annexure A, on the basis that the Court accepts our clients' interpretation of the DOCA and the need for amendment.
3. We note your clients' disagreement with that interpretation and that they maintain that the terms of the DOCA are sufficient to protect our clients' rights.
4. However, in the event that the Court does not accept your clients' interpretation of the DOCA, would you please provide your clients' response to the proposed changes set out in Annexure A and whether your clients would consent to them or to other changes to like effect.

#### **Position of insurers**

5. Your letter refers to the 'usual process' involving the steps you have identified, including that your clients notify PCA's insurers (where the insurance is 'prima facie responsive') of our clients' claims.
6. Your clients have been aware of our clients' claims, and the details of those claims, since correspondence between our clients' representative and PCA in October to December 2020, and, more recently, by the service of the Notice of Dispute and Letter of Demand on 20 March 2023.
7. In those circumstances, would you please:
  - (a) identify the relevant policies of insurance (and insurers) which are prima facie responsive to our clients' claims; and
  - (b) confirm that your clients have notified those insurers of our clients' claims;
  - (c) inform us of when your clients notified those insurers of our clients' claims; and



- (d) inform us of any response your clients have received from any insurer who was notified of our clients' claims, including whether those insurers have granted or declined indemnity (and if so why).
8. By your 24 March 2023 letter, your clients assert that:
- (a) Our client's claim, as described in Annexure A of the Originating Application as the 'DBC Claim' is a claim *in respect of an insurer*; and
- (b) because our client's claim is a claim *in respect of an insurer*, the proper construction of the DOCA is that our clients' claims and rights of recourse in respect of PCA are not '*released by the operation of clause 15.3(d) of the DOCA*' and that clause 8.5 '*effectively operates to empower [our clients] to subrogate to PCAQ's rights in respect of its claim against an insurer and take the benefit of any successful recovery*'.
9. Our client's claim, as described in Annexure A of the Originating Application as the "DBC Claim" is:
- 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 alleged damage, destruction, interference, subsidence, movement or other impact to the REX during 2020.
10. This description of our clients' claim makes no reference to insurance and is not a claim *in respect of an insurer* as asserted. It is a direct claim by DBC against PCA. As set out in our letters of 17 March 2023 and 22 March 2023, our clients do not presently have any right of recourse against an insurer. What our clients have is a claim against PCA, which it is anticipated one or more policies of insurance will respond to, if that claim is in due course proved by a judgment of the Court, or established by admission made by PCA, or is compromised by PCA. If the underlying claim by DBC against PCA is abandoned or released by operation of the DOCA there will be no basis for PCA to make a claim on an insurer.
11. In these circumstances, our clients maintain that the orders sought in the Originating Application are necessary to:
- (a) overcome the extinguishment of its claims against PCA and the preservation of recourse, resulting from the successful prosecution of those claims, to insurance proceeds. If the orders are made, our clients' claims against PCA would remain (and not otherwise be extinguished by the DOCA) such that the insurers will be (contingently) liable under the policies to indemnify PCA; or
- (b) at the very least, provide clarity to our clients, the Probuild Group of Companies and creditors of the Probuild Group of companies, in respect of the ambiguity that exists in respect of the operation of the DOCA on claims like our clients' claims against PCA.

In circumstances where your clients appear to accept that our clients should be allowed to progress their claims against PCA for the purpose of accessing any applicable insurance proceeds, it is unclear to us why your clients would resist this application, which as noted above, is required for clarity and to ensure that arguments alleging that our clients' claims against PCA were abandoned or extinguished by the DOCA, cannot be raised by PCA or its insurers after completion of the DOCA.

#### Other creditors

12. Your letter identifies that there are a 'number of creditors of the Probuild group of companies...who have taken the approach set out above'.
13. Would you please identify those creditors, including whether they are creditors of PCA.

14. We anticipate that the Court will be concerned to know whether those creditors have been notified of our clients' Originating Application and their attitude to it. Please confirm that your clients will notify those creditors accordingly.

**Leave to proceed**

15. Finally, we note that paragraph 7 of the Originating Application refers to seeking leave to proceed under s 440D of the *Corporations Act 2001* (Cth). This is an error. Leave is sought under s 444E(3) of the Act and we will seek the Court's leave to amend the Originating Application accordingly.
16. We look forward to hearing from you regarding the matters set out in our letter of 31 March 2023 and the matters set out above.

Yours faithfully,



**CARTER NEWELL**

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: of 2023

IN THE MATTER OF	<b>PCA (QLD) Pty Ltd (subject to Deed of Company Arrangement) ACN 141 148 245</b>
Applicants	<b>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</b>
	and
First Respondent	<b>PCA (QLD) Pty Ltd (subject to Deed of Company Arrangement) ACN 141 148 245</b>
	and
Second Respondent	<b>Salvatore Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities as Deed Administrators of the Deed Companies</b>

**AMENDED ORIGINATING APPLICATION**

**A. DETAILS OF APPLICATION**

This application is made under sections 445D, 450D, 445G, 447A, 447B and ~~444E~~44E 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 2, 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

- (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 444E(3) ~~444E(3)~~ 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: \_\_\_\_\_ at \_\_\_\_\_.



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: \_\_\_\_\_

\_\_\_\_\_  
Registrar

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 judgment) 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.*

**From:** Associate ApplegarthJ  
**Sent:** Wednesday, 5 April 2023 5:59:30 PM  
**To:** David Rodighiero  
**Cc:** Kinsey, Samantha (AU);Lethlean, Sarah (AU);Mackenzie, Patrick (AU);Sarah Ewing;John Grant;Associate HindmanJ;Apn Manager;CivilListManager;comlistmanager  
**Subject:** RE: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

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Dear Parties

Justice Applegarth has listed the matter on the Commercial List and allocated it to Justice Hindman to review and case manage.

Justice Hindman is listed in Applications on 20 April (the current return date), but whether the matter proceeds to a hearing that day before Justice Hindman will depend on directions being made that will allow it to be conveniently heard, including sufficient time being available to Justice Hindman to prepare for the hearing and sufficient time that day to hear it.

If that is not possible then the matter will need to be listed in the Civil List before a judge with availability to hear it on a date to be fixed.

The parties should confer with each other and propose directions to Justice Hindman that will facilitate the application being ready for a hearing. This will include a timetable for the filing of material and outlines of submissions well in advance of the hearing of the matter.

Please approach the Associate to Justice Hindman to review the matter and make directions at a convenient time.

Meanwhile Justice Applegarth proposes to make the following directions.

1. This proceeding be placed on the Commercial List and allocated to Hindman J for review and further directions on a date to fixed by Hindman J.
2. The parties communicate with the Associate to Hindman J about a time and date for the review, preferably early in the week commencing 10 April 2023, and any arrangements for appearances at the review to be by telephone or video-link.
3. Counsel with the conduct of the matter confer with each other about the realistic duration of the final hearing of the application, and develop a provisional hearing plan for consideration by Hindman J.
4. Well prior to the review, the parties are to communicate with each other and, if necessary, to confer (either in person, by telephone or by video-link):
  - a. to facilitate the identification and resolution of as many issues as possible at or prior to the review;

- b. to agree steps and directions for the just and expeditious resolution of the application at a minimum of expense;
  - c. to identify the issues that are proposed to be dealt with at the review and the directions that will be sought at the review; and
  - d. to be able to inform the Court of the current, realistic estimate of the length of the hearing of the application, and when the parties expect the matter will be ready for a final hearing.
- 5. By 9 am on Wednesday 12 April 2023 the parties advise by email the Application List Manager, Civil List Manager and the Associate to Hindman J of the expected time to hear and determine the application.
- 6. Well prior to the final hearing, the parties:
  - a. agree, if possible, the documents to which the judge should be specifically directed in order to prepare for the hearing of the application, and to which specific reference is likely to be made in written or oral submissions;
  - b. approach the Associate to the judge as to the judge's preference for how those documents are provided to the judge in advance of the hearing (either in written or electronic form) so that the judge has working copies of essential documents;
  - c. provide a list of essential authorities to which the judge is to be taken and approach the Associate to the judge as to whether the judge wishes these to be provided in hard copy or electronic form; and
  - d. provide to the Associate to the judge a hearing plan consisting of the allocation of time for openings, reading material, oral evidence (if any) and closing oral submissions.
- 7. The matter be provisionally allocated 3 hours hearing time in the Applications List on 20 April 2023.

Justice Hindman will direct at or after the pending review whether the matter proceeds to a hearing on 20 April in the Applications List or is listed in the Civil List on a date to be fixed.

Please direct any further inquiries to the Associate to Justice Hindman and the relevant list managers.

Kind regards

**Coco Peralta**

**| Associate to the Honourable Justice P D T Applegarth**

**| Supreme Court of Queensland**

**| PO Box 15167, City East QLD 4002 | 415 George Street, Brisbane QLD 4000**

**| t (07) 3738 7594 | e [associate.applegarthj@courts.qld.gov.au](mailto:associate.applegarthj@courts.qld.gov.au)**



---

**From:** David Rodighiero <djr@carternewell.com>

**Sent:** Monday, 3 April 2023 4:20 PM



**To:** Associate ApplegarthJ <Associate.ApplegarthJ@courts.qld.gov.au>  
**Cc:** Kinsey, Samantha (AU) <Samantha.Kinsey@au.kwm.com>; Lethlean, Sarah (AU) <Sarah.Lethlean@au.kwm.com>; Mackenzie, Patrick (AU) <Patrick.Mackenzie@au.kwm.com>; Sarah Ewing <Sewing@carternewell.com>; John Grant <JGrant@CarterNewell.com>  
**Subject:** BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

3 April 2023

Dear Associate,

**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 v PCA (Qld) Pty Ltd (subject to Deed of Company Arrangement) & Anor Proceeding BS4023 of 2023**

Please find **attached** our correspondence in this matter.

We act for the applicants and confirm that the solicitors for the respondents are copied to this email.

If you have queries or require any further assistance please let us know.

Your faithfully,

David



**David Rodighiero**  
Partner  
E [djir@carternewell.com](mailto:djr@carternewell.com)  
D +61 (0) 7 3000 8376  
M +61 (0) 412 189 388

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**From:** David Rodighiero  
**Sent:** Thursday, 6 April 2023 6:12:31 PM  
**To:** Associate HindmanJ  
**Cc:** Kinsey, Samantha (AU);Lethlean, Sarah (AU);Mackenzie, Patrick (AU);Sarah Ewing;John Grant  
**Subject:** DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATIONS PTY LTD & another -V- PCA (QLD) PTY LTD & others [CNE-Matters.FID447873]

6 April 2023

Dear Associate,

Thank you for your email.

We are seeking details from counsel for the Applicant as to their availability to appear at a review before her Honour next week.

We anticipate, however, that we are unlikely to be able to provide details of Counsel's availability until Tuesday, 11 April 2023.

Kind regards,

David



**David Rodighiero**  
Partner  
E [dj@carternewell.com](mailto:djr@carternewell.com)  
D +61 (0) 7 3000 8376  
M +61 (0) 412 189 388

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**From:** Associate HindmanJ <[Associate.HindmanJ@courts.qld.gov.au](mailto:Associate.HindmanJ@courts.qld.gov.au)>  
**Sent:** Thursday, 6 April 2023 4:26 PM  
**To:** David Rodighiero <[dj@carternewell.com](mailto:djr@carternewell.com)>; Kinsey, Samantha (AU) <[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)>  
**Subject:** FW: DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATIONS PTY LTD & another -V- PCA (QLD) PTY LTD & others

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Dear Parties,

Apologies, there was an error in the Applicant's email address from the registry.

Please see email below.

Thank you,

**Brooke Denholm**

Associate to the Hon. Justice Hindman

| Supreme Court of Queensland

| tel (07) 3738 7599 | e-mail [associate.hindmanj@courts.qld.gov.au](mailto:associate.hindmanj@courts.qld.gov.au)



---

**From:** Associate HindmanJ

**Sent:** Thursday, 6 April 2023 4:19 PM

**To:** [dj@cartnernewell.com](mailto:djr@cartnernewell.com); Kinsey, Samantha (AU) <[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)>

**Subject:** DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATIONS PTY LTD & another - V- PCA (QLD) PTY LTD & others

Dear Parties,

In reference to the above matter, could you please indicate which day next week would be preferable for all parties for a 9.15am Review before her Honour Justice Hindman.

Thank you,

**Brooke Denholm**

Associate to the Hon. Justice Hindman

| Supreme Court of Queensland

| tel (07) 3738 7599 | e-mail [associate.hindmanj@courts.qld.gov.au](mailto:associate.hindmanj@courts.qld.gov.au)



\*\*\*\*\*

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**From:** Sarah Ewing  
**Sent:** Tuesday, 11 April 2023 12:10:45 PM  
**To:** sarah.lethlean@au.kwm.com  
**Cc:** David Rodighiero; Kinsey, Samantha (AU); Mackenzie, Patrick (AU)  
**Subject:** FW: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

Dear Sarah

Further to our discussion this morning, I note that by the email below the Court has asked that certain things (highlighted in yellow below) happen prior to the review and/or certain things are communicated to the Court by 9am on 12 April 2023.

In order to comply with these directions, could you please:

1. provide us with the name and contact details for your client's counsel; and
2. confirm that a hearing estimate of 3 hours is suitable.

Kind regards

Sarah

**Sarah Ewing**

Senior Associate

Carter Newell Lawyers

E [Sewing@carternewell.com](mailto:Sewing@carternewell.com)

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M +61 (0) 407 147 200

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**From:** Associate ApplegarthJ <Associate.ApplegarthJ@courts.qld.gov.au>

**Sent:** Wednesday, 5 April 2023 6:00 PM

**To:** David Rodighiero <djr@carternewell.com>

**Cc:** Kinsey, Samantha (AU) <Samantha.Kinsey@au.kwm.com>; Lethlean, Sarah (AU) <Sarah.Lethlean@au.kwm.com>; Mackenzie, Patrick (AU) <Patrick.Mackenzie@au.kwm.com>; Sarah Ewing <Sewing@carternewell.com>; John Grant <JGrant@CarterNewell.com>; Associate HindmanJ <Associate.HindmanJ@courts.qld.gov.au>; Apn Manager <ApnManager@justice.qld.gov.au>; CivilListManager <CivilListManager@justice.qld.gov.au>; comlistmanager <comlistmanager@justice.qld.gov.au>

**Subject:** RE: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

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Dear Parties

Justice Applegarth has listed the matter on the Commercial List and allocated it to Justice Hindman to review and case manage.

Justice Hindman is listed in Applications on 20 April (the current return date), but whether the matter proceeds to a hearing that day before Justice Hindman will depend on directions being made that will allow it to be conveniently heard, including sufficient time being available to Justice Hindman to prepare for the hearing and sufficient time that day to hear it.

If that is not possible then the matter will need to be listed in the Civil List before a judge with availability to hear it on a date to be fixed.

The parties should confer with each other and propose directions to Justice Hindman that will facilitate the application being ready for a hearing. This will include a timetable for the filing of material and outlines of submissions well in advance of the hearing of the matter.

Please approach the Associate to Justice Hindman to review the matter and make directions at a convenient time.

Meanwhile Justice Applegarth proposes to make the following directions.

1. This proceeding be placed on the Commercial List and allocated to Hindman J for review and further directions on a date to fixed by Hindman J.
2. The parties communicate with the Associate to Hindman J about a time and date for the review, preferably early in the week commencing 10 April 2023, and any arrangements for appearances at the review to be by telephone or video-link.
3. Counsel with the conduct of the matter confer with each other about the realistic duration of the final hearing of the application, and develop a provisional hearing plan for consideration by Hindman J.
4. Well prior to the review, the parties are to communicate with each other and, if necessary, to confer (either in person, by telephone or by video-link):
  - a. to facilitate the identification and resolution of as many issues as possible at or prior to the review;
  - b. to agree steps and directions for the just and expeditious resolution of the application at a minimum of expense;
  - c. to identify the issues that are proposed to be dealt with at the review and the directions that will be sought at the review; and
  - d. to be able to inform the Court of the current, realistic estimate of the length of the hearing of the application, and when the parties expect the matter will be ready for a final hearing.
5. By 9 am on Wednesday 12 April 2023 the parties advise by email the Application List Manager, Civil List Manager and the Associate to Hindman J of the expected time to hear and determine the application.
6. Well prior to the final hearing, the parties:
  - a. agree, if possible, the documents to which the judge should be specifically directed in order to prepare for the hearing of the application, and to which specific reference is likely to be made in written or oral submissions;

- b. approach the Associate to the judge as to the judge's preference for how those documents are provided to the judge in advance of the hearing (either in written or electronic form) so that the judge has working copies of essential documents;
  - c. provide a list of essential authorities to which the judge is to be taken and approach the Associate to the judge as to whether the judge wishes these to be provided in hard copy or electronic form; and
  - d. provide to the Associate to the judge a hearing plan consisting of the allocation of time for openings, reading material, oral evidence (if any) and closing oral submissions.
7. The matter be provisionally allocated 3 hours hearing time in the Applications List on 20 April 2023.

Justice Hindman will direct at or after the pending review whether the matter proceeds to a hearing on 20 April in the Applications List or is listed in the Civil List on a date to be fixed.

Please direct any further inquiries to the Associate to Justice Hindman and the relevant list managers.

Kind regards

**Coco Peralta**

| Associate to the Honourable Justice P D T Applegarth

| Supreme Court of Queensland

| PO Box 15167, City East QLD 4002 | 415 George Street, Brisbane QLD 4000

| t (07) 3738 7594 | e [associate.applegarthj@courts.qld.gov.au](mailto:associate.applegarthj@courts.qld.gov.au)



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**From:** David Rodighiero <djr@carternewell.com>

**Sent:** Monday, 3 April 2023 4:20 PM

**To:** Associate ApplegarthJ <Associate.ApplegarthJ@courts.qld.gov.au>

**Cc:** Kinsey, Samantha (AU) <Samantha.Kinsey@au.kwm.com>; Lethlean, Sarah (AU) <Sarah.Lethlean@au.kwm.com>; Mackenzie, Patrick (AU) <Patrick.Mackenzie@au.kwm.com>; Sarah Ewing <Sewing@carternewell.com>; John Grant <JGrant@CarterNewell.com>

**Subject:** BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

3 April 2023

Dear Associate,



**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 v PCA (Qld) Pty Ltd (subject to Deed of Company Arrangement) & Anor  
Proceeding BS4023 of 2023**

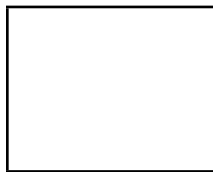
Please find **attached** our correspondence in this matter.

We act for the applicants and confirm that the solicitors for the respondents are copied to this email.

If you have queries or require any further assistance please let us know.

Your faithfully,

David



**David Rodighiero**  
Partner  
E [djr@carternewell.com](mailto:djr@carternewell.com)  
D +61 (0) 7 3000 8376  
M +61 (0) 412 189 388

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It is your responsibility to ensure that this email does not contain and is not affected by computer viruses, defects or interferences by third parties or replication problems.

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**From:** David Rodighiero  
**Sent:** Tuesday, 11 April 2023 4:31:11 PM  
**To:** Associate HindmanJ  
**Cc:** Kinsey, Samantha (AU); Lethlean, Sarah (AU); Mackenzie, Patrick (AU); Sarah Ewing; John Grant  
**Subject:** RE: DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATIONS PTY LTD & another -V- PCA (QLD) PTY LTD & others [CNE-Matters.FID447873]

11 April 2023

Dear Associate,

We act for the Applicant.

Senior and Junior counsel for the Applicant are available to appear at a review at 9:15am on Thursday 13 or Friday 14 April 2023.

We have not received confirmation from solicitors for the Respondents that these dates are suitable for their counsel.

Solicitors for the Respondents have been included as recipients to this email.

If we can be of further assistance, please let us know.

Yours faithfully.

David



**David Rodighiero**  
Partner  
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D +61 (0) 7 3000 8376  
M +61 (0) 412 189 388

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---

**From:** David Rodighiero <[djir@carternewell.com](mailto:djr@carternewell.com)>  
**Sent:** Thursday, 6 April 2023 6:13 PM  
**To:** Associate HindmanJ <[Associate.HindmanJ@courts.qld.gov.au](mailto:Associate.HindmanJ@courts.qld.gov.au)>  
**Cc:** Kinsey, Samantha (AU) <[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)>; Lethlean, Sarah (AU) <[Sarah.Lethlean@au.kwm.com](mailto:Sarah.Lethlean@au.kwm.com)>; Mackenzie, Patrick (AU) <[Patrick.Mackenzie@au.kwm.com](mailto:Patrick.Mackenzie@au.kwm.com)>; Sarah Ewing <[Sewing@carternewell.com](mailto:Sewing@carternewell.com)>; John Grant <[JGrant@CarterNewell.com](mailto:JGrant@CarterNewell.com)>  
**Subject:** DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATIONS PTY LTD & another -V- PCA (QLD) PTY LTD & others [CNE-Matters.FID447873]

6 April 2023

Dear Associate,

Thank you for your email.

We are seeking details from counsel for the Applicant as to their availability to appear at a review before her Honour next week.

We anticipate, however, that we are unlikely to be able to provide details of Counsel's availability until Tuesday, 11 April 2023.

Kind regards,

David



**David Rodighiero**  
Partner  
E [dj@carternewell.com](mailto:djr@carternewell.com)  
D +61 (0) 7 3000 8376  
M +61 (0) 412 189 388

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---

**From:** Associate HindmanJ <[Associate.HindmanJ@courts.qld.gov.au](mailto:Associate.HindmanJ@courts.qld.gov.au)>

**Sent:** Thursday, 6 April 2023 4:26 PM

**To:** David Rodighiero <[dj@carternewell.com](mailto:djr@carternewell.com)>; Kinsey, Samantha (AU) <[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)>

**Subject:** FW: DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATIONS PTY LTD & another -V- PCA (QLD) PTY LTD & others

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Dear Parties,

Apologies, there was an error in the Applicant's email address from the registry.

Please see email below.

Thank you,

**Brooke Denholm**

Associate to the Hon. Justice Hindman

| Supreme Court of Queensland

| tel (07) 3738 7599 | e-mail [associate.hindmanj@courts.qld.gov.au](mailto:associate.hindmanj@courts.qld.gov.au)



---

**From:** Associate HindmanJ  
**Sent:** Thursday, 6 April 2023 4:19 PM  
**To:** [dj@cartnernewell.com](mailto:djr@cartnernewell.com); Kinsey, Samantha (AU) <[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)>  
**Subject:** DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATIONS PTY LTD & another - V- PCA (QLD) PTY LTD & others

Dear Parties,

In reference to the above matter, could you please indicate which day next week would be preferable for all parties for a 9.15am Review before her Honour Justice Hindman.

Thank you,

**Brooke Denholm**

Associate to the Hon. Justice Hindman

| Supreme Court of Queensland

| tel (07) 3738 7599 | e-mail [associate.hindmanj@courts.qld.gov.au](mailto:associate.hindmanj@courts.qld.gov.au)



\*\*\*\*\*

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**From:** Lethlean, Sarah (AU)  
**Sent:** Wednesday, 12 April 2023 8:59:17 AM  
**To:** David Rodighiero  
**Cc:** Kinsey, Samantha (AU); Mackenzie, Patrick (AU); Sarah Ewing; John Grant  
**Subject:** RE: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873] [KWM-DOCUMENTS.FID4430114]

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Dear David

Thank you for your email and for your time on the phone last night. With apologies, I am still awaiting confirmation from counsel of their availability next week as they are currently on leave for the Easter break/school holidays. I hope to come back to you within the next hour or so if you are content to wait to contact to the court until then.

If however if you would prefer to unilaterally issue the second draft email to the court set out below, then we request that you amend the date in the final line of that email for the application hearing from 4 May 2023 to 25 May 2023 as discussed in our conference on Thursday last week.

I am available on my landline or mobile if you would like to discuss.

Kind regards  
Sarah

Sarah Lethlean | Solicitor  
King & Wood Mallesons

T [+61 3 9643 4127](tel:+61396434127)  
M [+61 409 696 642](tel:+61409696642)  
F [+61 3 9643 5999](tel:+61396435999)  
E [sarah.letthlean@au.kwm.com](mailto:sarah.letthlean@au.kwm.com)

Level 27, Collins Arch, 447 Collins Street, Melbourne VIC 3000  
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**From:** David Rodighiero <djr@carternewell.com>  
**Sent:** Wednesday, 12 April 2023 6:55 AM  
**To:** Lethlean, Sarah (AU) <Sarah.Lethlean@au.kwm.com>  
**Cc:** Kinsey, Samantha (AU) <Samantha.Kinsey@au.kwm.com>; Mackenzie, Patrick (AU) <Patrick.Mackenzie@au.kwm.com>; Sarah Ewing <Sewing@carternewell.com>; John Grant <JGrant@CarterNewell.com>  
**Subject:** RE: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

**EXTERNAL**

12 April 2023

Good morning Sarah,

I refer to our telephone discussions last night and your earlier discussions with Sarah Ewing of our office and email of 12:11pm yesterday in relation to the progress of this proceeding.

As discussed, by email dated 5 April 2023, his Honour Justice Applegarth directed the parties to take certain steps in this proceeding. Of particular relevance are the directions requiring:

1. counsel with the conduct of the matter to confer with each other about the realistic duration for the final hearing of the application and develop a provisional hearing plan for consideration by Hindman J;
2. the parties to communicate with each other to:
  - a. identify and resolve as many issues as possible prior to the review;
  - b. agree steps and directions for the just and expeditious resolution of the application at a minimum expense;
  - c. identify the issues that are proposed to be dealt with at the review and the directions that will be sought at the review; and
  - d. be able to inform the Court of the current, realistic estimate of the length of the hearing of the application and when the parties expect the matter will be ready for final hearing;
3. the parties to advise, by **9am on Wednesday 12 April 2023**, by email to the Application List Manager, Civil List Manager and the Associate to Hindman J of the expected time to hear and determine the application.

Accordingly, it is imperative that the parties comply with the above directions.

As previously requested, could you please:

1. provide us with the name and contact details of your client's counsel; and
2. confirm that a hearing estimate of 3 hours is suitable to your client.

In order to comply with his Honour's directions, and in circumstances where counsel cannot confer until such time as your client provides us with your counsel's name, we have prepared the **attached** directions for the review before her Honour Justice Hindman on a date convenient to your client and the Court next week.

You will note that draft direction 5 proposes to list our client's originating application for a three-hour hearing on an unspecified date. The direction has been prepared in this way to accommodate your clients' request for the 20 April 2023 hearing date to be adjourned.

Finally, would you please advise of whether your clients consent to the email below being sent to the Application List Manager, the Civil List Manager and the Associate to Hindman J by 9:00 am this morning:

*Dear Application List Manager, Civil List Manager and Associate*

*We act for the Applicants in proceeding BS4023 of 2023. This email is sent with the consent of the solicitors for the Respondents.*

*The parties have conferred and agree that the hearing of the Applicant's application will take three hours.*

*Solicitors for the Respondents have advised that they will not be in a position to have the application heard on 20 April 2023 and at the first review before her Honour Justice Hindman will seek directions adjourning the hearing of the application to a date convenient to her Honour and counsel for the parties in May 2023.*

*The parties are available to appear at a review before her Honour at 9:15am on **[Insert dates convenient for the counsel – please advise]**. Solicitors for the Respondents request that arrangements be made for their appearance by video-link.*

In the event that we do not receive a response from you prior to 8:55am this morning, we propose to send the following email to the Court:

*Dear Application List Manager, Civil List Manager and Associate*

*We act for the Applicants in proceeding BS4023 of 2023. Solicitors for the Respondents have been included as recipients to this email.*

*We have attempted to confer with solicitors for the Respondents in respect of the time estimate for hearing of the Applicant's application, but have not received a response to our attempts. The Applicants however remain of the view that the hearing of the Applicants' application will take three hours.*

*Solicitors for the Respondents have also advised that they will not be in a position to have the application heard on 20 April 2023. In order to allow the Respondents further time to prepare for the hearing of the application, the Applicants propose, at the first review before her Honour Justice Hindman, to seek directions adjourning the hearing of the application to the first date convenient to her Honour and counsel for the parties after 4 May 2023.*

We look forward to hearing from you.

If you have any queries, please do not hesitate to contact us to discuss.

Kind regards,

**Carter  
Newell**  
**LAWYERS**

**David Rodighiero**  
Partner  
E [dj@carternwell.com](mailto:djr@carternewell.com)  
D +61 (0) 7 3000 8376  
M +61 (0) 412 189 388

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---

**From:** Sarah Ewing <[Sewing@carternewell.com](mailto:Sewing@carternewell.com)>

**Sent:** Tuesday, 11 April 2023 12:11 PM

**To:** [sarah.lethlean@au.kwm.com](mailto:sarah.lethlean@au.kwm.com)

**Cc:** David Rodighiero <[dj@carternwell.com](mailto:djr@carternewell.com)>; Kinsey, Samantha (AU)

<[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)>; Mackenzie, Patrick (AU) <[Patrick.Mackenzie@au.kwm.com](mailto:Patrick.Mackenzie@au.kwm.com)>

**Subject:** FW: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

Dear Sarah



Further to our discussion this morning, I note that by the email below the Court has asked that certain things (highlighted in yellow below) happen prior to the review and/or certain things are communicated to the Court by 9am on 12 April 2023.

In order to comply with these directions, could you please:

1. provide us with the name and contact details for your client's counsel; and
2. confirm that a hearing estimate of 3 hours is suitable.

Kind regards

Sarah

**Sarah Ewing**

Senior Associate

Carter Newell Lawyers

E [Sewing@carternewell.com](mailto:Sewing@carternewell.com)

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M +61 (0) 407 147 200

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**From:** Associate ApplegarthJ <[Associate.ApplegarthJ@courts.qld.gov.au](mailto:Associate.ApplegarthJ@courts.qld.gov.au)>

**Sent:** Wednesday, 5 April 2023 6:00 PM

**To:** David Rodighiero <[djrcarternewell.com](mailto:djr@carternewell.com)>

**Cc:** Kinsey, Samantha (AU) <[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)>; Lethlean, Sarah (AU)

<[Sarah.Lethlean@au.kwm.com](mailto:Sarah.Lethlean@au.kwm.com)>; Mackenzie, Patrick (AU) <[Patrick.Mackenzie@au.kwm.com](mailto:Patrick.Mackenzie@au.kwm.com)>; Sarah

Ewing <[Sewing@carternewell.com](mailto:Sewing@carternewell.com)>; John Grant <[JGrant@CarterNewell.com](mailto:JGrant@CarterNewell.com)>; Associate HindmanJ

<[Associate.HindmanJ@courts.qld.gov.au](mailto:Associate.HindmanJ@courts.qld.gov.au)>; Apn Manager <[ApnManager@justice.qld.gov.au](mailto:ApnManager@justice.qld.gov.au)>;

CivilListManager <[CivilListManager@justice.qld.gov.au](mailto:CivilListManager@justice.qld.gov.au)>; comlistmanager

<[comlistmanager@justice.qld.gov.au](mailto:comlistmanager@justice.qld.gov.au)>

**Subject:** RE: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

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Dear Parties

Justice Applegarth has listed the matter on the Commercial List and allocated it to Justice Hindman to review and case manage.

Justice Hindman is listed in Applications on 20 April (the current return date), but whether the matter proceeds to a hearing that day before Justice Hindman will depend on directions being made that will allow it to be conveniently heard, including sufficient time being available to Justice Hindman to prepare for the hearing and sufficient time that day to hear it.

If that is not possible then the matter will need to be listed in the Civil List before a judge with availability to hear it on a date to be fixed.

The parties should confer with each other and propose directions to Justice Hindman that will facilitate the application being ready for a hearing. This will include a timetable for the filing of material and outlines of submissions well in advance of the hearing of the matter.

Please approach the Associate to Justice Hindman to review the matter and make directions at a convenient time.

Meanwhile Justice Applegarth proposes to make the following directions.

1. This proceeding be placed on the Commercial List and allocated to Hindman J for review and further directions on a date to fixed by Hindman J.
2. The parties communicate with the Associate to Hindman J about a time and date for the review, preferably early in the week commencing 10 April 2023, and any arrangements for appearances at the review to be by telephone or video-link.
3. Counsel with the conduct of the matter confer with each other about the realistic duration of the final hearing of the application, and develop a provisional hearing plan for consideration by Hindman J.
4. Well prior to the review, the parties are to communicate with each other and, if necessary, to confer (either in person, by telephone or by video-link):
  - a. to facilitate the identification and resolution of as many issues as possible at or prior to the review;
  - b. to agree steps and directions for the just and expeditious resolution of the application at a minimum of expense;
  - c. to identify the issues that are proposed to be dealt with at the review and the directions that will be sought at the review; and
  - d. to be able to inform the Court of the current, realistic estimate of the length of the hearing of the application, and when the parties expect the matter will be ready for a final hearing.
5. By 9 am on Wednesday 12 April 2023 the parties advise by email the Application List Manager, Civil List Manager and the Associate to Hindman J of the expected time to hear and determine the application.
6. Well prior to the final hearing, the parties:
  - a. agree, if possible, the documents to which the judge should be specifically directed in order to prepare for the hearing of the application, and to which specific reference is likely to be made in written or oral submissions;
  - b. approach the Associate to the judge as to the judge's preference for how those documents are provided to the judge in advance of the hearing (either in written or electronic form) so that the judge has working copies of essential documents;
  - c. provide a list of essential authorities to which the judge is to be taken and approach the Associate to the judge as to whether the judge wishes these to be provided in hard copy or electronic form; and
  - d. provide to the Associate to the judge a hearing plan consisting of the allocation of time for openings, reading material, oral evidence (if any) and closing oral submissions.
7. The matter be provisionally allocated 3 hours hearing time in the Applications List on 20 April 2023.

Justice Hindman will direct at or after the pending review whether the matter proceeds to a hearing on 20 April in the Applications List or is listed in the Civil List on a date to be fixed.

Please direct any further inquiries to the Associate to Justice Hindman and the relevant list managers.

Kind regards

**Coco Peralta**

| Associate to the Honourable Justice P D T Applegarth  
| Supreme Court of Queensland  
| PO Box 15167, City East QLD 4002 | 415 George Street, Brisbane QLD 4000  
| t (07) 3738 7594 | e [associate.applegarthj@courts.qld.gov.au](mailto:associate.applegarthj@courts.qld.gov.au)



---

**From:** David Rodighiero <[djr@carternewell.com](mailto:djr@carternewell.com)>  
**Sent:** Monday, 3 April 2023 4:20 PM  
**To:** Associate ApplegarthJ <[Associate.ApplegarthJ@courts.qld.gov.au](mailto:Associate.ApplegarthJ@courts.qld.gov.au)>  
**Cc:** Kinsey, Samantha (AU) <[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)>; Lethlean, Sarah (AU) <[Sarah.Lethlean@au.kwm.com](mailto:Sarah.Lethlean@au.kwm.com)>; Mackenzie, Patrick (AU) <[Patrick.Mackenzie@au.kwm.com](mailto:Patrick.Mackenzie@au.kwm.com)>; Sarah Ewing <[Sewing@carternewell.com](mailto:Sewing@carternewell.com)>; John Grant <[JGrant@CarterNewell.com](mailto:JGrant@CarterNewell.com)>  
**Subject:** BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

3 April 2023

Dear Associate,

**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 v PCA (Qld) Pty Ltd (subject to Deed of Company Arrangement) & Anor  
Proceeding BS4023 of 2023**

Please find **attached** our correspondence in this matter.

We act for the applicants and confirm that the solicitors for the respondents are copied to this email.

If you have queries or require any further assistance please let us know.

Your faithfully,

David



**David Rodighiero**  
Partner  
E [djrr@carternewell.com](mailto:djr@carternewell.com)  
D +61 (0) 7 3000 8376  
M +61 (0) 412 189 388

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**From:** Sarah Ewing  
**Sent:** Wednesday, 12 April 2023 9:04:56 AM  
**To:** Apn Manager;'CivilListManager';Associate HindmanJ  
**Cc:** David Rodighiero;Kinsey, Samantha (AU);sarah.lethlean@au.kwm.com  
**Subject:** DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATIONS PTY LTD & another -V- PCA (QLD) PTY LTD & others BS4023 of 2023 [CNE-Matters.FID447873]

Dear Application List Manager, Civil List Manager and Associate

We act for the Applicants in proceeding BS4023 of 2023. Solicitors for the Respondents have been included as recipients to this email.

We have attempted to confer with solicitors for the Respondents in respect of the time estimate for hearing of the Applicant's application, but have not received confirmation of the Respondents' views on the hearing estimate. The Applicants however remain of the view that the hearing of the Applicants' application will take three hours.

Solicitors for the Respondents have also advised that they will not be in a position to have the application heard on 20 April 2023. In order to allow the Respondents further time to prepare for the hearing of the application, the Applicants propose, at the first review before her Honour Justice Hindman, to seek directions adjourning the hearing of the application to a date convenient to her Honour and counsel for the parties in May 2023.

Regards

**Carter  
Newell**  
**LAWYERS**

**Sarah Ewing**  
Senior Associate  
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**2022 Workplace Culture and Health Award - QLS Excellence in Law**



**From:** Sarah Ewing  
**Sent:** Wednesday, 12 April 2023 9:08:54 AM  
**To:** Lethlean, Sarah (AU);David Rodighiero  
**Cc:** Kinsey, Samantha (AU);Mackenzie, Patrick (AU);John Grant  
**Bcc:** 166583 \_ PCA \_Qld\_ Pty Ltd \_subject to DOCA\_ E\_mails  
**Subject:** RE: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [KWM-DOCUMENTS.FID4430114] [CNE-Matters.FID447873]

Thanks Sarah

You will see that I have sent my second proposed email to the Court (with minor amendments, including removing the reference to 4 May, and instead alerting the Court to the fact that the parties will be looking to set the application down for hearing on a mutually convenient date in May 2023).

I am happy to send an updated email to the Court (or to look at any email you propose to send to the Court) when you hear from your counsel and we can provide the Court with dates for a review next week.

Kind regards

Sarah

**Sarah Ewing**

Senior Associate

Carter Newell Lawyers

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**2022 Workplace Culture and Health Award – QLS Excellence in Law**

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**From:** Lethlean, Sarah (AU) <Sarah.Lethlean@au.kwm.com>

**Sent:** Wednesday, 12 April 2023 8:59 AM

**To:** David Rodighiero <djr@carternewell.com>

**Cc:** Kinsey, Samantha (AU) <Samantha.Kinsey@au.kwm.com>; Mackenzie, Patrick (AU) <Patrick.Mackenzie@au.kwm.com>; Sarah Ewing <Sewing@carternewell.com>; John Grant <JGrant@CarterNewell.com>

**Subject:** RE: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873] [KWM-DOCUMENTS.FID4430114]

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Dear David

Thank you for your email and for your time on the phone last night. With apologies, I am still awaiting confirmation from counsel of their availability next week as they are currently on leave for the Easter

break/school holidays. I hope to come back to you within the next hour or so if you are content to wait to contact to the court until then.

If however if you would prefer to unilaterally issue the second draft email to the court set out below, then we request that you amend the date in the final line of that email for the application hearing from 4 May 2023 to 25 May 2023 as discussed in our conference on Thursday last week.

I am available on my landline or mobile if you would like to discuss.

Kind regards  
Sarah

**Sarah Lethlean | Solicitor**  
**King & Wood Mallesons**

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**M** [+61 409 696 642](tel:+61409696642)  
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Level 27, Collins Arch, 447 Collins Street, Melbourne VIC 3000  
[kwm.com](http://kwm.com)

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**From:** David Rodighiero <djr@carternewell.com>  
**Sent:** Wednesday, 12 April 2023 6:55 AM  
**To:** Lethlean, Sarah (AU) <Sarah.Lethlean@au.kwm.com>  
**Cc:** Kinsey, Samantha (AU) <Samantha.Kinsey@au.kwm.com>; Mackenzie, Patrick (AU) <Patrick.Mackenzie@au.kwm.com>; Sarah Ewing <Sewing@carternewell.com>; John Grant <JGrant@CarterNewell.com>  
**Subject:** RE: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

## **EXTERNAL**

12 April 2023

Good morning Sarah,

I refer to our telephone discussions last night and your earlier discussions with Sarah Ewing of our office and email of 12:11pm yesterday in relation to the progress of this proceeding.

As discussed, by email dated 5 April 2023, his Honour Justice Applegarth directed the parties to take certain steps in this proceeding. Of particular relevance are the directions requiring:

1. counsel with the conduct of the matter to confer with each other about the realistic duration for the final hearing of the application and develop a provisional hearing plan for consideration by Hindman J;
2. the parties to communicate with each other to:
  - a. identify and resolve as many issues as possible prior to the review;

- b. agree steps and directions for the just and expeditious resolution of the application at a minimum expense;
  - c. identify the issues that are proposed to be dealt with at the review and the directions that will be sought at the review; and
  - d. be able to inform the Court of the current, realistic estimate of the length of the hearing of the application and when the parties expect the matter will be ready for final hearing;
3. the parties to advise, by **9am on Wednesday 12 April 2023**, by email to the Application List Manager, Civil List Manager and the Associate to Hindman J of the expected time to hear and determine the application.

Accordingly, it is imperative that the parties comply with the above directions.

As previously requested, could you please:

1. provide us with the name and contact details of your client's counsel; and
2. confirm that a hearing estimate of 3 hours is suitable to your client.

In order to comply with his Honour's directions, and in circumstances where counsel cannot confer until such time as your client provides us with your counsel's name, we have prepared the **attached** directions for the review before her Honour Justice Hindman on a date convenient to your client and the Court next week.

You will note that draft direction 5 proposes to list our client's originating application for a three-hour hearing on an unspecified date. The direction has been prepared in this way to accommodate your clients' request for the 20 April 2023 hearing date to be adjourned.

Finally, would you please advise of whether your clients consent to the email below being sent to the Application List Manager, the Civil List Manager and the Associate to Hindman J by 9:00 am this morning:

*Dear Application List Manager, Civil List Manager and Associate*

*We act for the Applicants in proceeding BS4023 of 2023. This email is sent with the consent of the solicitors for the Respondents.*

*The parties have conferred and agree that the hearing of the Applicant's application will take three hours.*

*Solicitors for the Respondents have advised that they will not be in a position to have the application heard on 20 April 2023 and at the first review before her Honour Justice Hindman will seek directions adjourning the hearing of the application to a date convenient to her Honour and counsel for the parties in May 2023.*

*The parties are available to appear at a review before her Honour at 9:15am on **[Insert dates convenient for the counsel – please advise]**. Solicitors for the Respondents request that arrangements be made for their appearance by video-link.*

In the event that we do not receive a response from you prior to 8:55am this morning, we propose to send the following email to the Court:

*Dear Application List Manager, Civil List Manager and Associate*

*We act for the Applicants in proceeding BS4023 of 2023. Solicitors for the Respondents have been included as recipients to this email.*



*We have attempted to confer with solicitors for the Respondents in respect of the time estimate for hearing of the Applicant's application, but have not received a response to our attempts. The Applicants however remain of the view that the hearing of the Applicants' application will take three hours.*

*Solicitors for the Respondents have also advised that they will not be in a position to have the application heard on 20 April 2023. In order to allow the Respondents further time to prepare for the hearing of the application, the Applicants propose, at the first review before her Honour Justice Hindman, to seek directions adjourning the hearing of the application to the first date convenient to her Honour and counsel for the parties after 4 May 2023.*

We look forward to hearing from you.

If you have any queries, please do not hesitate to contact us to discuss.

Kind regards,



**David Rodighiero**

Partner

E [dj@carternell.com](mailto:djr@carternewell.com)

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M +61 (0) 412 189 388

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---

**From:** Sarah Ewing <[Sewing@carternewell.com](mailto:Sewing@carternewell.com)>

**Sent:** Tuesday, 11 April 2023 12:11 PM

**To:** [sarah.lethlean@au.kwm.com](mailto:sarah.lethlean@au.kwm.com)

**Cc:** David Rodighiero <[dj@carternell.com](mailto:djr@carternewell.com)>; Kinsey, Samantha (AU)

<[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)>; Mackenzie, Patrick (AU) <[Patrick.Mackenzie@au.kwm.com](mailto:Patrick.Mackenzie@au.kwm.com)>

**Subject:** FW: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

Dear Sarah

Further to our discussion this morning, I note that by the email below the Court has asked that certain things (highlighted in yellow below) happen prior to the review and/or certain things are communicated to the Court by 9am on 12 April 2023.

In order to comply with these directions, could you please:

1. provide us with the name and contact details for your client's counsel; and
2. confirm that a hearing estimate of 3 hours is suitable.

Kind regards

Sarah

**Sarah Ewing**

Senior Associate

Carter Newell Lawyers

E [Sewing@carternewell.com](mailto:Sewing@carternewell.com)

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M +61 (0) 407 147 200

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**From:** Associate ApplegarthJ <[Associate.ApplegarthJ@courts.qld.gov.au](mailto:Associate.ApplegarthJ@courts.qld.gov.au)>  
**Sent:** Wednesday, 5 April 2023 6:00 PM  
**To:** David Rodighiero <[djrcarternewell.com](mailto:djr@carternewell.com)>  
**Cc:** Kinsey, Samantha (AU) <[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)>; Lethlean, Sarah (AU) <[Sarah.Lethlean@au.kwm.com](mailto:Sarah.Lethlean@au.kwm.com)>; Mackenzie, Patrick (AU) <[Patrick.Mackenzie@au.kwm.com](mailto:Patrick.Mackenzie@au.kwm.com)>; Sarah Ewing <[Sewing@carternewell.com](mailto:Sewing@carternewell.com)>; John Grant <[JGrant@CarterNewell.com](mailto:JGrant@CarterNewell.com)>; Associate HindmanJ <[Associate.HindmanJ@courts.qld.gov.au](mailto:Associate.HindmanJ@courts.qld.gov.au)>; Apn Manager <[ApnManager@justice.qld.gov.au](mailto:ApnManager@justice.qld.gov.au)>; CivilListManager <[CivilListManager@justice.qld.gov.au](mailto:CivilListManager@justice.qld.gov.au)>; comlistmanager <[comlistmanager@justice.qld.gov.au](mailto:comlistmanager@justice.qld.gov.au)>  
**Subject:** RE: BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

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Dear Parties

Justice Applegarth has listed the matter on the Commercial List and allocated it to Justice Hindman to review and case manage.

Justice Hindman is listed in Applications on 20 April (the current return date), but whether the matter proceeds to a hearing that day before Justice Hindman will depend on directions being made that will allow it to be conveniently heard, including sufficient time being available to Justice Hindman to prepare for the hearing and sufficient time that day to hear it.

If that is not possible then the matter will need to be listed in the Civil List before a judge with availability to hear it on a date to be fixed.

The parties should confer with each other and propose directions to Justice Hindman that will facilitate the application being ready for a hearing. This will include a timetable for the filing of material and outlines of submissions well in advance of the hearing of the matter.

Please approach the Associate to Justice Hindman to review the matter and make directions at a convenient time.

Meanwhile Justice Applegarth proposes to make the following directions.

1. This proceeding be placed on the Commercial List and allocated to Hindman J for review and further directions on a date to fixed by Hindman J.

2. The parties communicate with the Associate to Hindman J about a time and date for the review, preferably early in the week commencing 10 April 2023, and any arrangements for appearances at the review to be by telephone or video-link.
3. Counsel with the conduct of the matter confer with each other about the realistic duration of the final hearing of the application, and develop a provisional hearing plan for consideration by Hindman J.
4. Well prior to the review, the parties are to communicate with each other and, if necessary, to confer (either in person, by telephone or by video-link):
  - a. to facilitate the identification and resolution of as many issues as possible at or prior to the review;
  - b. to agree steps and directions for the just and expeditious resolution of the application at a minimum of expense;
  - c. to identify the issues that are proposed to be dealt with at the review and the directions that will be sought at the review; and
  - d. to be able to inform the Court of the current, realistic estimate of the length of the hearing of the application, and when the parties expect the matter will be ready for a final hearing.
5. By 9 am on Wednesday 12 April 2023 the parties advise by email the Application List Manager, Civil List Manager and the Associate to Hindman J of the expected time to hear and determine the application.
6. Well prior to the final hearing, the parties:
  - a. agree, if possible, the documents to which the judge should be specifically directed in order to prepare for the hearing of the application, and to which specific reference is likely to be made in written or oral submissions;
  - b. approach the Associate to the judge as to the judge's preference for how those documents are provided to the judge in advance of the hearing (either in written or electronic form) so that the judge has working copies of essential documents;
  - c. provide a list of essential authorities to which the judge is to be taken and approach the Associate to the judge as to whether the judge wishes these to be provided in hard copy or electronic form; and
  - d. provide to the Associate to the judge a hearing plan consisting of the allocation of time for openings, reading material, oral evidence (if any) and closing oral submissions.
7. The matter be provisionally allocated 3 hours hearing time in the Applications List on 20 April 2023.

Justice Hindman will direct at or after the pending review whether the matter proceeds to a hearing on 20 April in the Applications List or is listed in the Civil List on a date to be fixed.

Please direct any further inquiries to the Associate to Justice Hindman and the relevant list managers.

Kind regards

**Coco Peralta**

| Associate to the Honourable Justice P D T Applegarth

| Supreme Court of Queensland

| PO Box 15167, City East QLD 4002 | 415 George Street, Brisbane QLD 4000

| t (07) 3738 7594 | e [associate.applegarthj@courts.qld.gov.au](mailto:associate.applegarthj@courts.qld.gov.au)



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**From:** David Rodighiero <[djf@carternewell.com](mailto:djr@carternewell.com)>  
**Sent:** Monday, 3 April 2023 4:20 PM  
**To:** Associate ApplegarthJ <[Associate.ApplegarthJ@courts.qld.gov.au](mailto:Associate.ApplegarthJ@courts.qld.gov.au)>  
**Cc:** Kinsey, Samantha (AU) <[Samantha.Kinsey@au.kwm.com](mailto:Samantha.Kinsey@au.kwm.com)>; Lethlean, Sarah (AU) <[Sarah.Lethlean@au.kwm.com](mailto:Sarah.Lethlean@au.kwm.com)>; Mackenzie, Patrick (AU) <[Patrick.Mackenzie@au.kwm.com](mailto:Patrick.Mackenzie@au.kwm.com)>; Sarah Ewing <[Sewing@carternewell.com](mailto:Sewing@carternewell.com)>; John Grant <[JGrant@CarterNewell.com](mailto:JGrant@CarterNewell.com)>  
**Subject:** BS4023 of 2023 - Commercial List Application | CN Ref: 166583 [CNE-Matters.FID447873]

3 April 2023

Dear Associate,

**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 v PCA (Qld) Pty Ltd (subject to Deed of Company Arrangement) & Anor  
Proceeding BS4023 of 2023**

Please find **attached** our correspondence in this matter.

We act for the applicants and confirm that the solicitors for the respondents are copied to this email.

If you have queries or require any further assistance please let us know.

Your faithfully,

David



**David Rodighiero**  
Partner  
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