

## Annual Report to Creditors 15 March 2017

Oceanlinx Limited (Receivers and Managers Appointed) (In Liquidation)  
ACN 077 104 404 (the Company, Oceanlinx)

### 1 Update on the Liquidation

#### 1.1 Federal Court of Australia Proceedings No. NSD461/2016

As reported to creditors previously, including in the reports to creditors dated 3 March 2016 and 5 May 2016:

- (a) on 10 December 2014, Ocean Energy Construction Pty Ltd (**OEC**) commenced proceedings against, inter alia, the Company and the Liquidators, in respect of the conduct of the sale of the Company's intellectual property by the Liquidators to a third party;
- (b) on 11 March 2016, his Honour Justice Yates handed down judgment in the proceedings in favour of the defendants, and subsequently ordered that OEC pay the defendants' costs of the proceedings; and
- (c) on 2 April 2016, OEC filed and served a notice of appeal in respect of his Honour's judgment.

On 20 June 2016, the Court ordered that OEC provide security for the Company and the Liquidators' costs of the proceedings in the amount of \$33,367.25. The Proceedings are stayed until such security is provided, and if security is not provided within 21 days after final orders being made in Federal Court of Australia Proceedings No. NSD337/2016 (referred to in more detail below), then the appeal will be dismissed with costs.

As such, the Company and its Liquidators are not presently required to take any further steps in these proceedings.

#### 1.2 Federal Court of Australia Proceedings No. NSD337/2016

As stated in the circular to creditors dated 5 May 2016, OEC commenced proceedings against the Company, the Liquidators and the Receivers asserting, inter alia, a priority claim to insurance settlement proceeds received by the Company by virtue of the sinking of the Company's wave energy converter machine in South Australia in March 2014. Each of the defendants have filed a defence in the proceedings.

On 29 August 2016, the Court ordered that:

- (a) OEC provide security for the Company and the Liquidators' costs of the proceedings in two (2) tranches in the combined amount of \$120,000;
- (b) OEC provide security for the Receivers' costs of the Proceedings in two (2) tranches in the combined amount of \$75,000; and
- (c) the Proceedings be stayed until payment of security in accordance with the above orders.

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Each of the first tranches of security have been paid into Court by OEC, totalling \$97,500, and as such the proceedings are no longer stayed. Each of the second tranches of security are due to be paid six (6) weeks before the hearing date for the proceedings, which has not yet been set down.

On 10 March 2017, her Honour Justice Jagot:

- (a) granted leave to OEC to amend its claims against each of the defendants (subject to payment of a further amount of \$8,500 as security for the Receivers' costs of the proceedings);
- (b) ordered that OEC pay the defendants' costs thrown away by virtue of OEC's amendments; and
- (c) granted leave pursuant to section 500(2) of the *Corporations Act 2001 (Cth)* to commence and continue the proceedings against the Company whilst it is in liquidation.

The defendants will be required to file amended defences to OEC's amended originating process and statement of claim (once they are filed by OEC pursuant to the leave granted by the Court). The matter is to be listed for further directions on 1 May 2017, and it is likely that a timetable will be set down for the parties to file and serve their evidence in the proceedings.

## 2 Estimated Statement of Position (ESOP)

Attached at **Annexure A** is the ESOP of the Company provided in our annual report to creditors dated 3 March 2016. We have not prepared an updated ESOP due to the material uncertainty surrounding the various Court proceedings. Once these proceedings have been finalised, we will provide creditors with an updated ESOP.

## 3 Receipts and Payments

Attached at **Annexure B** is a copy of the receipts and payments in the winding up of the Company for the annual anniversary period to 17 December 2016.

## 4 Liquidators' Annual Obligations

This report is provided to creditors of the Company pursuant to Section 508 of the *Corporations Act 2001 (the Act)* and should be read in conjunction with our previous reports and updates issued in this matter.

Should you have any further queries in this matter, please do not hesitate to contact George Simos of this office on (02) 9322 5447 or by email at [gsimos@deloitte.com.au](mailto:gsimos@deloitte.com.au).

Yours faithfully,



**Vaughan Neil Strawbridge**  
Liquidator

## **Annexure A**

### 3 Updated Estimated Statement of Position (ESOP)

Set out below is the updated ESOP of Oceanlinx. All amounts are exclusive of GST.

Estimated statement of position	Notes	439A Sup. Report		AGM Report	
		10 December 2014		3 March 2016	
\$'000		High	Low	High	Low
<b>Assets available</b>					
Cash at bank and other assets		349	349	19	19
Surplus from Receivers and Managers		2,400	2,230	1,800	1,800
Repayment of potential unfair preference		51	51	-	-
Funds held by Receivers and Managers		-	-	500	500
Less Receivers additional costs	1	-	-	(100)	(200)
SA Maritime - cost of assessing claim		-	-	(50)	(50)
OEC Claim - cost of assessing claim		-	-	(75)	(75)
Less s562 apportionment to SA Govt	2	-	-	-	(3,000)
Less s562 apportionment to OEC		-	-	-	(715)
Recovery of legal action costs if Consortium unsuccessful	3	-	-	154	-
<b>Total assets</b>		<b>2,800</b>	<b>2,630</b>	<b>2,248</b>	<b>(1,721)</b>
<b>Administration Costs</b>					
Administrators' Fees		(267)	(267)	-	-
Administrators' disbursements		(15)	(15)	-	-
Legal fees		(120)	(120)	-	-
		<b>(403)</b>	<b>(403)</b>	-	-
<b>Liquidators' Costs</b>					
Current Liquidators' Fees	4	-	-	(217)	(217)
Liquidators' disbursements to date		-	-	(13)	(13)
Legal Fees		-	-	(200)	(200)
		-	-	<b>(430)</b>	<b>(430)</b>
<b>Estimated Costs to Completion</b>					
Liquidators' fees to completion		(80)	(80)	(120)	(120)
Legal fees to completion		(20)	(20)	(75)	(75)
Payment of Consortium's legal action costs if action successful	5	-	-	-	(120)
Future legal costs - OEC Claim	6	-	-	(200)	(200)
OEC legal action costs if action successful		-	-	-	(140)
		<b>(100)</b>	<b>(100)</b>	<b>(395)</b>	<b>(655)</b>
<b>Funds available to secured creditors</b>		<b>2,297</b>	<b>2,127</b>	<b>1,423</b>	<b>(2,806)</b>
CN Holders - ALLPAAP security interest		-	-	-	-
<b>Funds available to unsecured creditors</b>		<b>2,297</b>	<b>2,127</b>	<b>1,423</b>	<b>(2,806)</b>
Less: Cash set aside for salvage costs		NA	NA	NA	NA
<b>Surplus / deficit available to unsecured creditors</b>		<b>2,297</b>	<b>2,127</b>	<b>1,423</b>	<b>(2,806)</b>
<b>Unsecured creditors</b>					
CN Holders - unsecured	7	(370)	(370)	(370)	(370)
Trade creditors		(3,044)	(3,044)	(3,044)	(3,044)
Contingent liabilities - SA	8	(3,000)	(3,000)	(3,000)	-
Contingent liabilities - NSW	9	(500)	(1,500)	(1,500)	(3,500)
Contingent liability - OEC	10	-	-	(715)	-
		<b>(6,914)</b>	<b>(7,914)</b>	<b>(8,629)</b>	<b>(6,914)</b>
<b>Surplus / (deficit) to creditors from Liquidation</b>	11	<b>(4,617)</b>	<b>(5,787)</b>	<b>(7,206)</b>	<b>(9,720)</b>
Return cents in the dollar		33	27	16	-

\*The above is provided for illustrative purposes only. The ESOPs are not directly comparable as they present estimated statements of position on different bases' at different points in time.

## Notes to estimated statement of position

1	The Receivers are currently holding surplus cash of \$500k for the purpose of dealing with contingent creditor claims pursuant to section 562 of the Act. In accordance with section 562 of the Act, the Receivers are entitled to claim costs associated with dealing with these claims from the insurance proceeds. The Receivers' costs associated with dealing with the section 562 Claims have been estimated at between \$100k and \$200k in the high and low scenarios.
2	It is uncertain whether SA Maritime or OEC have enforceable claims under section 562 of the Act. The low scenario assumes that the claims are both enforceable and will be paid in full in priority to unsecured creditors, while the high scenario assumes that no priority payment is made to either SA Maritime or OEC and that their claims will rank as unsecured claims against the company.
3	In the event that judgment handed down in the Federal Court Proceedings is not in favour of the Consortium, the Liquidators intend to seek a cost order for payment of legal expenses incurred. The high scenario includes an estimate of the recovery of legal expenses at the rate of 70% of those actually incurred. The low scenario assumes that the liquidators are not successful in the Federal Court Proceedings and there is no recovery of legal expenses.
4	In our Supplementary 439A Report we estimated future costs of the liquidation including legal expenses to be \$100k subject to Court actions and a determination under section 562 of the Act. Following publication of the Supplementary 439A Report the Federal Court Proceedings were filed and commenced by the Consortium and we received notice of the OEC claim. In the event that further Court actions or appeals are made in relation to the Federal Court Proceedings or a determination under section 562 of the Act, the liquidation costs may be significantly higher than estimated.
5	The low scenario assumes that judgment in the Federal Court Proceedings is not in favour of the Liquidators and a costs order is imposed against them.
6	Given the nature of correspondence exchanged to date, the Liquidators anticipate legal fees associated with making a determination in relation to OEC's claim to be extensive. The low range scenario assumes that any legal action commenced by OEC is found in their favour and that the Liquidators are subject to an adverse cost order. In the event that the Liquidators are successful in such proceedings, the Liquidators would seek to impose a costs order against OEC. Such recovery is uncertain and has therefore not been factored into the ESOP.
7	Unsecured CN Holders claims of \$370k rank pari passu with unsecured trade creditors.
8	The Liquidators have received a proof of debt from SA Maritime in the amount of \$3m. The high scenario assumes that SA Maritime is not entitled to a priority distribution and that their total claim will rank as an unsecured claim in the winding up of the Company.
9	In our Supplementary 439A Report we estimated NSW Maritime's contingent claim to be in the range of \$500k to \$1.5m. We have received subsequent advice from NSW Maritime indicating that their claim could be as high as \$3.5m. Based on our own preliminary enquiries and additional information from NSW Maritime, we have made a conservative estimate of their claim, being \$3.5m in the low scenario and \$1.5m in the high scenario.
10	Following publication of our Supplementary 439A Report we received notice of a priority claim from OEC in the amount of \$715k. The high scenario assumes that OEC's claim will rank as an unsecured claim in the winding up of the Company.
11	Unsecured creditors are estimated to receive between nil and 16 cents in the dollar.

## **Annexure B**

**Oceanlinx Limited**  
**(In Liquidation)**

**Liquidators' Summary of Receipts and Payments**  
**To 17 December 2016**

<b>RECEIPTS</b>	<b>Total (AUD)</b>
Cash at Bank	72,250.93
Bank Interest	5,723.15
Transfer balance of account from Rec	100,000.00
T'fer bal Insurance Proceeds from R&M	1,800,000.00
GST Clearing Account	72,064.78
<b>Total Receipts</b>	<b>2,050,038.86</b>
<b>PAYMENTS</b>	
Bank Charges	7.85
Hire of Meeting Room	525.00
Insurance of Assets (Taxable)	8,200.00
Legal Fees (Taxable)	317,241.13
Stamp Duty	742.50
Liquidators Remuneration (VA Period)	86,565.00
Liquidators Disbursements (VA Period)	6,117.59
Cost of Advertising	2,171.35
Consultancy Fees	660.00
Employees (E)	4,587.20
Contingent Liabilities (J)	700,000.00
GST Receivable	42,148.02
<b>Total Payments</b>	<b>1,168,965.64</b>
<b>Cash at Bank</b>	<b>881,073.22</b>