

COMMERCIAL LIST STATEMENT

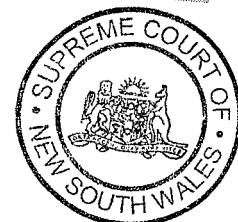
COURT DETAILS

Court Supreme Court of New South Wales
Division Equity
List Commercial
Registry Sydney
Case number 12019 /178541

FILED

7 JUN 2019

N.A.



TITLE OF PROCEEDINGS

Plaintiff

CJMcG Pty Ltd (ACN 169 952 096)

as trustee for the CJMcG Superannuation Fund

Defendant

RCR Tomlinson Limited ACN 008 898 486
(In Liquidation)

FILING DETAILS

Filed for CJMcG Pty Ltd (ACN 169 952 096) as trustee for the
CJMcG Superannuation Fund, the Plaintiff
Legal representative Simon Jacob Morris, Piper Alderman
Legal representative reference 414401
Contact name and telephone Simon Morris (02) 9253 9909
Contact email smorris@piperalderman.com.au

A. NATURE OF DISPUTE

- 1 This is a claim by the Plaintiff on behalf of persons who acquired an interest in shares in the Defendant, RCR Tomlinson Limited (In Liquidation) (the **Company**):
 - (a) pursuant to the Entitlement Offer (the **Entitlement Offer**) set out in the prospectus lodged with the Australian Securities Exchange Limited (**ASX**) on 28 August 2018 (the **Prospectus**); and/or
 - (b) during the period from 31 August 2018 to 12 November 2018 inclusive (the **Relevant Period**), on the financial market operated by the ASX.
- 2 The Company was at all material times an engineering and infrastructure company, the business of which included the engineering, procurement and construction, as well as the operation and maintenance of large-scale renewable energy (including

solar) generation assets. The Company was placed into administration on 21 November 2018. The Company was placed into liquidation on 26 March 2019.

3 It is alleged that during the Relevant Period, the Company contravened its continuous disclosure obligations, and engaged in misleading or deceptive conduct, by failing to inform the market about certain matters concerning and affecting its portfolio of solar energy projects and the effect that those matters were having on the Company's financial performance and its ability to meet its debts when they became due and payable.

4 It is also alleged that on 28 August 2018, the Company made representations that were misleading or deceptive or likely to mislead or deceive with such misleading representations continuing throughout the Relevant Period.

5 It is also alleged that the Prospectus lodged with the ASX in respect of the Entitlement Offer:

(a) omitted certain information that investors and their professional advisers would reasonably require to make an informed assessment of the Entitlement Offer; and

(b) contained misleading or deceptive statements,

such that the Company was not entitled to make the Entitlement Offer, and in making the Entitlement Offer, the Company contravened s 728 of the *Corporations Act 2001* (Cth) (**Corporations Act**).

B. ISSUES LIKELY TO ARISE

1 Did the Company contravene its continuous disclosure obligations in relation to its failure to inform the market about certain matters concerning and affecting its portfolio of solar energy projects and the effect that those matters were having on the Company's financial performance and its ability to meet its debts when they became due and payable?

2 Did the Company engage in conduct that was misleading or deceptive or likely to mislead or deceive in relation to:

(a) its failure to inform the market about certain matters concerning and affecting its portfolio of solar energy projects and the effect that those matters were having on the Company's financial performance and its ability to meet its debts when they became due and payable;

(b) the 28 August 2018 Representations (as defined in paragraph 75 in Section C below)?

3 Did the Company contravene section 728 of the Corporations Act by:

(a) its omission to include in the Prospectus for the Entitlement Offer information concerning and affecting its portfolio of solar energy projects and the effect that those matters were having on the Company's financial performance and its ability to meet its debts when they became due and payable;

(b) including misleading or deceptive statements (namely the 28 August 2018 Representations) in the Prospectus?

4 Did the Company's contraventions cause the Plaintiff and Group Members to suffer loss and damage?

5 What is the correct measure of compensation for which the Company may be liable to the Plaintiff and Group Members?

C. PLAINTIFF'S CONTENTIONS

I. PARTIES AND RELEVANT PERSONS

(A) The Plaintiff and Group Members

- 1 This proceeding is commenced as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) (**CPA**) on behalf of the Plaintiff and all persons who or which:
- a. acquired an interest in ordinary shares in the defendant, RCR Tomlinson Limited (In Liquidation) (the **Company**):
 - i. pursuant to the Entitlement Offer (the **Entitlement Offer**) set out in the prospectus lodged with the Australian Securities Exchange Limited (**ASX**) on 28 August 2018 (the **Prospectus**); and/or
 - ii. during the period from 31 August 2018 to 12 November 2018 inclusive (the **Relevant Period**), on the financial market operated by the ASX;
 - b. suffered loss or damage by or resulting from the contraventions by the defendant pleaded in Sections V to VII of this Commercial List Statement; and
 - c. are not any of the following:
 - i. a related party (as defined by section 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of the Company;
 - ii. a related body corporate (as defined by section 50 of the *Corporations Act*) of the Company;
 - iii. an associated entity (as defined by section 50AAA of the *Corporations Act*) of the Company;
 - iv. a former officer or close associate (as defined by section 9 of the *Corporations Act*) of the Company;
 - v. a Chief Justice, Justice or Registrar of the Supreme Court of New South Wales or the High Court of Australia; or
 - vi. a partner or employee of, or other legal practitioner engaged by, the law firm Piper Alderman,

(collectively, **Group Members**).

2 At the time of commencing this proceeding, seven or more persons being Group Members have claims against the defendant within the meaning of section 157 of the CPA.

3 The Plaintiff:

- a. is entitled to sue in its name and style;
- b. has standing to commence proceedings on its own behalf against the Company, within the meaning of section 158(1) of the CPA;
- c. acquired (in its capacity as the trustee for the CJMcG Superannuation Fund) shares in the Company pursuant to the Entitlement Offer; and

Particulars

The Plaintiff purchased 10,137 ordinary shares in the Company pursuant to the Entitlement Offer for \$10,137.00.

- d. acquired (in its capacity as the trustee for the CJMcG Superannuation Fund) shares in the Company during the Relevant Period on the financial market operated by the Australian Securities Exchange Limited (**ASX**).

Particulars

The Plaintiff purchased 23,138 ordinary shares in the Company on the financial market operated by the ASX for \$20,708.51, with settlement occurring on 13 November 2018.

4 As to the requirements in section 161 of the CPA:

- a. the Group Members to whom the proceedings relate are identified in paragraph 1 above;
- b. the claims made on behalf of Group Members are that:
 - i. the Prospectus contravened section 728(1) of the Corporations Act; and
 - ii. the Company breached its continuous disclosure obligations and engaged in misleading or deceptive conduct during the Relevant Period,

causing the Group Members loss in respect of the Company's shares acquired by them either pursuant to the Entitlement Offer or during the Relevant Period, as further described in this Commercial List Statement;

- c. the relief sought is set out in the Summons;
- d. the questions of law or facts common to the claims of the Group Members are set out in Part B of the Commercial List Statement, as further described in Part C of the Commercial List Statement.

(B) The Defendant and Relevant Persons

5 The Company:

- a. was at all material times a company duly incorporated pursuant to the Corporations Act and capable of being sued;
- b. was at all material times an engineering and infrastructure company, the business of which included the engineering, procurement and construction, as well as operation and maintenance, of large-scale renewable energy (including solar) generation assets;
- c. was on 21 November 2018 placed into voluntary administration with Jason Preston, Jamie Harris, Matthew Caddy and Rob Brauer appointed joint and several administrators of the Company on that day by resolution of the Board of the Company, pursuant to section 436A of the Corporations Act;
- d. was at all material times up to its placement into voluntary administration:
 - i. included in the official list of the financial market operated by the ASX;
 - ii. subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
 - iii. an entity whose securities are ED securities for the purposes of section 111AE of the Corporations Act;
 - iv. a listed disclosing entity within the meaning of section 111AL(1) of the Corporations Act; and
 - v. obliged by section 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1, once it became aware of any information concerning the Company that a reasonable person would expect to have a material effect on the price or value of the Company's shares, to tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply) (**Continuous Disclosure Obligations**).

6 Mr Roderick James McKenzie Brown (**Brown**):

- a. was from 18 October 2005 until the Company was placed into voluntary administration on 21 November 2018, an independent non-executive director of the Company; and
- b. was at all material times until the Company was placed into administration, the Chairman of the Company.

7 Mr Bruce Maxwell James (**James**):

- a. was from 28 January 2014 until 5 August 2018, an independent non-executive director of the Company; and
- b. was from 6 August 2018 until the Company was placed into voluntary administration on 21 November 2018, the interim Chief Executive Officer of the Company and an executive director of the Company.

8 Mr Andrew Phipps (**Phipps**) was from October 2013 until 7 November 2018, the Chief Financial Officer of the Company.

9 By reason of the matters pleaded in paragraphs 6 to 8 herein, any information which any of Brown, James or Phipps became aware of, or which ought reasonably to have come into their possession in the course of their performance of their respective duties was information of which the Company was aware (as awareness is defined in ASX Listing Rule 19.12).

II. THE COMPANY'S CONDUCT

(A) The Company's Solar Projects

10 In or around March 2016, the Company commenced acting upon a strategy to grow its portfolio of solar projects, including bidding for (and being awarded) Engineering, Procurement and Construction contracts (**EPC Contracts**), as well as Operation and Maintenance Contracts (**O&M Contracts**), for the solar farm projects in Australia described in paragraphs 12 to 26 below (**Solar Projects**).

1) Features of the EPC Contracts

11 The EPC Contracts for the Solar Projects described in paragraphs 12 to 26 below:

- a. provided that the Company would be paid for the work done on a progressive basis, with payments to the Company being linked to the achievement of

milestones prescribed by the EPC Contract, the effect of which was to require the Company to incur:

- i. an initial cash outlay; and
 - ii. high working capital requirements in the later stages of the Solar Projects;
- b. provided that completion occurred when all requisite regulatory approvals had been obtained and the solar farm was operating;
 - c. provided that the Company was entitled to a final payment (comprising up to 30% of the value of the Solar Project) only upon completion;
 - d. in some instances, required the Company to pay the owner of the solar farm liquidated damages (calculated on a per megawatt (**MW**) lost basis) where completion of the Solar Project was delayed.

Particulars

- 1) The Plaintiff does not have access to the EPC Contracts for the Solar Projects.
- 2) The above features of the EPC Contracts were generally reported in:
 - a. FY17 Annual Report, pages 35-36; and
 - b. Prospectus, pages 39 and 42.
- 3) Further particulars will be provided upon discovery.

2) Sun Metals Project

12 On or around 28 December 2016, the Company was awarded an EPC Contract with Sun Metals Corporation, valued at approximately \$155 million, to engineer, procure and construct a utility-scale solar farm with an initial capacity of 98.5MWac located at Townsville in Queensland (**Sun Metals Project**) pursuant to which:

- a. construction was planned to commence in April 2017; and
- b. the project was scheduled for completion in the first quarter of 2018.

Particulars

- 1) Company ASX announcement "RCR awarded contract for over \$155m for large scale solar farm" dated 28 December 2016.

- 13 On or around 27 March 2017, the scope of the Sun Metals Project was expanded to include an additional 26MW capacity such that solar farm would be constructed with a total capacity of 124.4MW and the value of the EPC Contract was increased to over \$200 million.

Particulars

- 1) Company ASX announcement "RCR awarded approximately \$85m EPC Contract for Manildra Solar Farm" dated 27 March 2017.

3) Gannawarra Project

- 14 On or around 13 March 2017, the Company was awarded an EPC and O&M Contract with Edify Energy Pty Ltd and Wirsol Energy Ltd, valued at approximately \$80 million, to engineer, procure and construct, and operate and maintain, the first phase of the Gannawarra Solar Farm with a capacity of 60MWp DC located in Kerang Queensland (**Gannawarra Project**) pursuant to which:

- a. construction was planned to commence in or around April to June 2017; and
- b. the project was scheduled for completion in the first quarter of 2018.

Particulars

- 1) Company ASX announcement "RCR awarded \$80m contract for Gannawarra Solar Farm" dated 13 March 2017.

4) Manildra Project

- 15 On or around 27 March 2017, the Company was awarded an EPC Contract with Manildra Prop Pty Ltd, valued at approximately \$85 million, to engineer, design and construct a major utility solar farm with a capacity of 48.5MW located at Manildra in New South Wales (**Manildra Project**) pursuant to which:

- a. construction was planned to commence in or around March 2017; and
- b. the project was scheduled for completion in the second quarter of 2018.

Particulars

- 1) Company ASX announcement "RCR awarded approximately \$85m EPC contract for Manildra Solar Farm" dated 27 March 2017.

5) Oakey and Longreach Projects

16 On or around 1 May 2017, the Company was awarded two EPC and O&M Contracts with Canadian Solar, valued together at approximately \$50 million, to engineer, design and construct, and operate and maintain, the 15MW Longreach Solar Farm (**Longreach Project**) and the first phase of the 25MW Oakey Solar Farm (**Oakey Project**), both located in Queensland, pursuant to which:

- a. with respect to the Longreach Project:
 - i. construction was planned to commence in or around June 2017; and
 - ii. the project was scheduled for completion in or around January 2018.
- b. with respect to the Oakey Project:
 - i. construction was planned to commence in or around May 2017; and
 - ii. the project was scheduled for completion in or around early May 2018.

Particulars

- 1) Company ASX announcement “RCR awarded \$50m in contracts for Oakey & Longreach solar farm projects” dated 1 May 2017.
- 2) Canadian Solar announcement “Canadian solar secures AUD65 million project financing for its 47MWP solar power projects in Australia” dated 2 May 2017.

6) Darling Downs Project

17 On or around 2 May 2017, the Company was awarded an EPC Contract with the APA Group, valued at approximately \$200 million, to engineer, design and construct a utility solar farm with an initial capacity of approximately 110MW, located in Dalby, Queensland (**Darling Downs Project**) pursuant to which:

- a. construction was planned to commence in July 2017; and
- b. the project was scheduled for completion in late 2018.

Particulars

- 1) Company ASX announcement “RCR secures \$175m contract for 110MW Darling Downs Solar Farm Project” dated 2 May 2017.

7) Swan Hill Project

18 On or around 2 August 2017, the Company was awarded an EPC and O&M Contract with Solar Powerstations Victoria, valued at approximately \$28 million, to engineer, design and construct, and operate and maintain, the Swan Hill Solar Farm, with a capacity 19MWdc, located in Victoria (**Swan Hill Project**) pursuant to which construction was planned to commence in September 2017.

Particulars

- 1) Company ASX announcement "Two new large-scale solar farm projects for RCR" dated 2 August 2017.
- 2) Publicly available information does not disclose when it was expected the project would complete.

8) Daydream and Hayman Project

19 On or around 11 August 2017, the Company was awarded EPC and O&M Contracts with Edify Energy Pty Ltd, valued at approximately \$315 million, to engineer, procure and construct, and operate and maintain, the 150MWac Daydream Solar Farm and the 50MWac Hayman Solar Farm in Collinsville Northern Queensland (**Daydream and Hayman Project**) pursuant to which:

- a. construction was planned to commence in the third quarter of 2017; and
- b. the project was scheduled for completion in or around mid-2018.

Particulars

- 1) Company ASX announcement "RCR awarded \$315m for Daydream and Hayman Solar Farm Projects" dated 11 August 2017.

9) Emerald Project

20 On or around 2 August 2017, the Company signed an Early Works Letter with RES Australia Pty Limited to work together to develop an EPC Contract to deliver an 80MW solar farm located in Emerald Queensland.

Particulars

- 1) Company ASX announcement "Two new large-scale solar farm projects for RCR" dated 2 August 2017.

- 21 On or around 23 October 2017, the Company was awarded an EPC and O&M Contract with RES Australia Pty Limited, valued at approximately \$110 million, to engineer procure and construct, as well as operate and maintain, the 68MWac solar farm located in Emerald Queensland (**Emerald Project**) pursuant to which:
- a. construction was planned to commence in or around October 2017; and
 - b. the project was scheduled for completion in the fourth quarter of 2018.

Particulars

- 1) Company ASX announcement "RCR awarded \$110m contract for 68MW Emerald Solar Farm Project" dated 23 October 2017.

10) Haughton Project

- 22 On or around 10 November 2017, the Company was awarded an EPC & O&M Contract with Pacific Hydro Australia, valued at approximately \$170 million, to commence work under a limited notice to proceed with respect to the engineering, procurement and construction, and operation and maintenance, of the 100MWac Haughton solar farm located in Townsville Queensland, pursuant to which:
- a. construction was planned to commence in March 2018; and
 - b. the project was scheduled for completion in January 2019.

Particulars

- 1) Company ASX announcement "RCR awarded limited notice to proceed for the \$170m (approximately) Haughton Solar Farm" dated 10 November 2017.

- 23 On or around 30 April 2018, the Company received a notice to proceed for the EPC and O&M Contract, then valued at approximately \$175 million, for the Haughton Project pursuant to which:
- a. construction was to commence in or around May 2018; and
 - b. the project was scheduled for completion in the first quarter of 2019.

Particulars

- 1) Company ASX announcement "\$175m EPC and O&M Contracts Finalised for 100MWac Haughton Solar Farm" dated 30 April 2018.

11) Clermont and Wemen Projects

- 24 On or around 13 November 2017, the Company was selected as the Preferred EPC Contractor by Wirsol Energy Limited for two EPC and O&M Contracts, totalling approximately \$260 million, for the engineering, procurement and construction, and the operation and maintenance, of the 75MWac Clermont Solar Farm located in Northampton, Queensland, and the 88MWac Wemen Solar Farm located in Wemen Victoria (**Clermont and Wemen Projects**).

Particulars

- 1) Company ASX announcement "RCR preferred contractor for the Clermont and Wemen Solar Farm Projects with combined value of \$260m" dated 13 November 2017.
- 25 On or around 14 December 2017, the Company received a notice to proceed with the EPC and O&M Contracts for the Clermont and Wemen Projects pursuant to which:
- a. with respect to the Wemen Project:
 - i. construction was planned to commence in January 2018; and
 - ii. the project was scheduled for completion in the third quarter of 2018;
 - b. with respect to the Clermont Project:
 - i. construction was planned to commence in February 2018; and
 - ii. the project was scheduled for completion in December 2018.

Particulars

- 1) Company ASX announcement "RCR EPC and O&M Contracts Finalised for 88MWac Wemen and 75MWac Clermont Solar Farms" dated 14 December 2017.

12) Greenough Project

- 26 On or around 10 April 2018, the Company was awarded an EPC Contract by South West Solar Development Holdings Pty Ltd, valued at approximately \$60 million, for the engineering, procurement and construction of a 30MWac expansion of the Greenough River Solar Farm located in Western Australia (**Greenough Project**) pursuant to which:

- a. construction was planned to commence in or around April 2018;

- b. the project was scheduled for completion in or around the second quarter of 2019.

Particulars

- 1) Company ASX announcement "RCR awarded \$60m Greenough River Solar Farm 30MWac Expansion Project" dated 10 April 2018.

(B) FY17 Annual Report and August-September 2017 Capital Raising

27 On 24 August 2017, the Company lodged with the ASX and publicly released:

- a. its annual report for the 2017 financial year (**FY17 Annual Report**);
- b. an announcement entitled "RCR Announces Strong Full Year Results and a Capital Raising to Support Future Growth" (**24 August 2017 Announcement**); and
- c. an investor presentation entitled "FY17 Results and Capital Raising to Support Future Growth" said to be prepared by the Managing Director and Chief Executive Officer at the time, Paul Dalglish, and Phipps, (**24 August 2017 Presentation**).

28 By the FY17 Annual Report, the Company stated:

- a. in the Chairman's report, that the past year's performance "exceeded market expectations" and the "business generated strong cash flows and ended the year with a record Order Book and stronger pipeline of opportunities";

Particulars

- 1) FY17 Annual Report, page 9.
- b. in the Managing Director's report:

"Over this past year we have achieved significant growth in revenue and earnings that is expected to continue into FY18. We believe that our strategic position as market leader in the renewable energy sector will see our business enjoy significant growth opportunities over the next decade from new, large-scale, solar, wind and storage projects.

In recent months RCR has secured over \$0.7 billion in new and extended contracts bringing our current Order Book to \$1.4 billion underpinning our FY18 revenue. In addition, RCR is the Preferred

Contractor for over \$1.6 billion in new projects, either currently under development or under an early contractor involvement (“ECI”) process.

We have secured our stronger Order Book from leveraging our smart engineering, which provided market leading solutions for customers.

Recent major project wins include Darling Downs 110MWac Solar Farm, the 150MWac Daydream and 50MWac Hayman Solar Farms and Pilbara Minerals’ Lithium Plant...

Major renewable energy projects secured in the past year include two of Australia’s largest solar farms currently under construction being a 125MWac Solar Farm for Sun Metals and the 110MWac Darling Downs (stage 1) Solar Farm for APA Group. Other projects currently under construction include the Gannawarra, Manildra, Longreach, Oakey, Swan Hill, Daydream and Hayman Solar Farms and the balance of plant for the Yaloak Wind Farm.”

Particulars

1) FY17 Annual Report, pages 10-11.

c. that its material risks (that is, risks that the Board of the Company considered the more significant risks, that in its opinion, should be specifically monitored and managed by the Company, and should also be considered by investors before investing in the Company) included:

i. a strategic risk that:

“RCR has highly concentrated market share and exposure to a range of risks and opportunities associated with large-scale solar project, which is a new sector experiencing rapid growth.

This exposes RCR to a range of risks and opportunities including energy regulations and standards, capital investment, increased competition, and associated EPC activity risks.

RCR’s current Order Book and Preferred Contractor Status (and therefore future revenues and earnings) are weighted to EPC contracts for new, large-scale solar farms”;

ii. a major project risk:

“Engineering, Procurement and Construction Activity Risks – RCR’s ability to achieve its operating and financial performance objectives is influenced by its ability to complete complex project which involve EPC, and operation and maintenance activities.

The execution and delivery of projects and supply of RCR proprietary equipment involves professional judgment across a range of activities.

These projects may also occur over extended time periods and may be impacted or delayed due [to] engineering design changes, supplier events, performance of supplier and sub-contractors, regulatory requirements and a wide variety of other events.

Cash flows and earnings could adversely be affected if RCR miscalculates the resources, cost or time needed to complete a project, fails to meet contractual obligations, or encounters delays due to varying conditions. In addition, some projects may require payment of liquidated damages if RCR does not meet project deadlines or performance guarantees.”

Particulars

- 1) FY17 Annual Report, pages 35-36.

29 By the 24 August 2017 Announcement, the Company stated:

- a. “RCR.. is pleased to announce its FY17 result, with a profit after tax of \$25.7 million, supported by stronger cash flows and a low Net Debt position of \$25.2 million.

RCR is on track to deliver further revenue and earnings growth in FY18, with continued growth of its Order Book and Preferred Contractor Status to over \$3 billion; up an impressive 97% on the prior year.

RCR has firmly positioned itself as one of Australia’s leading Engineering, Procurement and Construction (“EPC”) providers of large-scale solar and other renewable energy infrastructure projects. RCR now has over half a gigawatt of large-scale solar projects in its Order Book and more than a

gigawatt is currently being developed or progressed under Early Contractor Involvement (“ECI”) processes.”;

- b. “To support RCR’s growing pipeline of project in renewable energy, rail and transport markets and to fund our development aspirations in the renewable energy sector, RCR has today announced a capital raising. The capital raising will raise up to \$90 million, with approximately \$75 million underwritten by Macquarie Capital (Australia) Limited via a Placement and the balance will be raised by way of non-underwritten Share Purchase Plan offer to existing shareholders.

RCR’s Managing Director, Dr Paul Dalglish said ‘Following our strong result and with over \$3 billion in combined Order Book and Preferred Contractor Status, RCR is in a strong position to capitalise on the substantial growth across its end-markets, particularly the solar market. The capital raising is intended to ensure we have sufficient balance sheet flexibility to do so...’;

- c. “RCR has continued to identify opportunities in the rapidly evolving renewable energy sector that will see a significant number of new projects developed in Australia over the next decade, including an estimated 12.7GWac visible over the next few years.

RCR is currently positioned as the market leader in the EPC of large-scale solar projects and has strong partners and positioning on wind and battery storage. These projects also support RCR’s objective to reduce the cyclical nature of its revenue streams by engaging in projects that require long-term operations and maintenance support.

RCR’s success in the renewable energy sector has been enviable, and during this past year RCR has secured over 600MWac of renewable energy projects and has over 1GWac in development or under an ECI where RCR is the Preferred Contractor.

While conversion of these renewable energy projects from Preferred Contractor Status into contracted revenues is ultimately dependent upon financial investment decisions, and in some cases project funding, revenue conversion rates have been well over 90%.

Major renewable energy projects secured in the past include three of Australia’s largest solar farms currently under construction, being the 125MWac Solar Farm for Sun Metals, the 110MWac Darling Downs (Stage 1)

Solar Farm for APA Group and the 150MWac Daydream Solar Farm for Edify Energy. Other renewable energy project currently under construction include the Gannawarra, Manildra, Longreach, Oakey, Swan Hill and Hayman Solar Farms and the balance of plant for the Yaloak Wind Farm.”;

- d. “Following continued strong growth in RCR’s Order Book and Preferred Contractor Status, the RCR board has determined to undertake a capital raising in order to enable RCR to take full advantage of its growing pipeline of projects alongside RCR’s project partners.

RCR will raise approximately \$75 million via a fully underwritten placement to eligible sophisticated, professional and institutional investors (“Placement”), and up to \$15 million via a non-underwritten Share Purchase Plan.

The funds raised will be initially held as cash and will provide RCR with sufficient balance sheet flexibility to:

- ensure that RCR is best placed to continue winning projects across its growing end-markets;
- support future working capital and bonding requirements associated with RR’s strong pipeline of projects in the renewable energy, rail and transport sectors; and
- selectively invest in solar projects, alongside RCR’s project partners, when considered appropriate by RCR’s Management and Board.

RCR’s Chairman, Roderick Brown commented that “We believe maintaining a conservative and flexible balance sheet is essential to ensuring that RCR is in a position to taken full advantage of growth opportunities that exist across its end markets. In addition to supporting future working capital and bonding requirements, a stronger balance sheet will enable RCR to selectively invest in solar project, alongside its project partners. When the Board considers it prudent to do so.”.

30 By the 24 August 2017 Presentation, the Company stated:

- a. that the Company was “positioned for growth” by reason of securing \$0.7B in new contract wins in the past few months” including the Oakey and Longreach Projects, the Darling Downs Project, the Daydream and Hayman Project and the Swan Hill Project;

Particulars

- 1) 24 August 2017 Presentation, slide 3.
- b. that the renewable energy portfolio of the Infrastructure business of the Company was growing, referring to the Daydream and Hayman Project, the Sun Metals Project, the Darling Downs Project and an “additional 191MWac under construction”;

Particulars

- 1) 24 August 2017 Presentation, slide 10.
- c. that with an Order Book of \$1.4 billion and Preferred Contractor Status of \$1.6 billion, the Company expected further revenue and earnings growth in FY18 with “major pipeline opportunities” in renewable energy;

Particulars

- 1) 24 August 2017 Presentation, slide 14.
- d. that the purpose of the capital raising announced on that day was “to provide balance sheet flexibility and take full advantage of growth opportunities” and to support “growth and development aspirations in solar and rail”;

Particulars

- 1) 24 August 2017 Presentation, slide 2.
- e. that the funds raised from the capital raising “will be initially held as cash and will provide RCR with sufficient balance sheet flexibility to:
- ensure that RCR is best placed to continue winning projects across its growing end-markets
 - support future working capital and bonding requirements associated with RCR’s strong pipeline of project in the renewable energy, rail and transport sectors
 - selectively invest in solar projects, alongside RCR’s project partners, when considered appropriate by RCR’s Management and Board”;

Particulars

- 1) 24 August 2017 Presentation, slide 10.
- f. that its “Key Business Risks” included:

- i. a strategic risk being “reducing demand for services and products” as described on slide 26 of the 24 August 2017 Presentation;
- ii. a further strategic risk being “renewable energy market concentration risk” as described on slide 27 of the 24 August 2017 Presentation;
- iii. an operational risk being “order intake, order book, and preferred contractor status” as described on slide 28 of the 24 August 2017 Presentation;
- iv. a project risk being “construction activity risks” as described on slide 28 of the 24 August 2017 Presentation.

Particulars

- 1) 24 August 2017 Presentation, slides 26-30.

31 On 25 August 2017, the Company announced to the ASX:

- a. its successful completion of its fully underwritten institutional placement of new fully paid ordinary shares, as announced to the market on 24 August 2017 in the 24 August 2017 Announcement and the 24 August 2017 Presentation; and
- b. that the Share Purchase Plan outlined in the 24 August 2017 Announcement and 24 August 2017 Presentation was to open on 31 August 2017.

Particulars

- 1) Announcement by the Company to the ASX entitled “Successful completion of institutional placement” dated 25 August 2017.

32 On 28 August 2017, the Company announced to the ASX that:

- a. it was offering to Eligible Shareholders an opportunity to acquire additional shares in the Company under the Share Purchase Plan outlined in the 24 August 2017 Announcement and the 24 August 2017 Presentation;
- b. the Share Purchase Plan aimed to raise up to \$15 million and was not underwritten;
- c. the Company may determine to raise a higher amount or decide to scale back applications under the Share Purchase Plan in its absolute discretion;

- d. the Share Purchase Plan offer opened on 9.00am on 31 August 2017 and was scheduled to close at 5.00pm on 15 September 2017;
- e. details of the Share Purchase Plan were available in the booklet attached to the announcement.

Particulars

- 1) Announcement by the Company to the ASX entitled "RCR launches Share Purchase Plan Offer" dated 28 August 2017.

33 On 20 September 2017, the Company announced to the ASX:

- a. the successful completion of its Share Purchase Plan as announced to the market on the 24 August 2017 Announcement and the 24 August 2017 Presentation;
- b. that the Board had determined to accept the application in full received from 1,400 applicants, which had resulted in \$15.6 million in new capital being raised under the Share Purchase Plan;
- c. that in total the Company had raised approximately \$90 million through the institutional placement and the Share Purchase Plan.

Particulars

- 1) Announcement by the Company to the ASX entitled "RCR Tomlinson Ltd – Successful Completion of Share Purchase Plan" dated 20 September 2017.

(C) 13 December 2017 increase in funding capacity

34 On 20 September 2017, the Company announced to the ASX:

- a. that it had extended its contingent instrument bank guarantee facility by a further \$100 million to \$295 million;
- b. that it had approval to utilise insurance bonding facilities in the aggregate of up to \$250 million, which was an increase of \$50 million and that that increase provided the Company "with a significantly larger facility which will support our forecast growth. We are experiencing considerable growth in our development pipeline, in particular, rail and energy including solar, wind, storage and gas power opportunities".

Particulars

- 1) Announcement by the Company to the ASX entitled “RCR increase funding capacity by \$150m” dated 13 December 2017.

(D) FY18 Half Year Report

- 35 On 22 February 2018, the Company lodged with the ASX and publicly released:
- a. its Half Year Financial Report for the half year ended 31 December 2017 (**FY18 Half Year Report**); and
 - b. an announcement entitled “RCR Delivers Record Half Year Revenues, Cash Conversion and Earnings Growth” (**22 February 2018 Announcement**).

36 The FY18 Financial Report stated:

- a. in respect of the Group results that:

“Sales Revenue from Continuing Operations of \$940.1 million was up 100% on the prior comparative period of \$471.0 million. The increase in revenue can predominantly be attributed to the procurement and construction phase on a number of large scale solar farms.

Earnings before Interest and Tax (“EBIT”) from Continuing Operations increased to \$22.8 million, up 51% on the prior comparative period. The increase in EBIT compared with HY17 reflects the strong contribution from the Infrastructure business which made progress on delivery of a number of large-scale utility solar projects...”;

Particulars

- 1) FY18 Half Year Report, page 2.
- b. in respect of the results of the Infrastructure business of the Company that:

“Infrastructure includes the Group’s rail and transport, renewable energy, water, electrical, property services (HVAC and facilities management) and oil & gas services businesses.

Revenue increased 125.2% to a record \$676.4 million in HY18 (HY17: \$300.4 million) and EBIT increased 99.2% to \$24.7 million (HY17: \$12.4 million), which reflects a contribution of 4.7% (HY17: 4.1%).

The renewable energy and rail business lines performed strongly on the back of new contract wins while investing in engineering project staff and capital expenditure ahead of new project wins.

Key contracts contributing to Infrastructure's performance include renewable energy project for Sun Metals, Darling Downs, Manildra, Gannawarra, Oakey/Longreach, Daydream/Hayman, Swan Hill...".

Particulars

1) FY18 Half Year Report, page 3.

- 37 The FY18 Half Year Report included financial statements which were audited by Deloitte Touche Tohmatsu, the auditor in accordance with section 237 of the Corporations Act, and included an Independence Declaration as required under section 307C of the Corporations Act.

Particulars

1) FY18 Half Year Report, page 6.

- 38 The FY18 Half Year Report included a declaration from the directors of the Company that:
- a. in their opinion there were reasonable grounds to believe that the Company would be able to pay its debts as and when they became due and payable; and
 - b. in their opinion, the financial statements and notes thereto were in accordance with the Corporations Act, including compliance with accounting standards and gave a true and fair view of the financial position and performance of the consolidated entity.

Particulars

1) FY18 Half Year Report, page 17.

- 39 In the 22 February 2018 Announcement, the Company stated:
- a. "On the back of over \$800 million in recent contract wins, a growing pipeline, an Order Book of \$1.2 billion and Preferred Contractor Status of \$2.0 billion, RCR expects to deliver revenue and earnings growth in FY18 and into FY19.

RCR has been successful in the renewable energy sector during the past year and has secured over 850MWac of renewable energy projects. These wins are expected to contribute strongly to RCR's continuing growth momentum.”;

- b. in a statement from Mr Dalglish that:
- i. “RCR has delivered record revenue and earnings growth, whilst investing in growing our renewable energy and rail businesses. Our cash flows have improved significantly over the past year, and combined with our successful capital raising, we now have a record \$84.5 million in net cash”;
 - ii. “Over the past six months we have secured a number of large contract wins valued at over \$800 million... Pleasingly, we have added a number of new opportunities to further grow our strong pipeline of preferred contractor status to \$2.0 billion (up from \$1.6 billion at 30 June 2017 and from \$0.8 billion one year ago).”;
 - iii. “As we look forward, with a combined order book and preferred contractor status of \$3.2 billion, up an impressive 76% from a year ago, RCR is well placed for expected revenue and earnings growth, with a number of contracts to flow through to support FY19 revenue.”;
- c. that the Board had declared an Interim Dividend of 2.5 cents per share, unfranked.

(E) 30 July 2018 Trading Halt and 1 August 2018 Suspension of Shares

- 40 On 30 July 2018, the ASX announced to the market that:
- a. the shares of the Company would be placed in trading halt at the request of the Company, pending the release of an announcement by it;
 - b. unless the ASX decided otherwise, the shares would remain in trading halt until the earlier of the commencement of normal trading on 1 August 2018 or when the announcement was released to the market.

Particulars

- 1) ASX announcement “RCR Tomlinson Limited – Trading Halt” dated 30 July 2018.

- 41 On 1 August 2018, the Company wrote to the ASX and:

- a. requested a voluntary suspension of the Company's shares with immediate effect as it was in the process of reviewing cost overruns that were recently discovered on a project, and which were expected to have a material negative impact on FY18 earnings;
- b. stated that, given the materiality of the cost overruns and the need to undertake further work to assess the likely financial impact, the Company was not yet in a position to make an announcement regarding the matter;
- c. requested that the voluntary suspension remain in place until the earlier of the Company making an announcement to the market and the commencement of normal trading on 8 August 2018;
- d. stated that it was not aware of any reason why the voluntary suspension should not be granted;
- e. stated that it was not aware of any other information necessary to inform the market about its suspension at that time,

(Voluntary Suspension Request).

Particulars

- 1) Letter from Darryl Edwards (Company Secretary) to Ms Lisa Banh (Listings Adviser, ASX) dated 1 August 2018.

42 On 1 August 2018, the ASX announced to the market that the shares of the Company would be suspended from quotation immediately under ASX Listing Rule 17.2, at the request of the Company, pending the release of an announcement regarding the impact of its FY18 financial results (the **Voluntary Suspension**).

Particulars

- 1) ASX announcement "RCR Tomlinson Limited – Suspension from Official Quotation" dated 1 August 2018.

43 On 7 August 2018, the Company wrote to the ASX and:

- a. requested an extension of the Voluntary Suspension;
- b. confirmed that the cost overruns referred to in the Voluntary Suspension Request "occurred at a single project, nearing completion";
- c. stated that the Board was treating the matter with the "utmost seriousness and approaching its investigation as a matter of priority";

- d. stated that after 10 years as Chief Executive Officer, Mr Dalgleish would step down as Managing Director and Chief Executive Officer and that the Board of the Company had appointed James as Interim Chief Executive Officer commencing that day;
- e. requested that its shares remain suspended from trading pending completion of the investigation of the likely financial impact of the cost overruns at the single project which was expected to have a material negative impact on FY18 earnings, as well as preparations for any initiatives required to address the impact of those cost overruns;
- f. stated that, given the materiality of the cost overruns and the need to undertake further work to assess the likely financial impact, the Company was not in a position to make an announcement regarding this matter;
- g. requested that the voluntary suspension remain in place until the earlier of the Company making an announcement to the market and the commencement of normal trading on 31 August 2018;
- h. stated that it was not aware of any reason why the voluntary suspension should not be extended;
- i. stated that it was not aware of any other information necessary to inform the market about its suspension at that time.

Particulars

- 1) Letter from Darryl Edwards (Company Secretary) to Ms Lisa Banh (Listings Adviser, ASX) dated 7 August 2018.

(F) **28 August 2018 announcement and Entitlement Offer**

- 44 On 28 August 2018, the Company lodged with the ASX and publicly released:
- a. an announcement entitled "RCR announces FY18 results and a capital raising to strengthen balance sheet" (**28 August 2018 Announcement**);
 - b. a prospectus relating to the 1 for 1.65 pro rata accelerated non-renounceable entitlement offer (**Entitlement Offer**) of New Shares by the Company (the **Prospectus**);
 - c. an investor presentation entitled "RCR Tomlinson Ltd Project Update and Capital Raising" (the **28 August 2018 Presentation**);

- d. its Appendix 4E – FY18 Results Preliminary Final Report;
- e. its FY18 Statutory Final Report; and
- f. an Appendix 3B new issue announcement, application for quotation of additional securities and agreement in respect of the Entitlement Offer.

45 By the 28 August 2018 Announcement, the Company stated:

- a. that its statutory net loss of \$16.1 million (reported in the FY18 Full Year Report) was largely driven by cost overruns experienced on the Daydream and Hayman Project;
- b. that it had recorded a \$57 million cumulative write down from tendered margin for the Daydream and Hayman Project;
- c. that the cost overruns experienced on the Daydream and Hayman Project were due to several compounding issues specific to the Daydream and Hayman Project, including:
 - i. external delays;
 - ii. materially worse sub-surface ground conditions than were allowed for in the tender estimate; and
 - iii. adverse weather conditions,all of which had required the Company to continuously revise its execution methodologies to mitigate delays, leading to increases in subcontractor costs and logistics costs overruns;
- d. that a large proportion of the write-downs were only recently identified, due to the on-site procedures adopted by a limited number of site personnel which had the effect of circumventing the Company's standard processes and project level systems relating to procurement commitments;
- e. that a comprehensive internal investigation into the circumstances surrounding the cost overruns of the Daydream and Hayman Project had been completed, and several actions and additional measures were being implemented to mitigate the risk of project level systems being circumvented and cost overruns going undetected in the future;

- f. as part of the FY18 group audit, additional procedures were conducted by Deloitte in relation to the Daydream and Hayman Project and the Company's cost management systems and procedures;
- g. on request of its financiers, the Company had undertaken to commission an external review of the Daydream and Hayman Project by an independent accounting firm;
- h. aside from the cost overruns experienced on the Daydream and Hayman Project, the Company continued to operate across a large number of projects which, typical of a contracting business, experienced some variance to tendered margins;
- i. in the previous 12 months, the Company's revenue had been largely derived from fixed price EPC Contracts which exposed the Company to potential risks including project delays, unanticipated increases in costs of delivering projects, and high working capital requirements in the later stages of the projects, with cash receipts on these contracts being dependent on certain milestones being met, which may cause timing differences from a cash collection point of view;
- j. that the Company's primary focus in the near term would be on consolidation and repositioning the Company towards a more acceptable risk profile, with its strategic objectives being focussed on:
 - i. consolidating existing operations, successfully completing current projects, carefully assessing opportunities with a focus on projects with a more acceptable risk profile;
 - ii. increasing exposure to rail and transport sectors;
 - iii. selectively pursuing opportunities in the renewables sector, with a focus on risk profile and margins;
 - iv. shifting the project portfolio towards alliance style contracting models which offered more favourable risk allocations than EPC Contracts;
- k. that with the support of its existing financiers and the underwritten Entitlement Offer outlined in the Prospectus, the Company was in a strong financial position, trading on a business as usual basis, and was well placed to deliver for its customers and shareholders;

- l. that it had that day announced the Entitlement Offer to raise approximately \$100 million to strengthen the balance sheet and address the financial impacts of the cost overruns in respect of the Daydream and Hayman Project;
- m. that the Entitlement Offer would allow the Company to move forward in a position of strength.

46 By the Prospectus, the Company stated:

- a. that the Company had experienced significant cost overruns at the Daydream and Hayman Project;

Particulars

1) Prospectus, page 8.

- b. the cost overruns experienced in respect of the Daydream and Hayman Project were due to several compounding issues specific to the Daydream and Hayman Project, including:
 - i. external delays which resulted in extension of time submissions;
 - ii. materially worse sub-surface ground conditions than were allowed for the tender estimate, which caused an underestimation of site piling requirements; and
 - iii. continuous re-planning of construction due to the interdependence with piling, which was compounded by adverse weather conditions, increasing subcontractor costs (both people and plant) and logistics costs,

all of which had required the Company to continuously revise its execution methodologies to mitigate delays, leading to increases in subcontractor costs and logistics costs overruns;

Particulars

1) Prospectus, pages 9 and 35-36.

- c. that a large proportion of the write-downs were only recently identified, due to the on-site procedures adopted by a limited number of site personnel which had the effect of circumventing the Company's standard processes and project level systems relating to procurement commitments;

Particulars

- 1) Prospectus, pages 9 and 36.
- d. outside the cost overruns experienced on the Daydream and Hayman Project, the Company continued to operate across a large number of projects which, typical of a contracting business, experience some variance to tendered margins;

Particulars

- 1) Prospectus, pages 9 and 36.
- e. there had been a comprehensive internal investigation into the circumstances surrounding the cost overruns in respect of the Daydream and Hayman Project, the key findings of which were:
- i. on-site procedures adopted by a limited by number of site personnel at the Daydream and Hayman Project had the effect of circumventing the Company's standard processes and project level systems relating to procurement commitments;
 - ii. the nature of the conduct with respect to procurement commitments made it extremely difficult for the Company to accurately determine cost-to-date and forecast cost-to-complete on a timely basis;
 - iii. the procurement control issues at the site occurred during the recent peak execution months of the Daydream and Hayman Project;
 - iv. site management at the Daydream and Hayman Project were focused on delivering project milestones under time pressure, and did not give adequate focus to cost management and oversight of site practices with respect to procurement commitments;
 - v. no indication of fraud or collusion on the part of site personnel or management had been detected;
 - vi. the procurement control issues identified at the Daydream and Hayman Project were not systemic within the Company;

Particulars

- 1) Prospectus, pages 9 and 37.

- f. that the following actions and additional measures were being implemented to address the issues identified by the internal investigation at the Daydream and Hayman Project and mitigate the risk of similar issues occurring in the future:
- i. changes to mitigate risk at the Daydream and Hayman Project to completion as identified in paragraph 4.3.4(a) of the Prospectus;
 - ii. changes to mitigate risk of cost overruns as identified in paragraph 4.3.4(b) of the Prospectus;
 - iii. changes to ensure the Company's processes and systems were followed consistently as identified in paragraph 4.3.4(c) of the Prospectus;

Particulars

- 1) Prospectus, pages 36-37.

- g. that on request of the Company's financiers, the Company had undertaken to commission an external review of the Daydream and Hayman Project by an independent accounting firm;

Particulars

- 1) Prospectus, page 39.

- h. that in the last 12 months, the Company's revenue had been largely derived from fixed price EPC Contracts with respect to its Solar Projects, which exposed the Company to potential risks including project delays, unanticipated increases in the cost of delivering the project and high working capital requirements in the later stage of the project, and that cash receipts on these EPC Contracts were dependent on certain milestones being met, which could cause timing differences from a cash collection point of view;

Particulars

- 1) Prospectus, pages 39 and 42.

- i. that the Company was shifting its portfolio towards a more favourable risk allocation model, such that the Company's focus in the near term would be on the following strategic objectives:

- i. consolidating existing operations, successfully completing current projects, carefully assessing opportunities with a focus on projects with a more acceptable risk profile;
- ii. increasing exposure to rail and transport sectors;
- iii. selectively pursuing opportunities in the renewables sector, with a focus on risk profile and margins;
- iv. shifting the project portfolio towards alliance style contracting models which offered more favourable risk allocations than EPC Contracts;

Particulars

1) Prospectus, pages 8 and 40.

- j. that an important element of the Company's near-term strategy was to focus on projects that used "alliance" style contracting models which typically provided a higher degree of margin predictability, but still had high working capital requirements;

Particulars

1) Prospectus, page 42.

- k. that the Entitlement Offer, pursuant to which the Company was seeking to raise approximately \$100 million, would enable the Company to avoid the risk of breaching financial covenants under its Facility Agreement following the release of its FY18 Audited Financial Report.

Particulars

1) Prospectus, page 25.

- l. that the "key risks" attaching to an investment in shares in the Company included:
 - i. the "strategy and business risk" of the "potential for cost overruns on projects" which stated:

"There is a risk that additional cost overruns occur across one or more of RCR's projects which may have an impact on RCR's future financial performance. In addition to potentially impacting RCR's financial performance, additional cost overruns may result in an inability to procure future contract

and maintain existing contract. Further, future cost overruns have the potential to be costly and damaging to RCR's reputation and business relationships. Which in turn could have an adverse effect on RCR, including its operating and financial performance, industry standing and the value of RCR shares."

Particulars

- 1) Prospectus, page 56.
- ii. the "strategy and business risk" of "inability to maintain a strong balance sheet" which stated:

"Capital for the business is a fundamental requirement to achieve business objectives and to meet financial obligations when they fall due. The inability to maintain a strong balance sheet or to secure new capital or credit facilities (in the form of cash advance, overdraft, guarantee and bonding facilities) could impact RCR's opportunity to bid for work, make investments or meet its ongoing liquidity needs. The perception of a strong balance sheet is equally important to retaining the confidence of external counterparties and maintaining commercial terms as well as winning new work. A loss of confidence in RCR's balance sheet may impact RCR's future financial performance and has the potential to be costly and damaging to RCR's reputation and business relationships, which in turn could have an adverse effect on RCR, including its operating and financial performance, industry standing and the value of RCR shares.";

Particulars

- 1) Prospectus, page 57.
- iii. the "strategy and business risk" of "working capital requirements" which stated:

"Due to the nature of RCR's business, and operations, RCR has significant working capital requirements, which is expected to continue into the future. Relevantly, RCR's revised operating strategy include a shift towards 'alliance style'

contract. This type of arrangement requires a larger amount of working capital than is required under EPC style arrangements.

Furthermore, due to the nature of RCR's business, specifically in respect of the receipt of milestone payments under project contracts, it is possible that RCR may be unable to accurately predict working capital requirements in the future. If this is the case, RCR may require additional funding to address those working capital requirements.”;

Particulars

2) Prospectus, page 57.

- iv. the “strategy and business risk” of the “renewable energy market concentration risk” which stated:

“RCR is exposed to a range of risks and opportunities associated with engineering, procurement and construction (“EPC”) of large-scale solar projects. This is a sector for RCR which is experiencing growth exposing RCR to a range of risks and opportunities including energy regulations and standards, commissioning, capital investment, increased competition and a range of associated engineering, procurement and construction (“EPC”) activity risks.

RCR's current Order Book and Preferred Contractor Status (and therefore future revenues and earnings) are weighted towards EPC contracts for large-scale solar farms. Any adverse changes in the solar industry may have a significant impact on RCR.”;

Particulars

1) Prospectus, page 59.

- v. the “project risk” of “EPC risks” which stated:

“RCR's ability to achieve its operating and financial performance objectives is influenced by its ability to complete complex projects to the satisfaction of its customers. The execution and delivery of project or supply of RCR proprietary equipment involves professional judgment regarding the

design, planning, construction and commissioning and operation of complex operating facilities and equipment.

Projects may occur over extended time periods and may be impacted or delayed due to procurement, engineering, design changes, construction, commissioning, adverse weather, physical environment, supplier events, performance of subcontractors and joint venture partners, regulatory requirements, employment practices and a wide variety of other circumstances. Projects and operations, cash flows and liquidity could be adversely affected if RCR miscalculates the resources, cost or time needed to complete a project, fails to meet contractual obligations, encounters delays due to varying conditions or if a supplier fails to deliver project materials on time. In addition, some projects require payment of liquidated damages if RCR does not meet project deadlines or other contractual obligations.”

Particulars

- 1) Prospectus, page 63.

47 By the 28 August 2018 Presentation, the Company stated:

- a. that the Daydream and Hayman Projects experienced significant cost overruns due to several compounding project-specific issues at site resulting in cumulative write-downs of \$57.0M (EBIT) from tendered margin for the Project;

Particulars

- 1) 28 August 2018 Presentation, slide 5.
- b. a large proportion of the write-downs experienced were only recently identified due to on-site procedures adopted by a limited number of site personnel, which had the effect of circumventing the Company’s processes and project level systems relating to procurement commitments;

Particulars

- 1) 28 August 2018 Presentation, slide 5.

- c. that the Company was re-positioning towards a more acceptable risk profile with a near term focus on:
- i. consolidating existing operations and successfully completing current projects;
 - ii. increasing exposure to rail and transport sectors;
 - iii. selectively pursuing renewables opportunities;
 - iv. shifting towards “alliance style” contract models;

Particulars

1) 28 August 2018 Presentation, slide 5.

- d. the cost overruns experienced in respect of the Daydream and Hayman Project were due to several compounding issues specific to the Daydream and Hayman Project, including:
- i. external delays which resulted in extension of time submissions;
 - ii. materially worse sub-surface ground conditions than were allowed for in the tender estimate, which caused an underestimation of site piling requirements; and
 - iii. continuous re-planning of construction due to the interdependence with piling, which was compounded by adverse weather conditions, increasing subcontractor costs (both people and plant) and logistics costs;

Particulars

1) 28 August 2018 Presentation, slide 8.

- e. that a large proportion of the write-downs were only recently identified, due to the on-site procedures adopted by a limited number of site personnel which had the effect of circumventing the Company’s standard processes and project level systems relating to procurement commitments;

Particulars

1) 28 August 2018 Presentation, slide 8.

- f. there had been a comprehensive internal investigation into the circumstances surrounding the cost overruns in respect of the Daydream and Hayman Project, the key findings of which were:
- i. on-site procedures adopted by a limited by number of site personnel at the Daydream and Hayman Project had the effect of circumventing the Company's standard processes and project level systems relating to procurement commitments;
 - ii. the nature of the conduct with respect to procurement commitments made it extremely difficult for the Company to accurately determine cost-to-date and forecast cost-to-complete on a timely basis;
 - iii. the procurement control issues at the site occurred during the recent peak execution months of the Daydream and Hayman Project;
 - iv. site management at the Daydream and Hayman Project were focused on delivering project milestones under time pressure, and did not give adequate focus to cost management and oversight of site practices with respect to procurement commitments;
 - v. no indication of fraud or collusion on the part of site personnel or management had been detected;
 - vi. the procurement control issues identified at the Daydream and Hayman Project were not systemic within the Company;

Particulars

- 1) 28 August 2018 Presentation, slide 9.

- g. that on request of the Company's financiers, the Company had undertaken to commission an external review of the Daydream and Hayman Project by an independent accounting firm;

Particulars

- 1) 28 August 2018 Presentation, slide 9.

- h. that the following actions and additional measures were being implemented to address the issues identified by the internal investigation at the Daydream and Hayman Project and mitigate the risk of similar issues occurring in the future:

- i. changes to mitigate risk at the Daydream and Hayman Project to completion as identified in the first column on slide 10 of the 28 August 2018 Presentation;
- ii. changes to mitigate risk of cost overruns as identified in the second column on slide 10 of the 28 August 2018 Presentation;
- iii. changes to ensure the Company's processes and systems were followed consistently as identified in the third column on slide 10 of the 28 August 2018 Presentation;

Particulars

1) 28 August 2018 Presentation, slide 10.

- i. that the Company was shifting its portfolio towards a more acceptable risk profile, such that the Company's focus in the near term would be on the following strategic objectives:
 - i. consolidating existing business;
 - ii. focus on rail and transport sectors;
 - iii. selective participation in solar;

Particulars

1) 28 August 2018 Presentation, slide 13.

- j. that the growth in solar projects (primary through fixed price EPC Contracts) drove a substantial increase in revenue through FY17 and FY18 but that there was a trend towards "alliance style" contracting structures in the solar market;

Particulars

1) 28 August 2018 Presentation, slide 15.

- k. that the proceeds from the Entitlement Offer and additional working capital facilities would strengthen the RCR balance sheet and address financial impacts of the cost overruns at the Daydream and Hayman Project;

Particulars

1) 28 August 2018 Presentation, slide 5.

- l. that the Entitlement Offer would enable RCR to avoid risk of breaching financial covenants under its syndicated facility agreement following release of its FY18 results;

Particulars

1) 28 August 2018 Presentation, slide 23.

- m. that the Entitlement Offer and extension of working capital facilities would strengthen RCR's balance sheet and position the business for sustainable growth by:
 - i. addressing the financial impacts at the Daydream and Hayman Project;
 - ii. supporting the delivery of "alliance style" contract, which typically have a higher degree of margin predictability, but require additional working capital;
 - iii. enhancing the Company's ability to manage working capital requirements;

Particulars

1) 28 August 2018 Presentation, slide 23.

- n. that the "key risks" attaching to an investment in shares in the Company included those identified in paragraph 46k herein.

Particulars

1) 28 August 2018 Presentation, slides 27 to 38.

- 48 On 30 August 2018, the Company lodged with the ASX and publicly released an announcement (the **30 August 2018 Announcement**) which stated that:
- a. the Company had successfully completed the institutional component of its Entitlement Offer as first announced to the market on 28 August 2018;
 - b. a total of approximately \$70 million was raised under the institutional component of the Entitlement Offer, with existing shareholders taking up approximately 88% of New Shares available to them;
 - c. that in addition to the \$25 million extension of the Company's existing working capital facility as announced on 28 August 2018, the institutional component

of the Entitlement Offer would strengthen the Company's balance sheet and position the business for sustainable growth by:

- i. addressing the financial impact of cost overruns experienced at the Daydream and Hayman Projects;
 - ii. supporting the delivery of "alliance style" contracts;
 - iii. enhancing the Company's ability to manage working capital requirements;
- d. the Company had requested that the Voluntary Suspension be lifted and for the Company's shares to recommence trading on the ASX on ex-entitlement basis with effect from the open of the market on 30 August 2018;
- e. that the retail component of the Entitlement Offer was expected to open on 3 September 2018 and close on 19 September 2018.

49 On 30 August 2018, the Voluntary Suspension was lifted immediately, following the release by the Company of the 30 August 2018 Announcement.

Particulars

- 1) ASX market announcement "RCR Tomlinson Limited (ASX: RCR) – Reinstatement to Official Quotation" dated 30 August 2018.

50 On 4 September 2018, the Company lodged with the ASX and publicly released an Appendix 3B new issue announcement, application for quotation of additional securities and agreement with respect to the retail component of the Entitlement Offer.

51 On 21 September 2018, the Company lodged with the ASX and publicly released an announcement stating that:

- a. there had been a successful completion of its Entitlement Offer;
- b. that the retail component of the Entitlement Offer closed on 19 September 2018 and that it had raised approximately \$14.4 million;
- c. that new shares to be issued under the retail component of the Entitlement Offer were expected to be allotted on 26 September 2018 and commence trading on a normal settlement basis on 27 September 2018.

(G) 30 October 2018 Annual General Meeting

52 On 30 October 2018, the Company's 2018 Annual General Meeting was held at the InterContinental Sydney.

53 At the 2018 Annual General Meeting, Brown addressed the meeting (**Chairman's AGM Address**) pursuant to which he stated:

- a. that the Company's statutory net loss after tax of \$16.1 million in FY18 was largely due to cost overruns experienced on the Daydream and Hayman Project;
- b. that in order to strengthen the Company's balance sheet and address the financial impacts of the Daydream and Hayman Project, on 28 August 2018 the Board announced the \$100 million Entitlement Offer;
- c. that the Entitlement Offer was well supported by existing and new institutional shareholder and also by the Company's existing base of retail shareholders, with approximately \$70 million being raised from the Company's institutional shareholders and approximately \$14 million from its retail shareholders, with the shortfall being taken up by five sub-underwriters;
- d. that the difficulties experienced on the Daydream and Hayman Projects triggered the company, led by James, to undertake a comprehensive review of the Company's projects;
- e. that the Company's primary focus in the near term would be on consolidating and re-positioning the Company to a more acceptable risk profile with a lower cost base;
- f. that the Board, together with the Company's management, had taken immediate action to enhance the Company's systems including establishing a Project Controls Group which reported to James, implementing regular audit cost control structures on all projects, and standardising key processes in the engineering and construction of its renewable energy projects, with these matters reducing potential project risks;
- g. that the Company in the near-term would focus on a higher proportion of projects that used an "alliance style" contract model which was more working-capital intensive but offered a more favourable risk allocation to the Company as the contract and should provide a higher degree of margin predictability relative to fixed price EPC Contracts;

- h. that the Company's rate of growth in the renewable energy sector would moderate in the near term to allow the Company to consolidate its position in that sector;
- i. that in the near-term the Company would act to:
 - i. consolidate its existing operations, successfully completing current projects and carefully assessing near-term opportunities with a focus on contracting with well-known counterparties and projects with a more acceptable risk profile;
 - ii. capitalising on opportunities in the resources sector;
 - iii. increasing exposure to the rail and transport sectors;
 - iv. selectively pursuing opportunities in the renewable energy sector; and
 - v. shifting the project portfolio towards a higher proportion of "alliance-style" contracting models;
- j. that it was fair to say that FY19 continued to offer up challenges for the Company, with some delays in contract awards and additional costs on some existing projects, offset by identified cost savings through overhead restructure.

Particulars

- 1) Chairman's AGM Address, lodged with the ASX and publicly released on 30 October 2018.

54 On 30 October 2018, the Company lodged with the ASX and published a presentation entitled "RCR Tomlinson Ltd Annual General Meeting 2018" (**AGM Presentation**) which:

- a. stated that the Company was re-positioning towards a more acceptable risk profile by:
 - i. consolidating its existing business as described in the first column on slide 17 of the AGM Presentation;
 - ii. focussing on rail and transport as described in the second column on slide 17 of the AGM Presentation; and
 - iii. engaging in selective participation in Solar Projects as described in the third column on slide 17 of the AGM Presentation;

Particulars

- 1) AGM Presentation, slide 17.
- b. stated that the Company had recently experienced some delays and labour productivity issues in completion phases of some of its Solar Projects; however:
- i. most of its Solar Projects were now greater than 96% complete;
 - ii. those delays and labour productivity issues were offset by identified cost savings and contingencies as identified in slide 19 of the AGM Presentation;

Particulars

- 1) AGM Presentation, slide 19.
- c. set out the Company's "experience" with respect to the following Solar Projects:
- i. the Greenough Project;
 - ii. the Gannawarra Project;
 - iii. the Sun Metals Project.

Particulars

- 1) AGM Presentation, slides 21 to 23.

(H) Continuing Conduct

- 55 The information contained in and the statements made in:
- a. the 28 August 2018 Announcement including that referred to in paragraph 45 herein;
 - b. the Prospectus including that referred to in paragraph 46 herein;
 - c. the 28 August 2018 Presentation including that referred to in paragraph 47 herein;
 - d. the 30 August 2018 Announcement including that referred to in paragraph 48 herein;
 - e. the Chairman's AGM Address including that contained in paragraph 53 herein; and

f. the AGM Presentation including that referred to in paragraph 54 herein, continued to be disseminated in the period between when that information was first disseminated or made and 12 November 2018 inclusive.

Particulars

- 1) The continuing nature of the dissemination of the information in subparagraphs (a) to (f) arises from the omission by the Company to modify, qualify or contradict any of that information prior to 12 November 2018.

(I) 12-14 November 2018 – Trading Halt and Voluntary Suspension

56 On 12 November 2018, the shares of the Company were suspended from quotation immediately under ASX Listing Rule 17.2, at the request of the Company, pending the release of an announcement regarding its earnings for FY19 and the associated consequences for its funding.

Particulars

- 1) ASX Announcement, “RCR Tomlinson Limited (ASX: RCR) – Trading Halt” dated 12 November 2018.

57 On 14 November 2018, the Company wrote to the ASX and:

- a. requested a voluntary suspension of the Company’s shares with immediate effect for the purpose of the Company further reviewing its earnings for FY19 and associated consequences for its funding;
- b. requested the voluntary suspension remain in place until the earlier of the Company making an announcement to the market and the commencement of normal trading on 20 November 2018;
- c. stated it was not aware of any reason why the voluntary suspension should not be granted and was not aware of any other information necessary to inform the market about its suspension at the that time.

Particulars

- 1) Letter from James to Mr Elvis Onyura (Listings Advisor, AXS) dated 14 November 2018.

58 On 14 November 2018, the shares of the Company were suspended from quotation immediately under Listing Rule 17.2, at the request of the Company, pending the

release of an announcement regarding its earnings for FY19 and the associated consequence for its funding.

Particulars

- 1) ASX Announcement, "RCR Tomlinson Limited (ASX: RCR) – Suspension from Official Quotation" dated 14 November 2018.

59 On 20 November 2018, the Company wrote to the ASX and:

- a. requested an extension of the voluntary suspension of the Company's shares with immediate effect for the purpose of reviewing its earnings for FY19 and the associated consequences for its funding;
- b. requested that the voluntary suspension remain in place until the earlier of the Company making an announcement to the market and the commencement of normal trading on 27 November 2018;
- c. stated it was not aware of any reason why the voluntary suspension should not be granted and was not aware of any other information necessary to inform the market about its suspension at that time.

Particulars

- 1) Letter from James to Mr Elvis Onyura (Listings Advisor, AXS) dated 20 November 2018.

(J) Appointment of Administrators

60 On 22 November 2018, the Company lodged with the ASX and publicly released an announcement which stated that:

- a. at 5pm on 21 November 2018, Jason Preston, William James Harris, Robert Conry Brauer and Matthew Wayne Caddy of McGrathNicol were appointed as administrators to the Company (the **Administrators**);
- b. at 8.45pm on 21 November 2018, Administrators were also appointed as administrators to the other related companies listed in the Schedule to the announcement;
- c. the Administrators would make further announcements to the market and would be in communication separately with creditors and other stakeholders.

61 On 22 November 2018, McGrathNicol lodged with the ASX an announcement stating that:

- a. the directors of the Company and its Australian subsidiaries resolved on 21 November 2018 to appoint the Administrators;
- b. the Administrators were undertaking an assessment of the business and urgently seeking funding from the Company's and its related entities' financiers;
- c. the Administrators would work closely with the Company's employees, suppliers and customers to quickly stabilise operations and to determine the appropriate strategy for the business with a sale process to be commenced immediately;
- d. the first statutory meeting of creditors was expected to take place on 3 December 2018.

III. THE TRUE POSITION

(A) The National Electricity Rules Information

- 62 On 23 March 2017, the Australian Energy Market Commission (the **AEMC**) released a directions paper which:
- a. stated that a power system with increasing non-synchronous generation (such as solar generation):
 - i. had less inertia which in turn meant that the system had less time to recover from sudden equipment failure before widespread blackouts;
 - ii. meant the system strength (being the measure of the current that would flow into a fault at a given point in the system) was reduced;
 - b. outlined the AEMC's plan to address the reduced system strength referred to in subparagraph (a) herein, which plan included:
 - i. new rules making networks responsible for maintaining a minimum short circuit ratio to connected generators which in turn must meet their registered performance standards above this level;
 - ii. arrangements to enable networks to charge connecting generators to cover the cost of remedial action if the entry of that new generator causes a breach to minimum short circuit ratios;

- iii. arrangements under which the costs caused by generator retirements would be met by networks and defined as a prescribed service which would be ultimately funded by consumers.

63 On 19 September 2017, the AEMC made the *National Electricity Amendment (Managing power system fault levels) Rule 2017 No 10* under the *National Electricity Law* (the **National Electricity Rules**) which from 1 July 2018:

- a. required the relevant Network Service Provider (**NSP**) to provide the applicant generator (**Applicant Generator**) with information regarding the local system strength in response to their connection enquiry;
- b. required the NSP to undertake a preliminary assessment to screen for the need to undertake a detailed assessment of the connection of a new generator;
- c. required the NSP to remediate any adverse impact on system strength of the connection of the generator as a negotiated network service (unless the Applicant Generator implemented a system strength remediation scheme) following approval by the NSP; and
- d. required the Applicant Generator to fund the cost of remediating any works to address an adverse impact on system strength due to the connection of the new generator.

Particulars

- 1) See National Electricity Rules Version 110 (the version of the National Electricity Rules in place as at 1 July 2018).

64 By 28 August 2018, the National Electricity Rules (including those referred to in paragraph 63 herein) were having the effect of:

- a. delaying the completion of some solar projects; and
- b. materially increasing the cost of completion of those solar projects,

(the **National Electricity Rules Information**).

Particulars

- 1) See industry website Renew Economy report dated 30 July 2018 entitled "Major solar, wind projects stumble in front of new grid hurdles" which reported:

“Some, including those that have gotten as far as signing power purchase agreements, are having to go back to the drawing board because of connection requirements the developers either ignored, or didn’t know about.

The issue is most acute in western Victoria, but is also being felt in northern Queensland and south-west NSW.

Many new projects are being told that they face significant curtailment without either adding battery storage or old-style machinery known as synchronous condensers to deal with system strength issues.

Both options are causing headaches for developers, because either way they are trashing their financial models, and could cause extensive delays to projects that many expected would begin construction anytime soon.”

- 2) On 15 October 2018, the *Australian Financial Review* in an article entitled “AEMO imposes tough conditions on new wind and solar in Victoria’s ‘full’ grid” reported:

“AEMO is imposing tougher conditions on new wind and solar farms connecting to the grid in areas where system stability is suffering from a flood of renewables, described as “anarchy” by Energy Security Board chairman Kerry Schott...

“With a large number of new entrants unfamiliar with uniquely Australian conditions, we are seeing some proponents make commercial commitments ahead of confirming grid connection requirements – this has the potential to lead to suboptimal investment and power system performance outcomes,” an AEMO spokesperson said...

One source said AEMO required the developers include a “synchronous condenser” – an electric motor that is not connected to a load but spins idly and can be used to stabilise the grid at short notice if sudden fluctuations in energy supply or demand cause the voltage or frequency to deviate from safe levels.

Such "system strength" services traditionally came as a by-product of thermal generators, which use spinning turbines, but they are not an inherent part of solar farms and are only just being introduced to wind turbines. A synchronous condenser can do the job but could add millions of dollars to the project's cost."

- 3) By 28 August 2018, many wind and solar projects had experienced delays in connecting to the grid, for example:
 - a) the Lakeland wind farm (being developed by Windlab) lost its major equity investor InfraRed due to the inability to price risk associated with the project's grid connection, including risk of network losses and risk of curtailment (Windlab Limited ASX Release dated 6 November 2018);
 - b) the timetable for the Cherry Tree windfarm project developed by Infigen Energy had been impacted by the introduction of a requirement for several additional grid studies by the network owner. The company reported that "the introduction of additional grid studies, and the potential implications for new projects, explains significant delays being encountered by project proponents in many parts of the network"(see Infigen Energy ASX Release dated 16 November 2018 'AGM Presentations' page 9)];
 - c) French-based renewable energy developer Neoen reported in September 2018 that it had made a multi-million claim against the builder of three smaller NSW solar farms over construction and connection delays (see Neoen Llc *Document de Base* dated 11 September 2018, pages 426 and 481);
 - d) French-based renewable energy developer Total Eren reported in October 2018 that it had committed to install a synchronous condenser as a component of their solar farm "in order to facilitate a timely connection to the Victorian Transmission System" (see Total Eren Press Release dated 17 October 2018 'Total Eren Launches Construction of Its First Solar PV Plant In Australia' page 2);

e) South Australian Transmission Network Service Provider ElectraNet was authorised by the Australian Energy Regulator to install several Synchronous Condensers to remediate system strength (see Letter AER to ElectraNet 18 February 2019 'Re: System strength gap in South Australia').

4) Further particulars will be provided with evidence and discovery.

(B) The Solar Project Information

65 By 28 August 2018:

a. the completion of the following Solar Projects was delayed:

- i. the Gannawarra Project;
- ii. the Manildra Project;
- iii. the Oakey Project;
- iv. the Sun Metals Project;

Particulars

1) See Administrators' report to creditors pursuant to section 75-225 of the Insolvency Practice Rules (Corporations) 2016 dated 19 March 2019 (**Administrators' Report**), Figure 5.

b. the following Solar Projects were also close to completion:

- i. the Clermont Project;
- ii. the Darling Downs Project;

Particulars

1) Administrators' Report, Figure 5.

c. by reason of the National Electricity Rules Information:

- i. there was a risk of delay of completion of the Solar Projects referred to in this paragraph (or further delay in respect of the Solar Projects referred to in subparagraph (a) herein); and
- ii. by reason of that risk of delay:

1. there was a risk of delay in the Company receiving the final payments for these Solar Projects under the EPC Contracts that governed them; and
2. there was a risk of an increased cost of completing those Solar Projects including the risk of the Company being exposed to liquidated damages under the EPC Contracts that governed them,

(the **Solar Project Information**).

Particulars

- 1) Administrators' report, page 48, which states that the key issues which presented problems to the Company's Management in relation to solar contracts included:
 - a. timing delays;
 - b. the cash profile of the contracts;
 - c. interpretation of the milestone requirement prior to release of payment;
 - d. limited recourse in contracts for the Company to force timely approvals of extension of time requests, variations and milestone approvals, coupled with requirements to progress with construction to avoid adverse delay claims; and
 - e. the fixed price nature of the contracts, resulting in the majority of cost overruns (including costs incurred and delay liquidated damages) being borne by the Company (subject to limited variations).
- 2) Administrators' report, page 49, which states that external reasons for delay in final completion of the Solar Projects given by the Company's Management included the AEMC Information, described in the Administrators' Report as:
 - a. requests for additional testing outside of agreed requirements;

- b. delays in ability to perform tests required as a result of delays in the finalisation of connection agreement with AEMO.

(C) The Cash Flow Information

66 By 28 August 2018, and by reason of:

- a. the features of the EPC Contracts referred to in paragraph 11 herein;
- b. the National Electricity Rules Information; and
- c. the Solar Project Information,

there was a real risk of cumulative and compounding cash flow stress on the Company (the **Cash Flow Information**).

Particulars

- 1) That there was a real risk of cumulative and compounding cash flow stress on the Company by 28 August 2018 is reflected in the engagement of McGrathNicol by the Company's legal advisors on 14 August 2018, whose work included undertaking a head office based desktop review of the RCR Group's short term cash flow forecast dated 10 August 2018 (**10 August 2018 Forecast**). The report included commentary on the sources of information and on the processes involved in preparing the cash flow forecast. McGrathNicol's work also included "contingency planning: the role included gathering various information to allow preparation of a planning document for the appointment of administrators, if it were to be required" (**Phase 1 Work**) (Administrators' Report, page 28).
- 2) The Phase 1 Work (which was completed before 28 August 2018) identified that the Company's 10 August 2018 Forecast had not been prepared on the basis that payments would be made to creditors as and when they fell due at all times during the analysis period. Further, at certain points in time, the Company's management deferred payment to creditors (see Administrators' Report, page 57). The Phase 1 Work also identified that the Company's management had not applied sufficient scepticism in challenging the assumptions,

particularly in relation to the timing of milestone payments and new Solar Project wins.

- 3) See further Figure 6 of Administrators' Report, "Net cumulative cash of solar business unit" which shows that as at 31 July 2018 the cumulative cash flow of the solar business unit of the Company had fallen to (\$50.8 million), a \$203.4 million net cash outflow in seven months, due to the combined impact of delayed milestone receipts, an increase in costs, and the upfront weighted nature of the payment profile of the contracts. The Administrators state at page 50 of the Administrators' Report that the timing delays in reaching project milestones and project completion had a significant impact on the cash inflows received during the period from April 2018 to the Administrators' appointment. Forecast milestone payments during these months were progressively pushed out to later periods as milestones were not met. Other key factors impacting the cumulative cash flow forecasts at this time were cost overruns and liquidated damages claims by solar farm principals.

(D) The Insufficiency of the Entitlement Offer Information

- 67 By 28 August 2018, and by reason of the Cash Flow Information, there was a real risk that the amount of \$100 million sought to be raised by the Entitlement Offer would not in the near-term enable the Company to carry on its business and pay its debts when they became due and payable (the **Insufficiency of the Entitlement Offer Information**).

Particulars

- 1) The particulars to paragraph 64 are repeated.
- 2) While the 10 August 2018 Forecast showed that \$100 million sought through the Entitlement Offer was sufficient to remain within the agreed facility, and to return to a consistently positive cash position by the end of December 2018 (Administrators' Report, page 58), the 10 August 2010 Forecast in fact was not prepared on the basis that payments would be made to creditors as and when they fell due at all times during the

analysis period. The 10 August 2018 Forecast was optimistic due to deficiencies in the assumptions underpinning the forecasts, in particular with respect to the timing of milestone payments under the Solar Projects and new project wins (see Administrators' Report, page 57).

IV. INFORMATION OF WHICH THE DEFENDANT WAS AWARE

68 By 28 August 2018, the Company was aware (within the meaning of ASX Listing Rule 19.12) of the National Electricity Rules Information.

Particulars

- 1) The National Electricity Rules Information was publicly available information.
- 2) By reason of their roles as Chairman, Interim Chief Executive Officer and Chief Financial Officer of a company that was in the business which included the engineering, procurement and construction of large-scale renewable energy (including solar) generation assets, each of Brown James and Phipps knew or ought to have known of the National Electricity Rules Information.

69 By 28 August 2018, the Company was aware (within the meaning of ASX Listing Rules 19.12) of the Solar Project Information.

Particulars

- 1) The particulars to paragraph 66 are repeated.
- 2) By 28 August 2018, a comprehensive internal investigation, led by James, into the Daydream and Hayman Projects had been completed which, inter alia, sought to determine whether similar procurement and cost overrun issues experience on the Daydream and Hayman Project had occurred on any of the other Solar Projects.
- 3) Having regard to that objective of the comprehensive internal investigation, it ought to have revealed the Solar Project Information.

- 4) As the leader of this investigation, James ought to have known of the Solar Project Information.
- 5) By 28 August 2018, Phipps (as the Chief Financial Officer) and Brown (as the Chairman) ought to have been aware of the Solar Project Information by reason of the knowledge that James ought to have had as particularised in paragraph 4 above who should have reported those delays and complications to Phipps and Brown.
- 6) Further particulars will be provided with discovery

70 By 28 August 2018, the Company was aware (within the meaning of ASX Listing Rule 19.12) of the Cash Flow Information.

Particulars

- 1) The particulars to paragraph 69 are repeated.
- 2) Further, prior to 28 August 2018, McGrathNicol was engaged to conduct the Phase 1 Work which included a desktop review of the 10 August 2018 Forecast and contingency planning for the appointment of administrators. Both Brown and James and Company senior management attended various meetings on 13, 15, and, 17 August 2018 to discuss the Phase 1 work with McGrathNicol, including short-term cashflow structure and assumptions, key projects and the impact of those projects on the 10 August 2018 Forecast (see Appendix 2 – Phase 1 meetings to the Administrators' Report).
- 3) By reason of their attendance at these meetings, both Brown and James (and Phipps as part of the Company's senior management team at the time) knew or ought to have known of the Cash Flow Information.
- 4) Further particulars will be provided with discovery.

71 By 28 August 2018, the Company was aware (within the meaning of ASX Listing Rule 19.12) of the Insufficiency of Entitlement Offer Information.

Particulars

- 1) The particulars to paragraph 70 are repeated.

2) Further particulars will be provided with discovery.

V. THE COMPANY'S MISLEADING OR DECEPTIVE CONDUCT

(A) Misleading or deceptive conduct by omission

72 Neither the 28 August 2018 Announcement, the Prospectus nor the 28 August 2018 Presentation disclosed or referred to:

- a. the Solar Projects Information;
- b. the Cash Flow Information; or
- c. the Insufficiency of the Entitlement Offer Information.

73 The Company's conduct in failing to disclose in any of the 28 August 2018 Announcement, the Prospectus and the 28 August 2018 Presentation:

- a. the Solar Projects Information;
- b. the Cash Flow Information; and
- c. the Insufficiency of the Entitlement Offer Information,

was conduct in trade or commerce within the meaning of section 1014H of the Corporations Act, section 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**) and/or s 18 of the *Australian Consumer Law* (**ACL**).

74 The Company's conduct in failing to disclose in any of the 28 August 2018 Announcement, the Prospectus and the 28 August 2018 Presentation:

- a. the Solar Projects Information;
- b. the Cash Flow Information; and
- c. the Insufficiency of the Entitlement Offer Information,

was misleading or deceptive, or likely to mislead or deceive, contrary to section 1014H of the Corporations Act, section 12DA of the ASIC Act and/or section 18 of the ACL.

(B) Misleading or deceptive representations

75 By reason of the matters pleaded in paragraphs 44 to 47 herein, on 28 August 2018, the Company represented to the market that:

- a. the issues which it had experienced with respect to the Daydream and Hayman Projects were project-specific;
- b. if the Company raised around \$100 million through the Entitlement Offer, that would:
 - i. strengthen the Company's balance sheet;
 - ii. enable the Company to avoid risk of breaching financial covenants under its syndicated facility agreement following the release of its FY18 results; and
 - iii. position the business for sustainable growth in the future.

(the **28 August 2018 Representations**).

Particulars

- 1) The 28 August 2018 Representations were express and:
 - a. in respect of the representation pleaded in subparagraph (a) herein, the Plaintiff refers to the statements made in the 28 August 2018 Announcement set out in paragraph 45c herein, the statement made in the Prospectus set out in paragraph 46c herein and the statement made in the 28 August 2018 Presentation set out in paragraph 47a herein.
 - b. in respect of the representation pleaded in subparagraph (b) herein, the Plaintiff refers to the statements made in the 28 August 2018 Announcement and set out in paragraphs 45k-45m herein, the statement made in the Prospectus and set out in paragraph 46k herein and the statements made in the 28 August 2018 Presentation and set out in paragraphs 47k-47m herein.

76 By reason of the matters pleaded in paragraphs 44 to 47 herein, on 28 August 2018, the Company represented to the market that the Company had a reasonable basis for making the 28 August 2018 Representations (the **28 August 2018 Basis Representation**).

77 From 28 August 2018 to 12 November 2018 inclusive, the Company continued to make the 28 August 2018 Representations and the 28 August 2018 Basis Representation.

Particulars

1) Paragraph 55 and the particulars thereto are repeated.

78 The making of and the failure to correct or qualify each of the 28 August Representations and the 28 August 2018 Basis Representation was conduct engaged in by the Company:

- a. in trade or commerce;
- b. in relation to the shares in the Company.

79 As at and from 28 August 2018, the Company did not have reasonable grounds for making the 28 August 2018 Representations.

Particulars

1) To the extent that the 28 August 2018 Representations were representations as to future matters, the Plaintiff relies on section 12BB(1) of the ASIC Act, section 796C of the Corporations Act and/or section 4 of the ACL.

80 As at and from 28 August 2018, by making and/or failing to correct or qualify the 28 August 2018 Representations and the 28 August 2018 Basis Representation in the circumstances pleaded in paragraphs 56 to 67 herein, the Company engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

81 By reason of the matters pleaded in paragraphs 75 to 80 herein, the Company contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL.

VI. CONTRAVENTIONS OF SECTION 728 CORPORATIONS ACT IN RESPECT OF THE PROSPECTUS

(A) Contravention in respect of omissions from the Prospectus

82 As pleaded in paragraph 72 herein, the Prospectus did not contain or refer to, either expressly or impliedly:

- a. the Solar Projects Information;
- b. the Cash Flow Information; and

- c. the Insufficiency of the Entitlement Offer Information.

Particulars

- 1) The particulars to paragraph 72 are repeated.

83 Each of:

- a. the Solar Projects Information;
- b. the Cash Flow Information; and
- c. the Insufficiency of the Entitlement Offer Information

was information that investors and their professional advisers would reasonably require to make an informed assessment of the Entitlement Offer.

Particulars

- 1) Corporations Act, section 710.

84 By reason of the matters pleaded in paragraphs 82 and 83 herein, the Prospectus omitted material required by section 710 of the Corporations Act.

85 By reason of the matters pleaded in paragraph 84 herein, the Company was not entitled to make the Entitlement Offer and in making the Entitlement Offer, the Company contravened section 728 of the Corporations Act.

Particulars

- 1) Corporations Act, section 728(1)(b).

(B) Contraventions in respect of misleading or deceptive statements made in Prospectus

86 The Prospectus contained the 28 August 2018 Representations.

Particulars

- 1) The particulars to paragraph 75 herein are repeated to the extent they refer to the Prospectus.

87 As at 28 August 2018, the Company did not have reasonable grounds to make the 28 August 2018 Representations.

Particulars

- 1) To the extent that the 28 August 2018 Representations as contained in the Prospectus were representations as to future matters, the Plaintiff relies on section 728(2) of the Corporations Act.

88 The 28 August 2018 Representations to the extent they were contained in the Prospectus were misleading or deceptive statements.

Particulars

- 1) Paragraph 80 is repeated to the extent it refers to the Prospectus.
- 2) The 28 August 2018 Representations were misleading or deceptive statements for the purposes of section 728(1)(a) of the Corporations Act.

89 By reason of the matters pleaded in paragraphs 86 to 88 herein, the Company was not entitled to make the Entitlement Offer and in making the Entitlement Offer, the Company contravened section 728 of the Corporations Act.

Particulars

- 1) Corporations Act, section 728(1)(a).

VII. THE COMPANY'S CONTINUOUS DISCLOSURE CONTRAVENTIONS

(A) The Solar Projects Information

90 By reason of the matters pleaded in paragraph 69 herein, by 28 August 2018, the Company was aware (within the meaning of ASX Listing Rule 19.12) of the Solar Project Information.

91 As at and from 28 August 2018, the Solar Project Information was information that a reasonable person would expect to have a material effect on the price or value of the Company's shares within the meaning of ASX Listing Rule 3.1 and section 674(c)(ii) of the Corporations Act.

92 By reason of the Company's Continuous Disclosure Obligations and the matters pleaded in paragraphs 90 and 91 herein, on and from the time it became aware of it, the Company became obliged immediately to tell the ASX the Solar Projects Information.

93 The Company did not inform the ASX of the Solar Projects Information immediately on becoming aware of it, or at all in the Relevant Period, and the market of actual and potential investors in the Company's shares did not become aware of that information until after 22 November 2018.

94 By reason of the matters pleaded in paragraphs 90 to 93, the Company contravened ASX Listing Rule 3.1 and section 674(2) of the Corporations Act.

(B) The Cash Flow Information

95 By reason of the matters pleaded in paragraph 70 herein, by 28 August 2018, the Company was aware (within the meaning of ASX Listing Rule 19.12) of the Cash Flow Information.

96 As at and from 28 August 2018, the Cash Flow Information was information that a reasonable person would expect to have a material effect on the price or value of the Company's shares within the meaning of ASX Listing Rule 3.1 and section 674(c)(ii) of the Corporations Act.

97 By reason of the Company's Continuous Disclosure Obligations and the matters pleaded in paragraphs 95 and 96 herein, on and from the time it became aware of it, the Company became obliged immediately to tell the ASX the Cash Flow Information.

98 The Company did not inform the ASX of the Cash Flow Information immediately on becoming aware of it, or at all in the Relevant Period, and the market of actual and potential investors in the Company's shares did not become aware of that information until after 22 November 2018.

99 By reason of the matters pleaded in paragraphs 95 to 98, the Company contravened ASX Listing Rule 3.1 and section 674(2) of the Corporations Act.

(C) The Insufficiency of the Entitlement Offer Information

100 By reason of the matters pleaded in paragraph 71 herein, by 28 August 2018, the Company was aware (within the meaning of ASX Listing Rule 19.12) of the Insufficiency of the Entitlement Offer Information.

101 As at and from 28 August 2018, the Insufficiency of the Entitlement Offer Information was information that a reasonable person would expect to have a material effect on the price or value of the Company's shares within the meaning of ASX Listing Rule 3.1 and section 674(c)(ii) of the Corporations Act.

- 102 By reason of the Company's Continuous Disclosure Obligations and the matters pleaded in paragraphs 100 and 101, on and from the time it became aware of it, the Company became obliged immediately to tell the ASX the Insufficiency of the Entitlement Offer Information.
- 103 The Company did not inform the ASX of the Insufficiency of the Entitlement Offer Information immediately on becoming aware of it, or at all in the Relevant Period, and the market of actual and potential investors in the Company's shares did not become aware of that information until after 22 November 2018.
- 104 By reason of the matters pleaded in paragraphs 100 to 103, the Company contravened ASX Listing Rule 3.1 and section 674(2) of the Corporations Act.

VIII. CAUSATION & LOSS AND DAMAGE

(A) Continuous disclosure contraventions and misleading or deceptive conduct

- 105 The Plaintiff and Group Members acquired the Company's shares in a market of investors or potential investors in the Company's shares:
- a. operated by the ASX;
 - b. regulated by, *inter alia*, sections 674(2) of the Corporations Act and Listing Rules 3.1;
 - c. where the price or value of the Company's shares would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and ASX Listing Rule 3.1;
 - d. where material information had not been disclosed, which a reasonable person would expect, had it been disclosed would have had a material adverse effect on the price or value of the Company's shares (namely the information the subject of the contraventions referred to in Section VII of this CLS, or any one of them); and
 - e. where misleading or deceptive conduct had occurred (namely the conduct referred to in Section V of this CLS) by the omission of the Company to make a statement or statements and/or the making of statements to the market that a reasonable person would expect to have a material effect on the price or value of the Company's shares.

106 During the Relevant Period, the Plaintiff and Group Members acquired an interest in the Company's shares in circumstances in which the contraventions referred to in sections V and VII (or any one or combination of them) caused the market price of the Company's shares to be, or materially contributed to the market price of the Company's shares being, substantially greater than their true value and/or the market price that would otherwise have prevailed at the time of the acquisition but for those contraventions.

Particulars

- 1) Full particulars of the extent to which the contraventions referred to in Sections V and VII caused the market price for the Company's shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed at the time of acquisition will be provided after the Plaintiff has served expert evidence.

107 Further or in the alternative to paragraph 105 herein, if any of the 28 August 2018 Announcement, the Prospectus or the 28 August 2018 Presentation contained or referred to:

- a. the Solar Projects Information;
- b. the Cash Flow Information; and
- c. the Insufficiency of the Entitlement Offer Information,

the Plaintiff and one or more of the Group Members would not have acquired their interests in the Company's shares in the Relevant Period.

Particulars

- 1) The identity of all those Group Members who would not have acquired their interests in the Company's shares in the Relevant Period as pleaded in this paragraph is not within the Plaintiff's knowledge and cannot be ascertained unless and until those advising the Plaintiff take detailed instructions from those individual Group Members on individual issues relevant to the determination of this individual Group Members' claims.

108 Further or in the alternative to paragraphs 105, 106 and 107 herein, one or more of the contraventions in sections V and VII of this CLS materially contributed to the decision of the Plaintiff and one or more of the Group Members to purchase the

Company's shares at the prevailing market price during the Relevant Period and/or to retain the Company's shares during the Relevant Period.

Particulars

1) The particulars to paragraph 107 are repeated.

109 By reason of the matters pleaded in paragraphs 105 to 108 herein, the Plaintiff and the Group Members have suffered loss and damage in relation to their interest in the Company's shares by and resulting from the contraventions alleged in sections V and VII of this CLS.

(B) Contravention of section 728 of the Corporations Act

110 The Plaintiff and Group Members would not have acquired their interests in the Company's shares pursuant to the Entitlement Offer if the Prospectus contained or referred to:

- a. the Solar Projects Information;
- b. the Cash Flow Information; and
- c. the Insufficiency of the Entitlement Offer Information.

Particulars

1) The particulars to paragraph 107 are repeated.

111 By reason of the matters pleaded in paragraph 110 herein, the Plaintiff and Group Members have suffered loss or damage because of the Entitlement Offer made under the Prospectus.

112 By reason of the matters pleaded in paragraphs 110 and 111 herein, the Plaintiff and Group Members are entitled to recover their loss and damage from the Company.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE


1 None at this time.

E. MEDIATION

2 The Plaintiff is willing to proceed to a mediation.

SIGNATURE

Signature of legal representative



Simon Morris

Capacity

Solicitor for the Plaintiff

Date of signature

7. 6. 19

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

Plaintiff

CJMcG Pty Ltd (ACN 169 952 096) as
trustee for the CJMcG Superannuation Fund

Plaintiff

Defendant

RCR Tomlinson Limited ACN 008 898 486
(In Liquidation)

Defendant

FURTHER DETAILS ABOUT PLAINTIFF

Plaintiff

Name	CJMcG Pty Ltd (ACN 169 952 096) as trustee for the CJMcG Superannuation Fund
Address	Unit 2, Charring Court 35 Old Northern Road Baulkham Hills NSW 2153.

Legal representative for plaintiff

Name	Simon Jacob Morris
Practising certificate number	30490
Firm	Piper Alderman
Contact solicitor	Simon Morris
Address	Level 23 Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000
DX address	10216 Sydney Stock Exchange
Telephone	(02) 9253 9909
Fax	(02) 9253 9900
Email	smorris@piperalderman.com.au
Electronic service address	smorris@piperalderman.com.au

DETAILS ABOUT DEFENDANT

Name	RCR Tomlinson Limited ACN 008 898 486 (In Liquidation)
Address	Level 23 Gateway 1 Macquarie Place Sydney NSW 2000