

**Killarnee Civil & Concrete Contractors Pty Ltd  
(KCCC) (Administrators Appointed)  
ACN 085 230 486**

**Killarnee Contracting Pty Ltd  
(KCPL) (Administrators Appointed)  
ACN 109 535 686**

**Killarnee Equipment Holdings Pty Ltd  
(KEH) (Administrators Appointed)  
ACN 125 969 502**

**(Collectively referred to as “the “Companies”)**

**Minutes of the Second Concurrent Meetings of Creditors of the Companies held at the Holiday Inn Hotel, 778-788 Hay Street, PERTH WA 6000 on Tuesday, 7 October 2014 at 11:00am AWST.**

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**1. PRESENT**

See **Annexure “B”** for details of the Attendance Register.

**2. CHAIRMAN**

Martin Jones, one of the Joint and Several Administrators of the Companies, opened the meeting and advised that he would act as Chairman of the meeting in accordance with Regulation 5.6.17(1) of the Corporations Regulations and Section 439B(1) of the Corporations Act 2001 (the Act).

The Chairman advised that this was the second meeting of the creditors of the Companies and that the purpose of the meeting was for creditors to resolve pursuant to the Act:

- That the Company execute a Deed of Company Arrangement; or
- That the Administration should end; or
- That the Company be wound up; or
- That the Company adjourn the second meeting of creditors for a period not exceeding forty-five (45) business days.

**3. NOTICE OF MEETING**

The Chairman advised that the meeting had been called in accordance with the notice of meeting dated 26 September 2014; the meeting having been advertised in the Australian Securities and Investment Commission’s website on 26 September 2014 and also copy was attached to the Administrators Report to Creditors dated 26 September 2014. A copy of the notice was tabled.

The Chairman advised that he chose to hold the meetings concurrently to allow for efficient communication to all stakeholders with common interests and in order to minimise costs and generally allow an efficient Administration process without prejudicing creditor rights.

The Chairman then sought the following resolution:

**“That the notice of the meeting be taken as read”.**

Company	Moved	Resolution - carried / not carried
Killarnee Civil & Concrete Contractors Pty Ltd	Barry Woodhouse	Carried
Killarnee Contracting Pty Ltd	Barry Woodhouse	Carried
Killarnee Equipment Holdings Pty Ltd	Barry Woodhouse	Carried

The motion was declared carried.

#### 4. ATTENDANCE SHEET/PROXIES

The Chairman noted that he was required to consider and either admit or reject the proxies submitted for the purpose of voting for the meeting. In that regard, he noted that all proxies were admitted for the purpose of voting at the meeting other than:

- A proxy had been received in respect to a claim lodged by Downers EDI Engineering Power Pty Ltd (“Downers EDI”) in the amount of \$3,377,849.30. The Chairman noted the claim by Downers EDI is subject to a legal dispute and counter-claim by KCCC, which would notionally mean that Downers EDI would owe money back to KCCC. Steps are being taken to ensure the proper quantification of claim and a future determination will be made at a latter point in time based upon facts to be provided by both the parties.

In this regard, due to issue regarding the proper quantification of that claim, the complex legal issues that may arise and the potential counter claim by KCCC, the Chairman advised that he would mark that claim as “objected to” and so as not to disenfranchise that creditor, he would admit it for voting purposes at this meeting for a nominal sum of \$1.

- A proxy had been received from the Australian Taxation Office (ATO), requesting that they be able to attend via telephone. The Administrator attempted to dial the ATO before the meeting commenced, however the assigned representative was unavailable to attend.

The Chairman noted that there were observers in attendance and stated that he had no objections to their attendance.

#### 5. QUORUM

The Chairman then advised that, in accordance with Regulation 5.6.14, the meeting was being held at a date, time and place convenient to the majority of persons entitled to receive notice of the meetings and that in accordance with Regulation 5.6.16(2) of the Corporations Regulations, that a quorum was present for the following companies:

Company	ACN
Killarnee Civil & Concrete Contractors Pty Ltd	085 230 486
Killarnee Contracting Pty Ltd	109 535 686
Killarnee Equipment Holdings Pty Ltd	125 969 502

## **6. PURPOSE OF MEETING**

The Chairman advised that this was the second meeting of creditors held since his appointment as Administrator and the purpose of the meeting was to decide the future of the Company, whether:

- That a Deed of Company Arrangement should be executed by the Company; or
- That the Administration of the Company should end; or
- That the Company should be wound up.

The Chairman also advised that creditors may also resolve that the second meeting of creditors be adjourned for a period not exceeding forty-five (45) business days to allow for further examination of the issues and for the meeting to be reconvened, in order that creditors may decide the fate of the Company at a future date.

The Chairman noted that:

- In the Administrators Report to creditors dated 26 September 2014, his recommendation to creditors was to adjourn the meeting for a period not exceeding forty-five (45) business days.
- A DOCA has been proposed by the Director of the Company which would be addressed later in the meeting.

## **7. MOTIONS**

The Chairman advised that a resolution put to the vote of the meeting were to be resolved on the voices unless a poll is demanded, before or on the declaration of the result of the voices (Regulation 5.6.19):

- (a) By the Chairman; or
- (b) By at least two persons present in person, by proxy or by attorney that are entitled to vote at the meeting; or
- (c) By a person present in person, by proxy or by attorney representing not less than 10% of the total voting rights of all the persons entitled to vote at the meeting.

## **8. RESOLUTIONS**

The Chairman advised that a resolution is carried if:

- A majority of creditors voting (whether in person, by attorney or by proxy) vote in favour; and
- The value of the debts owed by the corporation to those voting in favour is more than half the total debts owed to all creditors voting.

The Chairman noted that he may exercise a “casting vote” if no result is reached for or against (Regulation 5.6.21). The Chairman’s decision to exercise this vote is subject to review by the Court upon application by a creditor (Section 600B and Section 600C) and in the event that a casting vote arises in respect to any resolution out at the meeting, the Chairman would record the reasons for the use of his casting vote in the minutes (Regulation 5.6.21(4A)).

The Chairman also noted that a secured creditor may vote with respect to the whole of its debt or claim, without being required to estimate the value of its security (Regulation 5.6.24).

The Chairman also noted that he and his staff have reviewed documentation provided by the creditors and related entities and was prepared to admit their claim as per the company records, other than noted previously.

## **9. DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES**

The Chairman tabled his Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) and noted that:

- (a) A copy of the original DIRRI had been provided to creditors in the first Circular to Creditors dated 2 September 2014.

The Chairman advised that no changes had occurred since the Declaration was provided to creditors.

## **10. EVENTS SINCE APPOINTMENT:**

The Chairman outlined the events which had occurred since the appointment which included:

<b>Date</b>	<b>Event</b>
01- Sep -14	Business Sales Agreement (BSA) entered into by Directors Administrators appointed at 11.30pm
10- Sep -14	First Meeting of Creditors held. Appointment of Administrators ratified. No committee of creditors was formed.
26- Sep -14	Report to creditors issued.
07- Oct -14	Second meeting of creditors held.

## **11. REPORT OF ADMINSTRATORS**

The Chairman tabled the Administrator's Report to Creditors dated 26 September 2014 and turned to the power-point presentation (**Annexure C**) to present the highlights of the report.

While presenting the slide presentation the Chairman detailed a chronology of events which had occurred since the appointment of Administrators, including the on-going trading of the Company, and the reconstruction and sale of business process

The Chairman detailed the Administrators reports to creditors stating that it covered the trade history of the Companies and cause of failure, a summary of assets and liabilities which had been completed by the Director.

He then proceeded to go into detail around the actions carried out during the administration process advising that the Administrators had conducted and attained valuations, on groups of assets. It was noted however that some of this information remained commercially sensitive, in particular valuations relating to the Companies plant and equipment, property and buildings. The Chairman advised that it was not in the interests of the Administrators or creditors to disclose this information, which when it becomes public could set a benchmark for potential buyers, confirming that the Administrators would prefer for competitive tension to set the levels of the offer in the circumstances that we the assets were taken to market.

The Chairman advised that the Administrators had conducted some statutory investigations, and set out the options available to creditors, being the three statutory options available to creditors, as well as the option to adjourn the meeting for a period of up to 45 business days and provided a recommendation in relation to these options, which he would address at a later point. He noted that included in the report was a separate remuneration report which detailed the breakdown of the Administrators fees and costs to date, as well as estimates of future fees and costs under the alternative administration choices.

The Chairman then made comment on the BSA entered into with Central Systems (CS), which provided an offer, accepted by the Company prior to our appointment, and the Administrators have been seeking to put that into effect for the benefit of the Creditors and that has been proceeding reasonably well.

He noted that the Administrators had entered into a funding arrangement with CS due to the Companies not having sufficient funds on the date of appointment, to ensure that wages were paid and that employees were being flown to and from various remote sites. We then extended that agreement a number of times and amended it to reflect the nature of transaction that was taking shape as we moved on and we think we're close to a final form of that document which we hope to have in place over the next couple of days and therefore get to completion shortly after.

On that point, the Chairman stated that the key contract on Gorgon with CB&I had been assigned to CS and as a consequence have replaced the guarantee with Westpac, in the amount of \$2.5M, and CS had taken on the obligation of meeting the employee entitlements for employees on that contract and had circulated to each employee an offer of employment which confirms the security of employee entitlements. We believe this to be a good result in regard to continuity of staff, their entitlements and the security of their ongoing payments, for Westpac as their guarantee had been replaced and undoubtedly from CB&I's perspective as it received a financially secure counterparty, with an ability to meet its obligations not only in relation to the completion of the contracted works, but the extended period under retentions and guarantees that have been provided for under the contract with Killarnee were preserved.

In relation to the other contracts, the Chairman advised that the Administrators are in the process of negotiating a settlement undertaking with WBHO. With regards to the Leighton's contract, the Administrators were continuing to negotiate with them to bring about an assignment of novation.

The Chairman moved on from the BSA noting, the continued communication and reporting to the secured creditors, to keep them abreast of how the Company's realisations were tracking and also to provide them with a general update on strategy, and how the Administrators believe their debts will be dealt with in the fullness of the administration process.

The Chairman advised that where possible the administrators had engaged valuers to attend to sites from Gorgon to Karratha, down to Geraldton and in Perth, to identify and value the fiscal assets of the Company, being the plant and equipment as well as land and buildings. The Chairman mentioned that a number of items of plant and equipment were subject to specific finance charges and that information was being taken back to the financier to enable them to make their own assessment of their recovery process, whether that should be participating with the Administrators to accept an assignment of novation from CS offer or whether their interests would be best served in taking that equipment away and dealing with it under their own powers.

The Chairman observed that another part of the reporting process was to issue creditors with a high level overview of the causes of failure of the Company. He outlined the three key issues identified in the Administrators report being:

1. A lack of working capital of the Companies and a failure to build a bridge between the completion of old contracts and the commencement of new contracts to be able to adequately deal from a balance sheet perspective in relation to disputes that arose and continuing to be able to fund the working capital situation to back those disputes.

At the time of appointment there was also a large amount owing to the ATO and a number of statutory arrangements had been entered into with the ATO which demonstrated that the Companies had an ongoing issue with working capital.

2. There was an emphasis on turnover, rather than profitability on a contract by contract basis, and therefore focusing on gross returns rather than net returns on the contracts.
3. Generally there have been unfavourable market conditions over the past 12 to 18 months, with the construction phase of some large construction projects being wound down as they change over into operating and production phases has seen a decline in available work.

The Chairman advised that preliminary investigations, in particular those relating to KCCC, revealed that the Company was probably insolvent from as early as June 2013. He noted that the Administrators had looked at key indicators of insolvency in their report and have provided a table which matches the point at which the key indicators show the Company may have been insolvent. The Chairman acknowledged that there is still significant forensic work to be carried out in order to be more precise about the date of insolvency, and that this would be required to should the Companies enter into Liquidation. With this in mind the Chairman restated that it was the Administrators educated view, that the date of insolvency may have been as early as June 2013.

In relation to the other entities, being KCPL and KEH, as they were so closely integrated financially with the affairs of KCCC, they probably became insolvent at the same time, but more probably became insolvent at a date closer to the time the Directors made a decision that administrators should be appointed.

The Chairman noted that the identification of the date of insolvency is also influential in determining whether there are any antecedent transactions, which may be recovered for the benefit of the creditors pool for distribution to creditors generally, and looking at the records of the Company, we have compiled a list of potential claims which total an amount in the vicinity of \$5.85M dollars. That is a high number as a headline collection, however experience shows that they are quite difficult claims to prosecute through the Supreme Court where they are defended and it is also a costly and time consuming exercise so whilst these payments have been identified there will still need to be a greater level of sophistication applied to the investigations before it could be recommended to commence any recovery action against those parties.

The Chairman stated that the Company kept adequate books and records, which had allowed for the interrogation of the Company's affairs. The Chairman again made the point that any litigation is inherently a complicated and time consuming process, and there would be further work required, before a degree of confidence could be reached to those recoveries being available for creditors.

Based on the information provided, the Chairman then directed the Creditors of the meeting back toward the future of the Company, and again summarised their options and opined on each. He stated that the view of the Administrators was that the Companies were insolvent, and therefore the Administration should not end, and control of the Companies should not revert back to the directors of the Companies.

He reiterated that the director has put forward a Deed of Company Arrangement as set out in the report however it was only a holding DOCA, which, for the time being, would meet the philosophical obligations of a Deed of Company Arrangement, that is to provide a better return to creditors than would exist in an immediate winding up of the affairs of the Company, but until the administrators had settled the final position in regards to contractual rights, any claims, and crystallise some of the realisations and amounts to be received for assets it would be difficult to calculate the recoveries to be expected from a liquidation and therefore how much would need to be offered by the DOCA. The Chairman advised that there was therefore an option for creditors to choose the DOCA however it would not be the recommendation of the Administrators.

With regard to the Liquidation option the Chairman stated that the Companies are insolvent, and that Liquidation is an option for the creditors at this time, however the Administrators did not believe that an immediate winding up of the Company would be in the best interests of creditors. It was their view that the continuation of the administration is in the best interest of creditors as it affords an opportunity to complete the BSA, to finalise negotiations with clients as counterparties to contracts and to work with the DOCA proponent to see if a proposal better than liquidation is capable of being put together and brought to Creditors.

## **12. ADMINISTRATORS RECOMMENDATION**

The Chairman noted that he had an obligation to provide a recommendation to creditors under the Act, and that his recommendation as set out in his Report was to adjourn the meeting for a period not to exceed 45 business days. The Chairman confirmed the administrators obligation to come back to creditors with a detailed report setting out the merits of a DOCA should one be further proposed, and to compare the returns and the risks associated with the returns against those which would arise in a liquidation scenario to allow creditors to make an informed decision, as to which course of action they would prefer to take.

## **13. DISCUSSION**

The Chairman then asked whether there were any questions which creditors wished to raise and requested that questions be directed to the Chairman in the first instance and that creditors identify themselves and the Company they represent.

There being no questions, the Chairman moved onto the resolutions.

#### **14. ADMINISTRATORS REMUNERATION**

The Chairman sought the following resolutions to approve the fees and costs incurred by the Administrators for each of the individual company's.

##### **Killarnee Civil & Concrete Contactors Pty Ltd (Administrators Appointed)**

The Chairman sought resolutions in regard to the Administrators' remuneration for the period 1 September 2014 to 21 September 2014.

**“That the remuneration of the Administrators, as set out in the Remuneration Request Approval Report dated 26 September 2014, for the period from 1 September 2014 to 21 September 2014 be fixed in the amount of \$259,401 (plus GST), and may be paid.”**

Moved by: Barry Woodhouse  
Seconded by: Richard John

The motion was declared carried.

The Chairman sought resolutions in regard to the Administrators' remuneration for the period 22 September 2014 to 7 October 2014.

**“That the remuneration of the Administrators, as set out in the Remuneration Request Approval Report dated 26 September 2014, for the period from 22 September 2014 to 7 October 2014 be fixed at the Ferrier Hodgson scale of rates up to a maximum amount of \$200,000 (plus GST) but subject to upward revision by resolution of creditors, or the Committee of Creditors and that the Administrators be authorised to make monthly payments on account of such remuneration.”**

Moved by: Barry Woodhouse  
Seconded by: Richard John

The motion was declared carried.

##### **Killarnee Equipment Holdings Pty Ltd (Administrators Appointed)**

The Chairman sought resolutions in regard to the Administrators' remuneration for the period 1 September 2014 to 21 September 2014.

**“That the remuneration of the Administrators, as set out in the Remuneration Request Approval Report dated 26 September 2014, for the period from 1 September 2014 to 21 September 2014 be fixed in the amount of \$40,097 (plus GST), and may be paid.”**

Moved by: Barry Woodhouse

The motion was declared carried on the voices



The Chairman sought resolutions in regard to the Administrators' remuneration for the period 22 September 2014 to 7 October 2014.

**“That the remuneration of the Administrators, as set out in the Remuneration Request Approval Report dated 26 September 2014, for the period from 22 September 2014 to 7 October 2014 be fixed at the Ferrier Hodgson scale of rates up to a maximum amount of \$50,000 (plus GST) but subject to upward revision by resolution of creditors, or the Committee of Creditors and that the Administrators be authorised to make monthly payments on account of such remuneration.”**

Moved by: Barry Woodhouse

The motion was declared carried on the voices

#### **Killarnee Contracting Pty Ltd (Administrators Appointed)**

The Chairman sought resolutions in regard to the Administrators' remuneration for the period 1 September 2014 to 21 September 2014.

**“That the remuneration of the Administrators, as set out in the Remuneration Request Approval Report dated 26 September 2014, for the period from 1 September 2014 to 21 September 2014 be fixed in the amount of \$10,981 (plus GST), and may be paid.”**

Moved by: Barry Woodhouse

The motion was declared carried on the voices

**“That the remuneration of the Administrators, as set out in the Remuneration Request Approval Report dated 26 September 2014, for the period from 22 September 2014 to 7 October 2014 be fixed at the Ferrier Hodgson scale of rates as set out in the Administrators remuneration report up to a maximum amount of \$30,000 (plus GST) but subject to upward revision by resolution of creditors, or the Committee of Creditors and that the Administrators be authorised to make monthly payments on account of such remuneration.”**

Moved by: Barry Woodhouse

The motion was declared carried on the voices

#### **15. FUTURE OF THE COMPANY**

The Chairman then reiterated that the purpose of the meeting is for creditors to consider and resolve whether pursuant to Section 439C of the Act whether:

- (a) The DOCA proposal be accepted.
- (b) The Company be wound up.
- (c) The Administration of the Company should end.
- (d) The meeting be adjourned for a period up to forty-five (45) business days.

The Chairman also noted that his recommendation to creditors is that the meeting be adjourned for a period up to forty-five (45) days as set out in the Administrators Report dated 26 September 2014.

The Chairman focused on that and sought a resolution that:

**“That the meeting be adjourned for a period up to forty-five (45) business days.”**

Moved by: Barry Woodhouse

The motion was declared carried.

## **16. COMMITTEE OF CREDITORS**

The Chairman noted that a Committee of Creditors was not formed at the first meeting of creditors and noted that there is now another opportunity for creditors to form a Committee of Creditors at this meeting should they wish to do so.

The Chairman called for nominations and/or any view from the floor creditors as to whether or not they wish to form a committee and participate in it.

There were no nominations from creditors to participate on the Committee of Creditors and thus no Committee of Creditors was formed.

## **17. QUESTIONS / OTHER BUSINESS**

The Chairman asked if there were any other matters or questions which creditors wish to raise or discuss.

## **18. CLOSURE OF MEETING**

There being no further business, the Chairman thanked those present for attending.

The Chairman declared the meeting closed at 11:45 pm.

Signed as a correct record.

DATED this 13<sup>th</sup> day of October 2014.



**Martin Jones**  
Chairman

**Annexure B (Page 1 of 2 Pages)****Killarnee Civil and Concrete Contractors Pty Ltd (Administrators Appointed)**

In Person	Representing	Amount of Claim (\$)
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**Ferrier Hodgson Representatives**

Martin Jones (Chairman)	N/A	N/A
Malcolm Field (Assisting Mr Jones)	N/A	N/A
William Hulmes (Assisting Mr Jones)	N/A	N/A
Max Gould (Assisting Mr Jones)	N/A	N/A
Nirav Shah (Assisting Mr Jones)	N/A	N/A

**Killarnee Civil and Concrete Contractors Pty Ltd (Administrators Appointed)****Creditors**

Avril Sadlier*	The Australian Taxation Office	5,063,673.88
Leanne Bradshaw	D&N Commercial Concrete Pty Ltd	208,697.96
Jonathon Post	Downer EDI Engineering Power Pty Ltd	1.00
Barry Woodhouse	Killarnee Group Pty Ltd	1,609,979.94
Matthew McLean	Matrix Partners Pty Ltd	97,229.00
Rene Engineering	Damian Niesch	5,934.50
Richard John	Vantage Performance	101,708.24

**Employees**

Lynn Burbage		11,257.02
Brenda Finlayson		6,835.61
Debra Martyn		6,440.26
Yvette Timu		6,766.07
Adriane Tse		6,378.56
Stephen Williams		3,371.53
Barry Woodhouse		10,867.00

**By Proxy****In Favour Of****Amount of Claim (\$)**

Australian Super	The Chairperson	124,732.65
Capital Finance Australia Limited	The Chairperson	10,439.18
CBUS Australian Super	The Chairperson	474,306.15
Direct Trades Supply Pty Ltd	The Chairperson	47,096.34
Host Plus Australian Super	The Chairperson	14,991.56
National Australia Bank	The Chairperson	896,669.33
Panos Safety	The Chairperson	7,657.93
Rod Selzers Lawnmowing Service	The Chairperson	500.00

**Observers**

Mitchell Thompson	N/A	N/A
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\* Please note that we attempted to contact Avril using the contact details provided to us, however we were unable to reach her before the commencement of the meeting. As a result, Avril was unable to attend.

**Annexure B (Page 2 of 2 Pages)**

<b>Killarnee Equipment Holdings Pty Ltd (Administrators Appointed)</b>		
<b>In Person</b>	<b>Representing</b>	<b>Amount of Claim (\$)</b>
<b>Ferrier Hodgson Representatives</b>		
Martin Jones (Chairman)	N/A	N/A
Malcolm Field (Assisting Mr Jones)	N/A	N/A
William Hulmes (Assisting Mr Jones)	N/A	N/A
Max Gould (Assisting Mr Jones)	N/A	N/A
Nirav Shah (Assisting Mr Jones)	N/A	N/A
<b>In Person</b>	<b>Representing</b>	
Barry Woodhouse	Killarnee Group Pty Ltd	1,782,875.44
<b>By Proxy</b>	<b>In Favour Of</b>	
Capital Finance Australia Limited	The Chairperson	10,439.18

<b>Killarnee Contracting Pty Ltd (Administrators Appointed)</b>		
<b>In Person</b>	<b>Representing</b>	<b>Amount of Claim (\$)</b>
<b>Ferrier Hodgson Representatives</b>		
Martin Jones (Chairman)	N/A	N/A
Malcolm Field (Assisting Mr Jones)	N/A	N/A
William Hulmes (Assisting Mr Jones)	N/A	N/A
Max Gould (Assisting Mr Jones)	N/A	N/A
Nirav Shah (Assisting Mr Jones)	N/A	N/A
<b>Creditors</b>		
<b>In Person</b>	<b>Representing</b>	
Barry Woodhouse	Killarnee Group Pty Ltd	150,681.00
<b>By Proxy</b>	<b>In favour of</b>	
National Australia Bank	The Chairperson	896 669.33