

**SUPREME COURT OF QUEENSLAND**

Registry: Brisbane  
No 4023 of 2023

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

ACN **141 148 245**

Applicants: **DESTINATION BRISBANE CONSORTIUM INTEGRATED  
RESORT OPERATIONS PTY LTD AS TRUSTEE FOR THE  
DESTINATION BRISBANE CONSORTIUM INTEGRATED  
RESORT OPERATING TRUST AND ANOTHER  
ACCORDING TO THE ATTACHED SCHEDULE**

Respondents **PCA (QLD) PTY LTD (SUBJECT TO DEED OF COMPANY  
ARRANGEMENT) AND OTHERS ACCORDING TO THE  
ATTACHED SCHEDULE**

**FOURTH AFFIDAVIT OF DAVID MICHAEL ORR**

**DAVID MICHAEL ORR**, of Deloitte Financial Advisory Pty Ltd (**Deloitte**), at Riverside Centre, 123 Eagle Street, Brisbane City, Queensland, 4000, registered liquidator and chartered accountant, states on oath:

**PART A – INTRODUCTION**

***A1. Introduction***

- 1 I am a partner in the Turnaround & Restructuring practice of the professional services firm trading as Deloitte. I am a chartered accountant and a registered liquidator and I have practised for more than 21 years as an accountant specialising in insolvency related matters in Australia.
- 2 I have previously sworn three affidavits in this proceeding, on 7 June 2023 (the **First Orr Affidavit**), on 15 December 2023 (the **Second Orr Affidavit**), and on 12 March 2024 (the **Third Orr Affidavit**). Capitalised terms used in this affidavit and not otherwise defined have

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Signed: 

Taken by: *Sarah Lethlean*

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**AFFIDAVIT**

Filed on behalf of the Second Respondents

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Ref: SJK/PXM:603-0072630

the meaning given in the First Orr Affidavit, the Second Orr Affidavit, or the Third Orr Affidavit.

- 3 I am authorised by my fellow Deed Administrators to make this affidavit on behalf of PCAQ, the other **DOCA Companies** (i.e., the sixteen companies subject to the DOCA) and the Deed Administrators. Where I depose to the view or the views of the Deed Administrators, they are the view(s) which each of Mr Algeri, Mr Tracy, Mr Donnelly and I hold at the date of swearing this, my affidavit.
- 4 In deposing this affidavit, I am not authorised to, and nor do I intend to, waive any legal professional privilege on behalf of the DOCA Companies, the Administrators or the Deed Administrators. Further, nothing in this affidavit should be taken as an admission in relation to any claim or potential claim a third party may have against any of the Companies. To the extent I depose to these claims or potential claims, it is solely for the purposes of this affidavit, and is not intended to prejudice the rights any of the Companies may have in relation to any insurance which may respond to claims against them.
- 5 Unless otherwise stated, this affidavit is based on my own knowledge and belief and from information I, and staff members at Deloitte, have obtained through my role as an Administrator or Deed Administrator of the Companies, which I believe to be true.
- 6 Where I refer to my experience, I am referring to my experience as a registered liquidator, chartered accountant, partner at Deloitte and my over 21 years' of experience in financial services, as outlined in my CV (a copy of which is located at **tab 1** of **Exhibit DMO-1** which was attached to the First Orr Affidavit).
- 7 In preparing this affidavit I have had regard to a number of documents to which I refer to in this affidavit. This bundle of documents is marked "**DMO-4**" (**Exhibit DMO-4**) and exhibited to this affidavit. A reference to a tab in this, my affidavit is a reference to a tab in Exhibit DMO-4, unless otherwise stated.

## **A2. Outline of Affidavit**

- 8 I swear this affidavit with the support of my fellow Deed Administrators in opposition to the relief sought by the applicants, DBC, in the amended originating application filed in this proceeding on 6 March 2024 (the **Applicants' Amended Application**).



- 9 I also swear this affidavit in support of the Deed Administrators' Second IA, filed in this proceeding on 19 December 2023.
- 10 The purpose of this affidavit is to provide this Honourable Court with various updates:
- (a) regarding the outstanding litigation against the DOCA Companies, including an update on those proceedings where the insurer has carriage of the proceedings (**Part B**);
  - (b) regarding the Deed Administrators' further communications with creditors, and a further proposed amendment to the DOCA (**Part C**);
  - (c) clarifying the Deed Administrators' position in relation to the existing form of the DOCA, remuneration and how the Deed Administrators would typically deal with claims for unliquidated damages (**Part D**).

## **PART B – UPDATE ON OUTSTANDING LITIGATION**

### ***B1. Proceedings against the DOCA Companies***

- 11 As stated at paragraph 4 above, I am not authorised to, and I do not make any admissions on behalf of any insurers nor in respect of any insured claims.
- 12 As described in the First Orr Affidavit, Second Orr Affidavit, and Third Orr Affidavit, there remain numerous ongoing proceedings in various courts and tribunals *against* the DOCA Companies, in respect of which leave to proceed has been granted pursuant to section 444E of the Act. Since the Third Orr Affidavit, there have been further developments in relation to this active litigation, including:
- (a) a foreshadowed application by KPMG Property & Environmental Services Pty Limited (**KPMG**) which is the fourth defendant in QIC Werribee Pty Ltd as trustee for the QIC Werribee Trust & Ors v Wadren Pty Ltd as trustee for the Hoppers Crossing Unit Trust & Ors Supreme Court of Victoria Proceeding S ECI 2023 05073 (**QIC Proceeding**) which is related to S ECI 2023 00960 Wadren Pty Ltd v Probuild Constructions (Aust) Pty Ltd (**Werribee Proceeding**) to join Probuild to the QIC Proceeding for the purposes of running a proportionate liability defence (**KPMG Joinder**) and for the QIC Proceeding and the Werribee Proceeding to be case managed together; and



(b) a further workers' compensation claim brought by the Victorian WorkCover Authority against Probuild seeking indemnity under section 369 of the *Rehabilitation and Compensation Act 2014* (Vic) in respect of which leave to proceed against Probuild in County Court proceeding number No. CI-23-01373 was granted by The Honourable Associate Justice Efthim in the Supreme Court of Victoria proceeding number S ECI 2024 01057 on 12 April 2024.

13 In respect of the KPMG Joinder, since 15 March 2024, various correspondence has taken place between the parties and their solicitors. As a consequence of that correspondence, I have been informed by Probuild's insurer which has assumed the conduct of Probuild's defence of the Werribee Proceeding, and believe that it will not assume the conduct or provide any indemnity in respect of the QIC Proceeding as no claim has been brought against Probuild in that Proceeding. No leave to proceed has as yet been granted in the KPMG Joinder.

14 At paragraph [28] of the Second Orr Affidavit, and paragraph [14] of the Third Orr Affidavit, I foreshadowed a potential claim against Probuild Civil Pty Ltd which had been brought to my attention. KWM has written to the solicitors acting for the claimant in those proceedings. I am informed by Mr Mackenzie, and believe, that as at the date of this affidavit, no response was received to this letter, nor has any application under section 444E of the Act having been made.

A copy of the letter from KWM to Shine Lawyers dated 22 March 2024 is at **tab 1** of this, my affidavit.

15 The following table summarises the current state of litigation against the DOCA Companies, and shows how this position has changed since 11 March 2024, being the date of the Third Orr Affidavit:

Description of type of claim	As at 11 March 2024	As at 24 April 2024
Personal injury / workers' compensation claims ( <b>with</b> leave to proceed granted)	14	16
Personal injury / workers' compensation claims (where a leave to proceed application is on foot)	0	0
Personal injury / workers' compensation claims ( <b>without</b> leave to proceed)	6	5



Description of type of claim	As at 11 March 2024	As at 24 April 2024
Claims in respect of allegedly defective building or design work ( <b>with</b> leave to proceed granted)	2 (DBC Claim, Werribee Claim)	2 (DBC Claim, Werribee Claim)
Proceedings in respect of allegedly defective building or design work <b>with confined leave</b> to proceed	1	1
Other claims which the Deed Administrators are aware of in relation to allegedly defective building or design work	8 (including foreshadowed claims by the Third and Sixth Respondents)	7 (including foreshadowed claims by the Third and Sixth Respondents)
Other claims	1	2
Claims resolved since 7 June 2023	(4)	(6)
<b>Total</b>	<b>28</b>	<b>27</b>
Net <b>increase</b> in claims since 11 March 2024	N/A	(1)

- 16 At paragraphs [16] and [17] of the Third Orr Affidavit I referred to correspondence between KWM and Taylor Scott regarding a subpoena issued to Probuild. I am informed by Mr Mackenzie, and I believe, there has been no further correspondence from Taylor Scott in relation to this subpoena.
- 17 As set out in my previous affidavits, the Third Respondent (**Dexus**) and the Sixth Respondent (**CBUS Property**) have foreshadowed further Court proceedings against Probuild and PCAQ respectively. As at the time of swearing this affidavit, these foreshadowed Court proceedings have not yet been commenced and no application for leave to proceed has been made.
- 18 I note that, at [22] of the Second Orr Affidavit, I stated that at the date of swearing that affidavit no proofs of debt had been lodged by any of the respondents in respect of their claim. At the date of the Second Orr Affidavit, the sixth respondent, CBUS Property, was yet not party to this proceeding. However, for completeness, I confirm that CBUS Property filed a proof of debt in respect of its claim on or about 3 March 2022 (as stated at [5] of the Affidavit of Gavin Grahame filed by CBUS Property in this proceeding dated 9 April 2024). Mr Grahame states at [8] of his affidavit that CBUS Property intends to submit a varied proof of debt in the future.



A copy of the draft varied proof of debt is located at **Exhibit GPG1** of the Affidavit of Gavin Grahame filed by the sixth respondent, CBUS Property, in this proceeding dated 9 April 2024.

***B2. Proceedings where the insurer has carriage of the proceedings***

19 The following table sets out a summary of the unresolved claims against the DOCA Companies, whether leave to proceed has been granted pursuant to s 444E(3) of the Act and whether the relevant insurer has appointed solicitors to take carriage of the defence of the proceeding. I am unable to confirm whether indemnity has been granted by the relevant insurer in respect of each of these proceedings, because the insurers for the DOCA Companies typically reserve their position in respect of indemnity, even in circumstances where those insurers appoint solicitors to take carriage of the defence of the proceeding.

	<b>Defendant DOCA Company</b>	<b>Proceeding Name/Number</b>	<b>444E Leave Granted (Y/N)</b>	<b>Insurer has carriage of the defence (Y/N)</b>	<b>Comment</b>
A	Personal injury / workers' compensation claims ( <b>with</b> leave to proceed granted)				
A1	Probuild Constructions (Aust) Pty Ltd	Nick Tseros v Probuild Constructions (Aust) Pty Ltd Proceeding S ECI 2021 03351	Yes	Yes [Wotton + Kearney]	Mr Tseros seeks damages as a result of an alleged injury whilst working at 452 Elizabeth St in 2017.
A2	Probuild Constructions (Aust) Pty Ltd	Victorian Work Cover Authority v Probuild Constructions (Aust) Pty Ltd Proceeding CI-21-03760	Yes	Yes [Wotton + Kearney]	Victorian Workcover Authority claim against Probuild an indemnity under s 369 of the Workplace Injury Rehabilitation and Compensation Act 2014 for an alleged injury of Nick Tseros whilst working at 452 Elizabeth St in 2017.
A3	Probuild Constructions (Aust) Pty Ltd	Sanders v Probuild Constructions (Aust) Pty Ltd CIV 1809 of 2021	Yes	Yes [Barry Nilsson]	Mr Sanders seeks damages as a result of an alleged injury whilst working on the 1 Barrack Street site in Perth in 2018.
A4	Probuild Constructions (Aust) Pty Ltd	Valde Bozinovski v SAS Steel Pty Ltd & Probuild Constructions (Aust) Pty Ltd Proceeding CI-22-01180	Yes	Yes [Wotton + Kearney]	Mr Bozinovski seeks damages as a result of an alleged injury whilst working at 452 Elizabeth Street in 2017.
A5	Probuild Constructions (Aust) Pty Ltd	Victorian WorkCover Authority v Probuild Constructions (Aust) Pty Ltd	Yes	Yes [Wotton + Kearney]	Victorian Workcover Authority claim against Probuild an indemnity under s 369 of the Workplace Injury Rehabilitation and Compensation Act 2014 for an alleged injury of Nick Tseros whilst working at 452 Elizabeth St in 2017.



	<b>Defendant DOCA Company</b>	<b>Proceeding Name/Number</b>	<b>444E Leave Granted (Y/N)</b>	<b>Insurer has carriage of the defence (Y/N)</b>	<b>Comment</b>
		Pty Ltd Proceeding CI-23-01373			Act 2014 for an alleged injury of Valde Bozinovski while working at 452 Elizabeth Street in 2017.
A6	Probuild Constructions (Aust) Pty Ltd	Magdau v I&D Group Pty Ltd and Probuild Constructions (Aust) Pty Ltd Proceeding CI-20-02780	Yes	Yes [Wotton + Kearney]	Mr Magdau seeks damages as a result of an alleged injury whilst working at Chadstone Shopping Centre in 2016.
A7	Probuild Constructions (Aust) Pty Ltd	Sati Albadry v WSP Australia and Probuild Constructions (Aust) Proceeding CI-22-00477	Yes	Yes [Wotton + Kearney]	Mr Albadry seeks damages as a result of an alleged injury whilst working at 250 Spencer Street in 2019.
A8	Probuild Constructions (Aust) Pty Ltd	VWA v Probuild Constructions (Aust) Proceeding No. CI-21-03889	Yes	Yes [Wotton + Kearney]	Victorian Workcover Authority claim against Probuild an indemnity under s 369 of the Workplace Injury Rehabilitation and Compensation Act 2014 for an alleged injury of Sati Albadry whilst working at 250 Spencer Street in 2019.
A9	Probuild Constructions (Aust) Pty Ltd	Masljak v I&D Group and Probuild Constructions (Aust) Proceeding CI-21-01040	Yes	Yes [Wotton + Kearney]	Mr Masljak seeks damages as a result of an alleged injury whilst working at 224 La Trobe Street in 2017.
A10	Probuild Constructions (Aust) Pty Ltd	VWA v Probuild Constructions (Aust) Pty Ltd Proceeding CI-21-02279	Yes	Yes [Wotton + Kearney]	Victorian Workcover Authority claim against Probuild an indemnity under s 369 of the Workplace Injury Rehabilitation and Compensation Act 2014 for an alleged injury of Stjepan Masljak whilst working at 224 La Trobe Street in 2017.
A11	Probuild Constructions (Aust) Pty Ltd	Victorian WorkCover Authority v Probuild Constructions (Aust) Pty Ltd	Yes	Yes [Wotton + Kearney]	Victorian Workcover Authority claim against Probuild an indemnity under s 369 of the Workplace Injury Rehabilitation and Compensation Act 2014 for an alleged injury of Shannon Darcy Molloy whilst working at 162 Cremore Street, Richmond.
A12	Probuild Constructions (Aust) Pty Ltd	Warren Manning v Probuild Constructions (Aust) Pty Ltd District Court of Western Australia Proceeding CIV 2677 of 2020	Yes	Yes [Barry Nilsson]	Mr Manning seeks damages as a result of an alleged injury whilst working at 1 Barrack Street site in Perth, in 2018.

Signed:



Taken by:

Sarah Lethlean

	Defendant DOCA Company	Proceeding Name/Number	444E Leave Granted (Y/N)	Insurer has carriage of the defence (Y/N)	Comment
A13	Probuild Constructions (Aust) Pty Ltd	Lepp v Probuild Constructions (Aust) Pty Ltd S ECI 2023 04815	Yes	Yes [Wotton + Kearney]	Mr Lepp seeks damages as a result of an alleged injury whilst working at 100 Queen Street in 2020.
A14	Probuild Constructions (Aust) Pty Ltd	Victorian WorkCover Authority v Probuild Constructions (Aust) Pty Ltd CI-22-01963	Yes	Yes [Wotton + Kearney]	Victorian Workcover Authority claim against Probuild an indemnity under s 369 of the Workplace Injury Rehabilitation and Compensation Act 2014 for injury of Mr Lepp whilst working at 100 Queen Street in 2020.
A15	Probuild Constructions (Aust) Pty Ltd	Giuseppe Cuscuna v Meridian Concrete Vic Pty Ltd and Probuild Constructions (Aust) Pty Ltd Victorian County Court Proceeding CI-23- 02245	Yes	Yes [Wotton + Kearney]	Mr Cuscuna seeks damages as a result of an alleged injury whilst working at the Melbourne Convention and Exhibition Centre.
A16	PCA (Qld) Pty Ltd	Kennefick v Workcover Queensland, Anora Foundations Pty Ltd, Mainland Civil Queensland Pty Ltd and PCA (Qld) Pty Ltd BS6804 of 2023	Yes	Yes [Sparke Helmores]	Mr Kennefick seeks damages as a result of an alleged injury whilst working at the Queens Wharf project.
B	Personal injury / workers' compensation claims ( <b>without</b> leave to proceed)				
B1	Probuild Constructions (Aust) Pty Ltd	Victorian WorkCover Authority v Probuild Constructions (Aust) Pty Ltd Proceeding CI- 20-03047	No	Yes [Wotton + Kearney]	Victorian Workcover Authority claim against Probuild an indemnity under s 369 of the Workplace Injury Rehabilitation and Compensation Act 2014 for an alleged injury of Vasile Magdau whilst working at Chadstone Shopping Centre in 2016.
B2	Probuild Constructions (Aust) Pty Ltd	Dimitrios Konomos v Probuild Constructions (Aust) Pty Ltd 2023/00356408	No	No	Mr Konomos seeks damages as a result of an alleged injury whilst working at the Sydney Town Hall.
B3	Probuild Constructions (Aust) Pty Ltd	No proceeding on foot.	No	Yes [McCabe Curwood]	Claim by Mr Lennard in respect of an alleged injury suffered whilst working at the MLC project.
B4	Probuild Constructions (Aust) Pty Ltd	Victorian WorkCover Authority v Probuild Constructions Aust and	No	No	Victorian Workcover Authority claim against Probuild an indemnity under s 369 of the Workplace Injury





	Defendant DOCA Company	Proceeding Name/Number	444E Leave Granted (Y/N)	Insurer has carriage of the defence (Y/N)	Comment
		Nomad Scaffolding Pty Ltd CI-20-04307			Rehabilitation and Compensation Act 2014 for an alleged injury of Mr Matthew Turner whilst working at Chadstone Shopping Centre in 2016.
B5	Probuild Civil Pty Ltd	No proceeding on foot.	No	No	Claim by Mary Spurway, a woman allegedly injured stepping on a 'TSGI' grid in Airlie Beach under the <i>Personal Injuries Proceedings Act 2002</i> (Qld)
C	Claims in respect of allegedly defective building or design work ( <b>with</b> leave to proceed granted)				
C1	Probuild Constructions (Aust) Pty Ltd	Wadren Pty Ltd (ACN 005 537 235) in its capacity as trustee for the Hoppers Crossing Unit Trust (ABN 83 405 769 465) & QIC Werribee Pty Ltd (ACN 624 121 204) in its capacity as trustee for the QIC Werribee Trust (ABN 76 994 021 211) – v – Probuild Constructions (Aust) Pty Ltd (ACN 095 250 945) (subject to deed of company arrangement) S ECI 2023 00960	Yes	Yes	Claim of the Fourth Respondents.
C2	PCA (Qld) Pty Ltd	Destination Brisbane Consortium & Anor v PCA (Qld) Pty Ltd BS13749 of 2023	Yes	No	Claim of the Applicants.
D	Proceedings in respect of allegedly defective building or design work <b>with confined leave</b> to proceed				
D1	Probuild Constructions (Aust) Pty Ltd	Clive Bowles v ACN 071 773 969 Pty Ltd and Probuild Constructions (Aust) Pty Ltd and Owners Corporation 620160U VCAT File No. BP1812/2021	No	No	Claim in respect of common property in the Roi Apartment complex located at 4 Bik Lane, Fitzroy North, Victoria 3068.
E	Other claims which the Deed Administrators are aware of in relation to allegedly defective building or design work				

Signed:



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Sarah Lethlean

	<b>Defendant DOCA Company</b>	<b>Proceeding Name/Number</b>	<b>444E Leave Granted (Y/N)</b>	<b>Insurer has carriage of the defence (Y/N)</b>	<b>Comment</b>
E1	Probuild Constructions (Aust) Pty Ltd	Owners Corporation 620160U PS620160U - v- ACN 071 773 969 Pty Ltd and Probuild Constructions (Aust) Pty Ltd VCAT File No. BP1236/2021	No	No	Claim in respect of common property in the Roi Apartment complex located at 4 Bik Lane, Fitzroy North, Victoria 3068.
E2	Probuild Constructions (Aust) Pty Ltd	The Owners of Lot 9 - The Towers at Elizabeth Quay Strata Plan 72010 v Probuild Constructions (Aust) Pty Ltd SAT Order - CC 2011/2021	No	No	Details of claims unknown to Deed Administrators.
E3	Probuild Constructions (Aust) Pty Ltd	The Owners of Lot 10 - The Towers at Elizabeth Quay Strata Plan 72011 v Probuild Constructions (Aust) Pty Ltd SAT Order - CC/1267/2021	No	No	Details of claims unknown to Deed Administrators.
E4	Probuild Constructions (Aust) Pty Ltd	The Owners of Lot 10 - The Towers at Elizabeth Quay Strata Plan 72011 v Probuild Constructions (Aust) Pty Ltd SAT Order - CC/1268/2021	No	No	Details of claims unknown to Deed Administrators.
E5	Probuild Constructions (Aust) Pty Ltd	The Owners - Strata Plan No. 92548 v Probuild Constructions (Aust) Pty Ltd & Wu International Investments Pty Ltd 2021/309522	No	No	Proceeding in the Supreme Court of NSW Equity Division in respect of 38 Albert Avenue, Chatswood. Briefly, it is a claim about defective building works, breaches of the <i>Home Building Act 1989</i> (NSW) and the <i>Design and Building Practitioners Act 2020</i> (NSW).
E6	Probuild Constructions (Aust) Pty Ltd	Foreshadowed claim of the Third Respondent (Dexus) - No proceeding commenced	No	No	Claim of the Third Respondent.
E7	PCA (Qld) Pty Ltd	Foreshadowed claim of the Sixth Respondent (CBUS Property) - No proceeding commenced	No	No	Claim of the Sixth Respondent.
F	Other claims				



	<b>Defendant DOCA Company</b>	<b>Proceeding Name/Number</b>	<b>444E Leave Granted (Y/N)</b>	<b>Insurer has carriage of the defence (Y/N)</b>	<b>Comment</b>
F1	Probuild Constructions (Aust) Pty Ltd	VCAT matter BP1534/2021 claim by Danmei Song	No	No	Details of claim unknown to the Deed Administrators. Mr Song is a self-represented litigant.
F2	Probuild Constructions (Aust) Pty Ltd	QIC Werribee Pty Ltd & Ors v Wadren Pty Ltd & Ors   Supreme Court of Victoria Proceeding S ECI 2023 05073	No	No	KPMG Property & Environmental Services Pty Limited (the Fourth Defendant) has named (Probuild Constructions (Aust) Pty Ltd) as a concurrent wrongdoer in its defence and intends to make an application to have Probuild joined as a party to proceeding S ECI 2023 05073.

### ***B3. Progress of insured claims against the DOCA Companies***

20 I stated in Section E3 of the First Orr Affidavit that DBC had made very little progress towards the resolution of its claim, despite PCAQ's works which are the subject of DBC's claim having been completed a number of years ago.

21 In the ten months since I swore the First Orr Affidavit, PCAQ's claim on its insurance in respect of DBC's claim against PCAQ which is the subject of the proceeding identified in the table above has not progressed to any significant extent. There has also been delay by DBC in providing information requested by PCAQ's insurer. As yet, PCAQ's insurer has not assumed the conduct of PCAQ's defence in Proceeding BS 13749/23. Nor has PCAQ's insurer agreed to pay PCAQ's defence costs. As I stated at paragraph [116] of the First Orr Affidavit, I have been informed by Mr Travis Toemoe, a partner of KWM specialising in insurance litigation with over 20 years' experience, that (without in any way waiving privilege) insurance claims of the size and complexity of the Werribee Claim and DBC Claim can reasonably be expected to take several years to reach a final conclusion (allowing time for appeals), and this is likely to be even longer where there are significant, ongoing delays in the prosecution of claims (such as the DBC Claim) and the foreshadowed claims by CBUS Property and Dexus which have not yet been commenced more than two years after the commencement of the administration of the DOCA Companies. I believe what Mr Toemoe told me to be true.

22 As I stated at [30] of [43] of the Second Orr Affidavit, in my experience, including as a voluntary administrator and deed administrator of other large construction companies in



Australia, the amount of litigation against the DOCA Companies is abnormally high in terms of the number of court proceedings which have been commenced and are continuing or have been foreshadowed despite the moratoria that applies during the voluntary administration and the DOCA period. I am not aware of any other corporate administration in Australia in which such a significant volume of litigation has been commenced after the commencement of the administration. In my experience, the slow rate of progress of the claimants in prosecuting their claims and commencing Court proceedings is unprecedented. In my experience, creditors with claims against a company in DOCA or liquidation to which section 562 of the Act may respond will usually prosecute those claims with urgency to ensure that claims are resolved while the books and records of the company are available and before any responsive insurance is depleted by the claims of other creditors which reach judgment or a compromise.

## **PART C – THE DEED ADMINISTRATORS’ CREDITOR COMMUNICATIONS**

### ***C1. Materials uploaded to the creditor website and Halo portal***

- 23 To ensure creditors are kept informed in relation to this proceeding, I have caused the court documents filed in this proceedings to date to be uploaded to both the Deloitte creditors’ website for the administration of WBHO Australia Pty Ltd (subject to deed of company arrangement) under the heading “DOCA Amendment Application” (<https://www.deloitte.com/au/en/services/financial-advisory/notices/wbho-australia-pty-ltd.html>), and the Halo portal under the heading “DOCA Amendment Application Documents” (<https://aurestructuring.deloitte-halo.com/probuild/?Pg=8>). These documents are:
- (a) the originating application of the Applicants dated 31 March 2023;
  - (b) the outline of submissions of the Applicants dated 31 March 2023;
  - (c) the amended originating application of the Applicants dated 14 April 2023;
  - (d) the First Orr Affidavit;
  - (e) the Deed Administrators’ first interlocutory application dated 7 June 2023;
  - (f) the Deed Administrators’ submissions dated 7 June 2023;
  - (g) the affidavit of Patrick Mackenzie dated 12 June 2023 (**First Mackenzie Affidavit**);



- (h) the Deed Administrators' second interlocutory application dated 15 December 2023;
- (i) the Second Orr Affidavit;
- (j) the Applicants' amended originating application dated 6 March 2024;
- (k) the Applicants' outline of submissions in support of the amended originating application dated 11 March 2024;
- (l) the Third Orr Affidavit;
- (m) the second affidavit of Patrick Mackenzie dated 13 March 2023 (**Second Mackenzie Affidavit**);
- (n) the Deed Administrators' written submissions in support of the interlocutory application dated 19 December 2023 dated 13 March 2024;
- (o) the Sixth Respondent's written submissions and affidavit in support dated 9 April 2024;
- (p) the Applicants' further written submissions dated 10 April 2024;
- (q) the Third respondents' written submissions and affidavit in support dated 10 April 2024;  
and
- (r) the Fourth Respondents' written submissions and affidavit in support dated 11 April 2024.

24 On 18 April 2024, I caused a further circular to creditors to be published on the Deloitte website and the Halo Platform, as well as being emailed to all creditors with email addresses registered on the Halo Platform.

A copy of the email to creditors, along with a copy of the circular provided to creditors, appears at **tab 2**, of this, my affidavit.

***C2. Responses received from creditors to date***

25 As has been set out in the First, Second and Third Orr Affidavits, and the First and Second Mackenzie Affidavits, the Deed Administrators have caused notice to be given to those

Signed: 

Taken by: *Sarah Lethlean*

potentially insured creditors, and published several circulars to all remaining creditors of the DOCA Companies in relation this proceeding.

26 The responses received have been summarised in my earlier affidavits.

27 I have been informed by Mr Mackenzie, and I believe, that on 2 April 2024, KWM received a letter from Peninsula Personal Injury Law (**PPIL**) who are the solicitors acting for an insured creditor with a workers' compensation claim against Probuild. A copy of the letter from PPIL to KWM, dated 2 April 2024, appears at **tab 3**, of this, my affidavit.

28 As set out at [61(b)(ii)] of the Second Orr Affidavit, the Deed Administrators do not intend to issue Insured Creditor Contribution Notices to those Insured Creditors with workers' compensation claims. For the same reasons, the Deed Administrators do not intend to issue Insured Creditor Contribution Notices to personal injury claimants who do not have workers' compensation claims. To make this clear, and to address the concerns raised by PPIL, the Deed Administrators propose the following additional clause 13.11(i) be included in the DOCA Amendments which will provide:

*Notwithstanding any other provision of this Deed, the Deed Administrators may not issue an Insured Claim Contribution Notice to an Insured Creditor in respect of a workers' compensation claim or a personal injury claim.*

29 The Deed Administrators consider the amendment to be appropriate as workers' compensation claims are generally smaller claims brought by a vulnerable class of creditors and are usually capable of resolution in a relatively short period of time.

30 I therefore instructed KWM to respond to PPIL and setting out this proposed new clause 13.11(i). I am informed by Mr Mackenzie, and I believe, a letter was sent to PPIL on 16 April 2024, and, as at the date of this, my affidavit, no response has been received.

A copy of the letter from KWM to PPIL, dated 16 April 2024, appears at **tab 4**, of this, my affidavit.

31 GPT Funds Management Limited ACN 115 026 545 as responsible entity of the GPT Wholesale Office Fund No 1 (**GPT**) has submitted a proof of debt for \$50,748,810.82 for a 'Pool C' distribution from the DOCA. The Deed Administrators understand that GPT's claim,



while not yet adjudicated, is not insured and is an ordinary, unsecured 'Pool C' claim for the purposes of the DOCA. On 22 April 2024, GPT's solicitor, Gavin Rakoczy, of Baker Mckenzie sought information from the Deed Administrators to better understand how the various proposed changes to the DOCA would impact on GPT. On 24 April 2024, I instructed KWM to send to Baker Mackenzie a letter in response to that request.

A copy of the letter from KWM to Baker Mckenzie (excluding enclosure) appears at **tab 5** of this, my affidavit.

- 32 In the letter from KWM to Baker Mackenzie dated 24 April 2024, the Deed Administrators estimate the total value of provable claims is approximately \$360,163,000. This does not include any provision for the unsecured claims in respect of the DBC Claim, the Werribee Claim or the claims of the other respondents. As at the date of swearing this affidavit, no proofs of debt have been lodged for those claims in the administration of the DOCA Companies or pursuant to the DOCA, save for the proof of debt lodged by CBUS (see paragraph 18 above). The Deed Administrators have not yet called for formal proofs of debt for distribution of the Pool C fund or adjudicated any of the Pool C claims for distribution purposes. Accordingly, this estimate is indicative only, and calculated without the Deed Administrators having benefit of formal proofs of debt and the adjudications of those proofs of debt.
- 33 This current estimate of the total value of provable claims differs from the total creditor position for voting in respect of the Section 439C Resolution of 442 unsecured creditors voting in respect of \$658,838,974.82 worth of unsecured claims set out at paragraph [82] of the First Orr Affidavit and [23] of the Second Orr Affidavit largely due to the removal of duplicated claims following pooling under the DOCA.

#### **PART D – DEED ADMINISTRATORS' USUAL APPROACH**

- 34 I have reviewed the materials filed by the other parties in this proceeding. In this part of my affidavit, I wish to clarify certain observations which have been made of the Deed Administrators' position, which do not accurately state the Deed Administrators' position.



***D1. Clarification of the operation of the existing DOCA***

- 35 The Deed Administrators do not consider the present drafting of the DOCA is flawed or inadequately preserves the operation of section 562 of the Act or fails to protect the interests of Insured Creditors.
- 36 In my experience as an administrator and deed administrator, the provisions of the DOCA which deal with Insured Claims (including clauses 8.5 and 14.11) are usual provisions for deeds of company arrangement of this type. In my role as Deed Administrator, I would have regard to the interests of all creditors (including ordinary creditors and claimants litigating with leave to proceed against a DOCA Company) in planning the timing of the declaration of a final dividend and the effectuation of the DOCA. Under the terms of the existing DOCA, the Deed Administrators would not declare a final distribution under the DOCA without regard to the interests of claimants litigating with leave to proceed against a DOCA Company. Such an approach is what KWM proposed to DBC as the “cooperative approach” in its letter to Carter Newell (solicitors for DBC) dated 31 May 2023. The Deed Administrators would also consider whether to seek any directions from the Court in relation to the timing of any proposed declaration of a final dividend or effectuation of the DOCA if that timing would have a significant negative impact on any particular creditor or claimant.

A copy of the letter from KWM to Carter Newell dated 31 May 2023 is at **tab 10** of **Exhibit DMO-1** to the First Orr Affidavit.

- 37 As set out at [48] to [52] of the Second Orr Affidavit, in light of the volume and complexity of the Insured Claims which have now been made or foreshadowed, the Deed Administrators now consider that amendments to the DOCA are required to balance the competing interests of insured creditors and ordinary creditors.


***D2. Deed Administrators’ usual approach to adjudicating proofs of debt***

- 38 In my experience as an administrator, deed administrator and liquidator, I confirm that:
- (a) it is usual for deed administrators to adjudicate complex damages claims for voting and distribution purposes and, if necessary, the relevant deed administrators will seek legal advice to assist with the adjudication; and





- (b) the adjudication process is typically an expeditious process (an adjudication of a proof of debt will usually take less than 1 month, but may take longer if advice is required).

Signed: 

Taken by: Sarah Lethlean



## SCHEDULE OF PARTIES

First Applicant:	<b>DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATIONS PTY LTD AS TRUSTEE FOR THE DESTINATION BRISBANE CONSORTIUM INTEGRATED RESORT OPERATING TRUST</b>
Second Applicant:	<b>QWB RESIDENTIAL PRECINCT OPERATIONS PTY LTD AS TRUSTEE FOR THE QWB RESIDENTIAL PRECINCT OPERATIONS TRUST</b>
First Respondent:	<b>PCA (QLD) PTY LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT)</b>
Second Respondents:	<b>SALVATORE ALGERI, JASON TRACY, DAVID ORR AND MATTHEW DONNELLY IN THEIR CAPACITIES AS JOINT AND SEVERAL DEED ADMINISTRATORS OF THE DOCA COMPANIES</b>
Third Respondent:	<b>DEXUS FUNDS LIMITED AS TRUSTEE FOR THE DEXUS MARTIN PLACE TRUST</b>
First Fourth Respondent:	<b>WADREN PTY LTD AS TRUSTEE FOR THE HOPPERS CROSSING UNIT TRUST</b>
Second Fourth Respondent:	<b>QIC WERRIBEE PTY LTD AS TRUSTEE FOR THE QIC WERRIBEE TRUST</b>
Fifth Respondent:	<b>WBHO CONSTRUCTION (PTY) LIMITED</b>
Sixth Respondent:	<b>CBUS PROPERTY BRISBANE PTY LTD (ACN 169 683 292) AS TRUSTEE FOR THE BRISBANE UNIT TRUST</b>



**SUPREME COURT OF QUEENSLAND**

Registry: Brisbane  
No 4023 of 2023

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

**ACN 141 148 245**

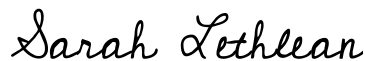
Applicants: **DESTINATION BRISBANE CONSORTIUM INTEGRATED  
RESORT OPERATIONS PTY LTD AS TRUSTEE FOR THE  
DESTINATION BRISBANE CONSORTIUM INTEGRATED  
RESORT OPERATING TRUST AND ANOTHER  
ACCORDING TO THE ATTACHED SCHEDULE**

Respondents **PCA (QLD) PTY LTD (SUBJECT TO DEED OF COMPANY  
ARRANGEMENT) AND OTHERS ACCORDING TO THE  
ATTACHED SCHEDULE**

Exhibit **"DMO-4"** to the affidavit of **DAVID MICHAEL ORR** affirmed on 24 April 2024.



Deponent



Witness

Australian legal practitioner, King & Wood  
Mallesons

**CERTIFICATE OF EXHIBIT**  
Filed on behalf of the Defendant  
Form 47, Version 3  
Uniform Civil Procedure Rules 1999  
Rule 435

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

Signed:



Taken by:

*Sarah Lethlean*

## INDEX TO BUNDLE OF DOCUMENTS

### MARKED EXHIBIT “DMO-4”

No	Description	Page
1	Letter from KWM to Shine Lawyers dated 22 March 2024	22 - 25
2	Email from the Deed Administrators to creditors and the attached circular to creditors dated 18 April 2024	26 - 31
3	Letter from PPIL to KWM dated 2 April 2024	32 – 34
4	Letter from KWM to PPIL dated 16 April 2024	35 - 36
5	Letter from KWM to Baker Mackenzie (excluding enclosure) dated 24 April 2024	37 - 39



TO Callum Copland | Legal Practice Manager  
Shine Lawyers  
56 Gordon Street  
MACKAY QLD 4740

By email only: [ccopland@shine.com.au](mailto:ccopland@shine.com.au)

22 MARCH 2024

Dear Mr Copland

**Mary Spurway | Claim against Probuild Civil Pty Ltd (subject to deed of company arrangement)**

- 1 We refer to:
  - (a) your letter to Probuild Civil Pty Ltd (subject to deed of company arrangement) (**Probuild Civil**) dated 2 November 2023;
  - (b) the Notice of Claim Parts 1 and 2 dated 30 October 2023;
  - (c) the Law Practice Certificate dated 17 October 2023;
  - (d) the Claimant Certificate dated 30 October 2023;
  - (e) your letter to Sal Algeri, Jason Tracy, Matt Donnelly and David Orr of Deloitte (**Deed Administrators**) dated 11 December 2023;
  - (f) the email from KWM to your office dated 20 December 2023; and
  - (g) the emails between KWM and your office since 11 January 2024.
- 2 We understand you act for Ms Mary Spurway in relation to her alleged claim against Probuild Civil (**Claim**) arising out of an injury suffered on 4 July 2022 at Airlie Beach said to be caused by a slip on a 'tactile ground surface indicator' (**TGSI**) (**Incident**).
- 3 We act for the Deed Administrators.
- 4 The Deed Administrators consider your client's Claim, insofar as it relates to Probuild Civil, should no longer be pressed against Probuild Civil. This because:
  - (a) your client cannot begin or continue with proceedings against Probuild Civil by reason of the section 444E of the *Corporations Act 2001* (Cth) (**Corporations Act**);
  - (b) there is no insurance coverage available to Probuild Civil as at the date of the alleged incident, and therefore no basis for your client to obtain leave to proceed against Probuild Civil; and
  - (c) the Claim itself has no prospects of success as against Probuild Civil.
- 5 These reasons are set out in more detail below.

### Proceedings are stayed

- 6 As set out in our email to you of 20 December 2023:
  - (a) on 23 February 2022, the Deed Administrators were appointed joint and several voluntary administrators of the group of Probuild companies, including Probuild Civil;
  - (b) on 21 July 2022, sixteen companies in the Probuild corporate group - including Probuild Civil - executed a deed of company arrangement (**DOCA**) appointing the Administrators as Deed Administrators.
  - (c) by reason of the voluntary administration, all proceedings against Probuild Civil were automatically stayed pursuant to section 440D of the *Corporations Act 2001* (Cth) (**Corporations Act**), with effect from 23 February 2022; and
  - (d) upon execution of the DOCA on 21 July 2022, all proceedings against Probuild Civil remain automatically stayed by operation of section 444E of the Corporations Act.
- 7 As such, the Claim cannot proceed unless and until leave to proceed is obtained from a Court (as defined in the Corporations Act).
- 8 While the 'pre-court' phase of litigation under the *Personal Injury Proceedings Act 2002* (Qld) (**PIP Act**), is a step *prior* to commencing a proceeding in a court based on a claim, we still consider section 444E means our clients are not required to respond to either of the Notice(s) of Claim. This is consistent with the public policy designed to preserve the estate of the insolvent companies for the benefit of creditors who had claims arising prior to the commencement of the external administration.
- 9 In order for your client to be considered a creditor of Probuild Civil for the purposes of the DOCA, the facts giving rise to the claim must have existed prior to the commencement of the external administration on 23 February 2022. Even if the Claim was successful, your client does not have any rights under the DOCA as the Incident occurred on 4 July 2022, i.e. after the appointment date.

### Probuild Civil's position regarding the Claim

- 10 Although the above demonstrates the Claim is presently stayed and the Deed Administrators do not need to respond, we instructed to explain Probuild Civil's insurance position, and why the Deed Administrators do not consider the Claim has any merit, and should be withdrawn as against Probuild Civil.
- 11 At the outset, it is important to note Probuild Civil ceased trading in 2016 at the latest.

### Insurance position

- 12 The majority of the Probuild group's insurance program ceased coverage upon the appointment of the voluntary administrators on 23 February 2022. In any case, all coverage ceased on the 30 June 2022 with some policies providing limited run-off cover to the 30 June 2022. Some extensions were sought to 30 June 2022 for projects on which construction works were continuing after the appointment of voluntary administrators, but did not include Probuild Civil.
- 13 Probuild Civil had no insurances in place as at 4 July 2022, and the Deed Administrators are not aware of any insurance policy which Probuild Civil would have the benefit of which would otherwise respond to the Claim.

#### Merits of the Claim

- 14 Regardless of the insurance position, the Deed Administrators do not consider the Claim has any merit, and it should be withdrawn against Probuild Civil.
- 15 While the Deed Administrators have very limited information, in particular with no direct access to the contractual documents in relation to the project, the following facts can be inferred in relation to the work subject of the Incident:
  - (a) while the cause of action relied on by your client is unclear, to the extent the Claim relates to any allegedly defective or negligent installation of the TGSIs, we consider the Claim is well out of time, as the TGSIs were installed by the end of 2012 at the latest (for the avoidance of doubt, our clients do not admit Probuild was in any way responsible for the installation of the TGSIs);
  - (b) in order for the project to have reached both contractual practical completion and final completion at the end of the Defects Liability Period under the Head Contract, the TGSIs would have been required to have been assessed as compliant under the relevant Australian Standards before these milestones were achieved;
  - (c) the Queensland Government Guidelines provide for a maximum 6 to 10 year lifespan for TGSIs under conditions of low pedestrian traffic areas and the documents provided do not make any reference any records to the Whitsunday Regional Council's maintenance of the TGSIs;
  - (d) Probuild Civil was not responsible for the maintenance of the TGSIs; and
  - (e) Annexure B to the Notice of Claim - Part A (which we note is difficult to read due to the quality of the scanned document provided) appears to conclude the measured 'SRV' for the TGSIs was 42, which is a P4, and therefore compliant with the Australian Standards enforced in Queensland.
- 16 It follows there are there are a number of shortcomings to your client's Claim, insofar it relates to potential liability of Probuild Civil. In those circumstances, we consider the prudent course of action is for your client to no longer pursue the Claim against Probuild Civil.

#### Next steps

- 17 In light of the above, please confirm your client will no longer pursue the Claim against Probuild Civil, by no later than 8 April 2024.



- 18 The Deed Administrators must act in the best interests of all creditors. The Deed Administrators do not consider it is in the best interests of the creditors to engage in protracted correspondence regarding the Claim.
- 19 Our clients' rights otherwise remain reserved.

Yours faithfully



**King & Wood Mallesons**

Contact

**Samantha Kinsey | Partner**  
**King & Wood Mallesons**

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**E** [samantha.kinsey@au.kwm.com](mailto:samantha.kinsey@au.kwm.com)  
Partner profile

**Patrick Mackenzie | Senior Associate**  
**King & Wood Mallesons**

**T** +61 8 9269 7267  
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**F** +61 8 9269 7999  
**E** [patrick.mackenzie@au.kwm.com](mailto:patrick.mackenzie@au.kwm.com)

**Lethlean, Sarah (AU)****Exhibit DMO-4 Tab 2**

---

**From:** Deloitte Halo Voluntary Administrator <probuild1@deloitte.com.au>  
**Sent:** Thursday, 18 April 2024 4:49 PM  
**To:** Lethlean, Sarah (AU)  
**Subject:** WBHO Australia Pty Ltd ACN 095 983 681 and certain subsidiaries (all Subject to Deed of Company Arrangement) | Update to creditors  
**Attachments:** 240418\_Circular to Creditors\_Update on Queensland Proceeding.pdf

**EXTERNAL**

Please refer to the attached update from the Deed Administrators.

Regards,

**David Orr**

Joint and Several Deed Administrator

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18 April 2024

TO THE CREDITOR AS ADDRESSED

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

*This update should be read in conjunction with the previous circulars to creditors dated 1 June 2023 and 22 June 2023 and the report to creditors 6 December 2023 (available here: <https://aurestructuring.deloitte-halo.com/probuild/?Pg=3>).*

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

The purpose of this circular is to provide a short update to creditors about the proposed amendments to the DOCA and an associated proceeding which is currently on foot in the Supreme Court of Queensland (Supreme Court proceeding BS 4023 of 2023) (**Queensland Proceeding**).

## Why amend the DOCA?

There are a very large number of Court proceedings (now 25+) continuing against the Companies, and various Courts have granted leave to proceed against the Companies in respect of these Court proceedings. The volume and complexity of these claims and the associated Court proceedings far exceeds the expected number of claims contemplated at the commencement of the DOCA.

Insurance may respond to some of the claims in these proceedings. If so, that insurance represents a potentially valuable source of recovery for these claimants. New Court proceedings are still being commenced against the Companies, more than two years after the voluntary administration began, by claimants seeking access to the Companies' insurance. The Deed Administrators expect that it may take several years for these insurance recovery proceedings to conclude.

These proceedings, and the associated costs incurred by the Deed Administrators, may have a significant impact on the Deed Administrators' ability to finalise the DOCA and to pay any further dividends to creditors.

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This is explained further in the previous circulars to creditors dated 1 June 2023 and 22 June 2022 and the report to creditors dated 6 December 2023 (**December Report to Creditors**) (available here: <https://aurestructuring.deloitte-halo.com/probuild/?Pg=3>).

## Deed Administrators' proposed amendments to the DOCA

As foreshadowed in the December Report to Creditors, the Deed Administrators have formed the view that the DOCA needs to be amended to require the claimants in the insurance recovery proceedings to fund some of the costs of the Companies associated with the insurance recovery proceedings, including holding costs associated with a prolonged DOCA period beyond 21 July 2025. However, given the relatively small value and lower complexity of their claims, workers' compensation and personal injury claimants would be exempted from this funding obligation. The Deed Administrators have prepared proposed amendments to the DOCA to achieve this.

The proposed amendments will also allow for the DOCA to be effectuated in stages for each of the Companies to reduce the holding costs associated with a prolonged DOCA period. Details of the Deed Administrators' current proposed DOCA amendments and the supporting affidavits of David Orr are contained on the Deed Administrators' website, under the heading 'DOCA Amendment Application' (<https://www.deloitte.com/au/en/services/financial-advisory/notices/wbho-australia-pty-ltd.html>) (**Deed Administrators' Proposed DOCA Amendments**).

The Deed Administrators consider that these proposed amendments to the DOCA will enable the claimants to continue to pursue insurance recovery proceedings while preventing the return to creditors under the DOCA being eroded by the associated costs of those proceedings.

## DBC's proposed amendments to the DOCA

DBC has also proposed amendments to the DOCA to prevent the DOCA from being effectuated until all of the insurance recovery proceedings have concluded. DBC's proposed amendments do not impose any funding obligation on insured creditors which means that the costs associated with the insured recovery proceedings will continue to be met by the general DOCA fund. However, DBC's proposed amendments also allow for the DOCA to be effectuated in stages for each of the Companies to reduce the holding costs associated with a prolonged DOCA period.

Details of DBC's current proposed DOCA amendments dated 11 March 2024 have been uploaded to the Deed Administrators' website under the heading 'DOCA Amendment Application' (<https://www.deloitte.com/au/en/services/financial-advisory/notices/wbho-australia-pty-ltd.html>) (**DBC Proposed DOCA Amendments**).

## What is the Queensland Proceeding about?

There are currently two competing applications which have been made in the Queensland Proceeding:

- (1) **Deed Administrator's application** - The Deed Administrators have applied for directions from the Court that they are justified in convening a meeting of DOCA creditors, to consider and vote on the Deed Administrators' Proposed DOCA Amendments. If the Court grants the directions sought, the Deed Administrators:
  - a. will convene a meeting of DOCA creditors to consider and vote on the Deed Administrators' Proposed DOCA Amendments;
  - b. will issue a further circular to creditors in advance of that meeting further explaining the Deed Administrators' Proposed DOCA Amendments and providing details of the meeting and voting instructions;
  - c. will also provide DOCA creditors at that meeting with the opportunity to consider and vote on the DBC Proposed DOCA Amendments;
- (2) **DBC Application** - DBC has applied to the Court for orders by the Court to make the DBC Proposed DOCA Amendments pursuant to sections 445D, 450D, 445G, 447A, 447B and 440D of the Corporations Act. If the Court makes the orders sought by DBC, the DBC Proposed DOCA Amendments will be made by order of the Court and DOCA creditors will not have an opportunity to vote on those amendments.

Both applications and supporting affidavits and submissions will be uploaded to the Deed Administrators' website.

A number of parties have already sought leave to make submissions and file affidavit material in the Queensland Proceeding in relation to the Deed Administrators' Application and / or the DBC Application. This material submitted by these parties will be uploaded to the Deed Administrators' website.

## What happens next?

The hearing of the applications is listed to take place in the Supreme Court of Queensland on **26 April 2024**.

The Deed Administrators will contact creditors to inform them of the outcome of the hearing.

If DOCA creditors have a view either in support of, or in opposition to, either application, then please contact us at [probuid1@deloitte.com.au](mailto:probuid1@deloitte.com.au). The Deed Administrators will bring any correspondence received to the attention of the Court at the hearing on 26 April 2024.

## Further information

If creditors want to access the full bundle of material filed in the Queensland Proceeding, it is available here under the heading 'DOCA Amendment Application':

<https://www.deloitte.com/au/en/services/financial-advisory/notices/wbho-australia-pty-ltd.html>.

The Deed Administrators will continue to upload any further materials filed to this link.

Should you have any queries regarding this circular, the Queensland Proceeding or the DOCA in general, please contact us at [probuid1@deloitte.com.au](mailto:probuid1@deloitte.com.au).

Yours faithfully

A handwritten signature in black ink, appearing to read 'David Orr', with a stylized flourish at the end.

**David Orr**  
Joint and Several Deed Administrator

## Appendix A

## Entities subject to Deed of Company Arrangement

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



Ref:JC:JSC:WC03169

02/04/2024

King & Wood Mallesons  
30/250 St Georges Terrace  
PERTH WA 6000

By email: [patrick.mackenzie@au.kwm.com](mailto:patrick.mackenzie@au.kwm.com);

Dear Sir/Madam,

RE: Destination Brisbane Consortium Integrated Resort Operations Pty Ltd & Anor v PCA  
(Queensland) Pty Ltd (subject to deed of company arrangement) & Ors  
BS 4023 of 2023  
Your Ref: WC03169

1. We refer to the above matter and to the email from Patrick McKenzie on 11 January 2024 (p31 of Second Affidavit of Patrick Xavier Robert McKenzie sworn 12 March 2024) (**Your Email**).
2. Our client, Mr Manning, is a 51 year old carpenter who has commenced proceedings against Probuild Constructions (Aust) Pty Ltd and others in the District Court of Western Australia in respect of personal injuries sustained by him as a result of an incident that occurred at a Probuild Constructions (Aust) Pty Ltd construction site that has left Mr Manning totally and/or partially incapacitated for work.
3. For the reasons set out below, our client opposes the proposed amendments to the Deed of Company Arrangements (**DOCA**) on the grounds that they are oppressive, unfairly prejudicial and/or unfairly discriminatory against him and would be liable to be set aside pursuant to s445D(1)(f), *Corporations Act*.
4. As a personal injury claimant against an insolvent company, Mr Manning's position is protected under the *Corporations Act* in at least the following ways:
  - (a) First, Mr Manning may be entitled to priority over the general body of unsecured creditors in accordance with s555(1)(f), *Corporations Act*;
  - (b) Secondly, Mr Manning has priority over the proceeds obtained from any insurance policy in respect of his claim in accordance with s562(1), *Corporations Act*; and
  - (c) Thirdly, in the event that Probuild Constructions (Aust) Pty Ltd was wound up and deregistered, then Mr Manning would be entitled to proceed directly against the insurer pursuant to s601AG, *Corporations Act*.
5. Notwithstanding the protections afforded to personal injuries creditors such as Mr Manning under the *Corporations Act*, we understand that the Deed Administrators and their solicitors are concerned that they may incur costs and consequential delays as a result of having to deal with insured claims by personal injury plaintiffs such as Mr Manning and to that end have proposed amendments to the DOCA to the following effect:
  - (a) No less than 5 Business Days before 21 July 2025, the Deed Administrators may issue an Insured Creditor with an Initial Insured Claim Contribution Notice requiring them to pay \$5,000 towards an equal share by them of any estimated uninsured costs that the

**Mandurah**

1/33 Davey Street (cnr Forrest Street)  
Mandurah, WA 6210  
(08) 9581 4339

**North Perth**

429 Charles Street (cnr Hobart Street)  
North Perth, WA 6006  
(08) 9443 5312

**Ellenbrook**

7/46 Coolamon Blvd  
Ellenbrook, WA 6069  
(08) 9297 1537



Deed Administrators may incur in dealing with all Insured Creditors' claims: cl 13.11(a); cl 1.1, "Long Stop Date", "Holding Costs" and "Direct Holding Costs".

- (b) An Insured Creditor who receives an Initial Insured Claim Contribution Notice must pay the sum of \$5,000 within 30 days of 21 July 2025: cl 13.11(b).
  - (c) Thereafter, the Deed Administrators may issue further Insured Claim Contribution Notices requiring an Insured Creditor to pay further amounts towards that Insured Creditor's share of any estimated uninsured costs that the Deed Administrators may incur in dealing with that Insured Creditor's claim less their initial \$5,000 payment: cl 13.11(c).
  - (d) An Insured Creditor who receives a further Insured Claim Contribution Notice must pay the amount notified to them by the Deed Administrators within 30 days of receiving the notice: cl 13.11(d).
  - (e) If an Insured Creditor fails to pay the amounts specified in an Initial Claim Contribution Notice or a further Claim Contribution Notice within the specified period, then the Deed Administrator's may issue a default notice requiring payment of the outstanding amount within 20 business days: cl 13.11(e).
  - (f) If an Insured Creditor does not pay in response to an Insured Claim Termination Notice, then the Deed Administrator's may issue an Insured Claim Termination Notice that is deemed to have the effect of:
    - (i) releasing and discharging the Insured Creditor's claims; and
    - (ii) including in respect of any rights under cl 8.5 of the DOCA (i.e. pursuant to s 562(1), *Corporations Act*), cl 13.11(f)-(g).
6. Those amendments are, with respect, obviously oppressive, unfairly prejudicial and/or unfairly discriminatory against a personal injuries claimant such as Mr Manning.
7. That is so for at least two reasons:
- (a) First, it would require a personal injuries plaintiff such as Mr Manning to underwrite the defendant company's costs of those proceedings prior to there having been any determination of the merits of the plaintiff's claims. Costs usually follow the event (being the substantive determination of the proceedings); they do not usually precede the event
  - (b) Secondly, in the event a personal injuries plaintiff such as Mr Manning is unable to pay such amounts as are demanded by the Deed Administrators (such sums presumably being calculated on an indemnity costs basis that likely far exceeds the amounts usually allowable in personal injuries actions), then their claim could be extinguished without being adjudicated upon by a Court. That would obviously leave an Insured Claimant such as Mr Manning materially worse off than the position that would apply if the relevant defendant company were to be liquidated and deregistered.
  - (c) Thirdly, the requirement to underwrite the defendant company's legal costs of defending proceedings goes far beyond anything which the relevant defendant company is likely to obtain in the personal injuries proceedings themselves. For example, a defendant company would not ordinarily be entitled to be paid its costs on an indemnity basis and it would certainly not be entitled to self-determine the quantum of them. Further, a defendant company is highly unlikely to obtain an order for security for costs against a personal injuries plaintiff. That is particularly so, in circumstances where any impecuniosity of a personal injuries plaintiff is likely to be a direct result of the impact of the injury on their earning capacity.
8. In accordance with paragraph 2 of Your Email, we request that you bring our client's position to the attention of the Court.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'J. Cvitan', with a long horizontal stroke extending to the right.

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16 APRIL 2024

Dear Colleagues

**BS 4023 of 2023 | Destination Brisbane Consortium & Anor v Probuild Constructions (Aust) Pty Ltd (subject to deed of company arrangement) (Proceeding)**

- 1 We refer to the above Proceeding, and your letter dated 2 April 2024. Unless otherwise defined, capitalised terms in this letter take the meaning given to them in the interlocutory application dated 15 December 2023 and filed by our clients in the Proceeding on 19 December 2023.

**Impact of the proposed amended DOCA on your client's claim**

- 2 As stated in our email to you of 11 January 2024, our clients consider Mr Manning's claim is a worker's compensation claim for the purposes of clause 13.11(a)(ii) of the proposed amended DOCA. Therefore, our clients do not intend to issue Mr Manning with an Initial Insured Claim Contribution Notice. As such, Mr Manning will not be required to pay, or contribute to, any of the Direct Holding Costs or Holding Costs incurred by the Deed Administrators after the Longstop Date under the proposed amendments to the DOCA.
- 3 It is not, and was never, our clients' intention to prejudice the interests of claimants with personal injury or workers' compensation claims against any of the DOCA Companies.
- 4 To ensure that it is absolutely clear that the proposed DOCA amendments do not impact on your client, our clients propose to include a new clause 13.11(i) which provides "*Notwithstanding any other provision of this Deed, the Deed Administrators may not issue an Insured Claim Contribution Notice to an Insured Creditor in respect of a workers' compensation claim or personal injury claim.*"
- 5 Please let us know whether these amendments would address your client's concerns.

6 Please do not hesitate to contact us if you have any questions.

Yours faithfully



**King & Wood Mallesons**

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24 APRIL 2024

Dear Colleagues

**Probuild Constructions (Aust) Pty Ltd (subject to deed of company arrangement) - GPT estimated return under the DOCA**

- 1 We understand that you act for GPT Funds Management Limited ACN 115 026 545 as responsible entity of the GPT Wholesale Office Fund No 1. We act for Sal Algeri, David Orr, Jason Tracy and Matthew Donnelly in their capacity as joint and several deed administrators (**Deed Administrators**) of Probuild Constructions (Aust) Pty Ltd (subject to deed of company arrangement) (**Probuild**) and various of its related entities.
- 2 We refer to:
  - (a) the deed of company arrangement executed by Probuild and the Deed Administrators (among others) by dated 21 July 2022 (**DOCA**);
  - (b) the reports to creditors dated 23 June 2022 and 6 December 2023 (**Update Report to Creditors**);
  - (c) the proof of debt submitted by GPT Funds Management Limited ACN 115 026 545 as responsible entity of the GPT Wholesale Office Fund No 1 (**GPT**) for \$50,748,810.82 for a 'Pool C' distribution from the DOCA on 15 April 2024 (**GPT's claim**);
  - (d) Proceeding BS 4023 of 2023 (**Proceeding**) listed for hearing on 26 April 2024 regarding:
    - (i) the applicants' amended originating application dated 4 March 2024 for Court orders to amend the DOCA in the manner set out in that application (**DBC's Proposed Amendments**); and
    - (ii) the Deed Administrators' interlocutory application dated 19 December 2023 for judicial advice that they would be justified in convening a meeting of creditors to consider proposed amendments to the DOCA, including the Deed Administrators' proposed amendments set out in that application (**Deed Administrators' Proposed Amendments**).

Capitalised terms used in this letter not otherwise defined have the meaning given in the DOCA.

- 3 You have asked us to provide an estimate of GPT's likely return under the DOCA and an estimate of the impact that DBC's Proposed Amendments and the Deed Administrators' Proposed Amendments will have on that return.

#### Assets available for distribution under the DOCA

- 4 The Deed Administrators' Update Report to Creditors estimated at [4.1.1] that there will be at least \$13,650,000 available for distribution to Pool C creditors. This was based on a number of assumptions, notably that the DOCA will be amended to reflect the Deed Administrators' Proposed Amendments, which provide the Deed administrators with certainty as to the coverage of costs associated with the various insurance recovery proceedings against the DOCA companies (including the holding costs of any prolonged DOCA period). A copy of the Deed Administrators' Update Report to Creditors is enclosed to this letter for reference. The final number will not be known until closer to the time of any distributions being made.

#### Pool C claims under the DOCA

- 5 The Deed Administrators confirm receipt of GPT's claim, which is currently under review and has not yet been adjudicated. The Deed Administrators understand that GPT's claim is not insured, and is an ordinary, unsecured 'Pool C' claim for the purposes of the DOCA.
- 6 Many creditors submitted claims prior to voting on the DOCA in February to June 2022. The Deed Administrators have not yet called for formal proofs of debt for distribution of the Pool C fund or adjudicated any of the Pool C claims for distribution purposes.

#### Estimated return

- 7 Based on the information available to the Deed Administrators from the Pool C claims submitted to date (without adjudication):
  - (a) The Deed Administrators estimate the total value of provable claims (excluding claims which are being litigated, and which they apprehend will be litigated, pursuant to grants of leave to proceed, but including GPT's claim in full) is approximately \$360,163,000.
  - (b) GPT's claim for \$50,748,810.82, represents 14.1% of the total estimated Pool C claims.
  - (c) Further claims have been foreshadowed but have not yet been formally submitted into the Halo system. Therefore, the total value of Pool C claims is subject to change.
  - (d) Based on the estimated assets available for distribution as set out in the Update Report to Creditors and estimated provable claims of about \$360 million, GPT would receive at least \$1,900,000 under the DOCA in respect of the GPT claim (subject to adjudication). As noted above, this assumes the DOCA will be amended to reflect the Deed Administrators' Proposed Amendments.
  - (e) If the DOCA is amended to reflect DBC's Proposed Amendments however, it is likely that GPT will receive a dividend which is approximately 25% smaller than if the Deed Administrators' Proposed Amendments are made. This is because the assets available for distribution to Pool C creditors will be significantly diminished, as the Deed Administrators will incur further costs and expenses associated with keeping the DOCA on foot, and resolving or otherwise dealing with the litigation pursued (and which the Deed Administrators apprehend will be pursued) pursuant to grants of leave to proceed (as stated in the circular to creditors dated 1 June 2023). In particular, the diminution would occur because of some complex construction claims being litigated with leave to proceed (and further complex construction claims which have not been commenced and for which leave to proceed is yet to be sought, but which have been advertised to the Deed Administrators as claims that are intended to be litigated with leave to proceed). Those complex construction claims may take years to resolve and their pursuit by litigation is requiring, and will continue to require, the Deed Administrators to do work and incur expenses specific to those claims.

8 These estimates are indicative only, and calculated without the Deed Administrators having benefit of formal proofs of debt and the adjudications of those proofs of debt.

Yours sincerely



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