

## RIVERCITY CLASS ACTION

### NOTICE OF PROPOSED SETTLEMENT, OPT OUT RIGHTS AND ASSESSMENT

#### *Federal Court of Australia Proceeding NSD 757 of 2012*

5 JULY 2016

1. This Notice is provided pursuant to Orders made by the Federal Court of Australia on 30 June 2016. This Notice is an important legal document and you should read it carefully as it concerns your legal rights.
2. You have received this Notice because you are a group member in the Federal Court of Australia proceeding *Hopkins v AECOM Australia and two others* (NSD757/2012) (the **RiverCity class action** or **Proceeding**). The outcome of the Proceeding directly affects your rights.
3. You should read the whole of this Notice. In summary, this notice is to inform you that the parties to the Proceeding have agreed to settle the Proceeding subject to the approval of the settlement by the Court. You must choose to do one of the following:

**Option 1:** You do not need to do anything if you wish to receive compensation in the proposed settlement. If the settlement is approved by the Court, you will be paid approximately the amount(s) listed in Schedule 1 of this notice below;

**Option 2:** If you wish to receive compensation in the proposed settlement but you believe there are errors in your Claim Data in Schedule 1 and/or you wish to seek a recalculation of your provisional assessment as set out in Schedule 1 of this notice, you must contact Maurice Blackburn by **4pm on 26 July 2016**;

**Option 3:** Object to the approval of the settlement by **4pm on 3 August 2016**; or

**Option 4:** Opt-out of the Proceeding by **4pm on 3 August 2016**.

More information about your options is provided in section E below.

#### **A SUMMARY OF THE CLASS ACTION**

4. The RiverCity class action is brought by Stephen Hopkins and Kim Hopkins as trustees for the Hopkins Superannuation Fund (the **Applicants**) on their own behalves and on behalf of group members, against AECOM Australia Pty Ltd (formerly known as Maunsell Australia Pty Ltd) (**AECOM Australia**), RiverCity Motorway Management Limited (**RCMML**) and RiverCity Motorway Services Pty Ltd (**RCM Services**) (together the **Respondents**).
5. The Applicants allege that AECOM Australia made traffic forecasts for the then-proposed CLEM7 Tunnel in Brisbane without reasonable grounds and that AECOM Australia consented to the inclusion of these forecasts, and other material containing misleading or deceptive statements and omissions, in the RiverCity Product Disclosure Statement (**PDS**). The Applicants further allege that RCMML and RCM Services issued, prepared or were involved in the preparation of the PDS which was defective.
6. The Applicants allege that, as a consequence of the Respondents' alleged conduct, they suffered loss and damage and they claim compensation and other remedies for themselves and the group members.

7. AECOM Australia and RCM Services deny the allegations. RCMML has not been required to file a defence.
8. AECOM Australia has filed cross-claims in the Proceeding against the following ten persons and entities (together, the **Cross-Respondents**): National Institute of Economic and Industry Research Pty Ltd (**NIEIR**), Peter Hicks (**Hicks**), RCM Services, RCMML, CPB Contractors Pty Limited (formerly known as Leighton Contractors Pty Limited) (**Leighton**), RBS Group (Australia) Pty Ltd (formerly known as ABN AMRO Australia Ltd) (**RBS**), Bilfinger RE Asset Management Pty Ltd (formerly known as Bilfinger Berger Concessions Pty Ltd) (**Bilfinger**), LendLease Building Contractors Pty Ltd (formerly known as Boulderstone Hornibrook Pty Ltd) (**Boulderstone**), Beca Pty Ltd (**Beca**) and Mallesons Stephen Jaques (**MSJ**). The Cross-Respondents deny the allegations made in the cross-claims.
9. Full details of the allegations made by the Applicants are set out in the Second Further Amended Statement of Claim (**2FASOC**) which may be inspected on the Maurice Blackburn website (<http://www.mauriceblackburn.com.au/current-class-actions/rivercity-class-action>). AECOM Australia's and RCM Services' defences can also be found at that website.

## **B WHO IS A GROUP MEMBER?**

10. You are a group member in the class action if you:
  - a. acquired an interest in stapled units in the RiverCity Motorway Investment Trust and the RiverCity Motorway Holding Trust on the Allotment Date on or about 4 August 2006; and
  - b. suffered loss or damage because of the conduct of the Respondents as alleged in the 2FASOC; and
  - c. entered into a litigation funding agreement with IMF Bentham Limited (**IMF**) on or before 27 July 2012.
11. Only the Applicants and group members will benefit from the settlement.
12. As noted in paragraph 2 above, you have been sent this Notice because you are a group member. If you are concerned that this is not correct, you should seek legal advice without delay. You may either contact Maurice Blackburn using the details set out in Section F below or seek your own legal advice from another lawyer retained by you.

## **C PROPOSED SETTLEMENT OF THE CLASS ACTION**

13. The Applicants have entered into a settlement document (**Settlement Document**), which records the terms of the proposed settlement. Under the terms of the proposed settlement:
  - a. the parties to the Proceeding have agreed to settle the Proceeding on a no admissions basis for \$121 million inclusive of costs subject to various conditions, including Court approval; and
  - b. in exchange for receiving the settlement amount, the Applicants and the Group Members will release each of the Respondents and the Cross-Respondents from all "Clem7 Claims", and will not be able to bring any further "Clem 7 Claim", or facilitate any other person to bring or maintain such a claim. The term "Clem7

Claim” is defined in the Settlement Document, but means all claims which have been or could have been brought against any of the Respondents and Cross-Respondents in respect of the subject matter of the RiverCity class action.

14. The process by which the settlement sum is proposed to be distributed between group members is outlined in a Draft Settlement Distribution Scheme. The Scheme contains a confidential Loss Assessment Formula which has been used to calculate your provisional assessment as set out in the Provisional Assessment Notice in Schedule 1, and will be used to calculate returns to group members if the settlement is approved by the Court.
15. A copy of the Draft Settlement Distribution Scheme will be given to you by Maurice Blackburn on request. A copy of the Settlement Document and the Loss Assessment Formula will be given to you by Maurice Blackburn on request, subject to you giving a written confidentiality undertaking.
16. The Applicants, Maurice Blackburn and IMF each consider that the proposed settlement is in the interests of the group members and that it is appropriate to resolve the Proceeding on the terms of the Settlement Document and the Settlement Distribution Scheme.
17. The proposed settlement will not proceed unless and until the Court approves its terms (namely, the terms of the Settlement Document and the Settlement Distribution Scheme) under section 33V of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**). If the proposed settlement is not approved by the Court, the Proceeding will continue. The Court has fixed **10 August 2016** as the date on which it will hear the Applicants’ application for the Court approval of the proposed settlement.
18. In applying for approval of the proposed settlement, the Applicants will tender evidence from an independent costs expert and the Court will be asked to approve the Applicants deducting an amount of approximately \$19 million from the \$121 million settlement sum being the reasonable legal costs incurred conducting the Proceeding. The Applicants will also apply for a reasonable sum to reimburse them for the time spent giving instructions to Maurice Blackburn to conduct the Proceeding. The reasonable costs of administering the Settlement Distribution Scheme will be subject to an application for Court approval at a later date.

#### **D YOUR CLAIM DATA, PROVISIONAL ASSESSMENT AND REMITTANCE DETAILS**

19. You should read **Schedule 1** to this notice very carefully as it records your Claim Data, provides a provisional assessment of your return under the settlement, and requests information from you regarding how you would like to be paid.
20. The **Holding Verification Notice** lists IMF’s record of your Claim Data which, under the Settlement Distribution Scheme, will be used by the Settlement Administrator (Maurice Blackburn) to calculate the amount you will receive by reason of the settlement.
21. The **Provisional Assessment** of your return under the settlement has been calculated by reference to a confidential Loss Assessment Formula and your Claim Data (as listed in the Holding Verification Notice).
22. Schedule 1 also contains a **Remittance Details** section. You may elect as to the form by which you wish to receive any amount payable to you pursuant to the terms of the proposed settlement and supply remittance details which the Settlement Administrator will be able to rely on when making distributions.

## **E WHAT MUST GROUP MEMBERS DO?**

23. If you are a group member in the RiverCity class action you have the following options:

### **Option 1 – if you wish to receive compensation in the proposed settlement**

24. You do not need to do anything if you wish to receive compensation and are satisfied that the Claim Data in the Holding Verification Notice listed in Schedule 1 to this notice is correct.

25. It will expedite the process of distributing the settlement amount if you provide the Remittance Details requested in Schedule 1. You can provide your remittance details electronically as set out in Schedule 1 or you can complete your details and return them to Maurice Blackburn by **4pm on 26 July 2016** at [riverscityclassaction@mauriceblackburn.com.au](mailto:riverscityclassaction@mauriceblackburn.com.au). Failure to provide your details by **4pm on 26 July 2016** will not affect the amount you receive by way of distribution (although it may mean it takes longer for you to receive any amounts payable to you).

### **Option 2 – if you believe there are errors in your Claim Data and/or wish to seek a recalculation of your Provisional Assessment**

26. You should carefully check the Holding Verification Notice in Schedule 1 and if you believe there are errors in it you should notify Maurice Blackburn in writing to [riverscityclassaction@mauriceblackburn.com.au](mailto:riverscityclassaction@mauriceblackburn.com.au) by **4pm on 26 July 2016**, and provide documentary evidence to support any correction which you contend ought be made. Changes to Claim Data may result in you receiving more or less compensation than is listed in this notice.

27. If you believe an error has been made in your Provisional Assessment Notice in Schedule 1, you may request a recalculation by writing to Maurice Blackburn at [riverscityclassaction@mauriceblackburn.com.au](mailto:riverscityclassaction@mauriceblackburn.com.au) by **4pm on 26 July 2016** and setting out the reasons that you believe the Loss Assessment Formula has been applied incorrectly. Maurice Blackburn will recalculate the amount of your return and determine whether any error has been made. Again, this may result in you receiving less or more compensation.

### **Option 3 – if you wish to oppose the proposed settlement**

28. If you wish to ask the Court not to approve the settlement, you must:

- a. send a written notice to Maurice Blackburn by **4pm on 3 August 2016** stating that you wish to oppose the settlement and providing reasons why; and
- b. attend (or send a representative to) the hearing at the Federal Court of Australia NSW Registry, Law Courts Building, Queens Square, Sydney at **10:15am on 10 August 2016**, when the Federal Court will consider whether to approve the settlement. You or your representative will need to be in a position on that date to explain to the Court why you consider that the settlement should not be approved.

29. If you think you might wish to oppose the proposed settlement of the class action, you should obtain independent legal advice immediately.

### **Option 4 – if you wish to opt out of the class action**

30. The Federal Court Act provides that group members in any class action can cease to be members of the class by opting out of the class action before a date fixed by the

Court. The Court has fixed **4pm on 3 August 2016** as the date by which any group member must opt out of the Proceeding.

31. Unless you opt out, you will be bound by the outcome of the class action. If the class action is successful, such as if the settlement is approved, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicants and group members. (In some cases you may have to satisfy certain conditions before your entitlement arises.) If the action is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings. In the present case, if the Court makes orders approving the proposed settlement and if you do not opt out, you will be bound by the proposed settlement.
32. **If you do not wish to remain** a group member you must opt out of the class action. If you opt out, you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you may be able to bring your own claim against the Respondents and Cross-Respondents, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim, you should seek your own legal advice about your claim and the applicable time limit **urgently and prior** to opting out.
33. If you wish to opt out of the class action, you must do so by completing an 'Opt Out Notice' in the form that is available on Maurice Blackburn's website at <http://www.mauriceblackburn.com.au/current-class-actions/rivercity-class-action> and return it to the Registrar of the Federal Court of Australia at the address shown on the form. The Opt Out Notice must reach the Registrar by no later than **4pm on 3 August 2016**, otherwise it will not be effective.
34. You should submit the Opt Out Notice if:
  - a. you qualify as a group member and you wish to opt out of the class action; or
  - b. you believe that you have been incorrectly identified as a group member, because you do not meet the criteria set out in the section headed "Who is a group member?" (Section B above).
35. Each group member should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

## **F QUESTIONS**

36. Please consider the above matters carefully. If there is anything of which you are unsure regarding this Notice, you should contact Maurice Blackburn by sending an email to [rivercityclassaction@mauriceblackburn.com.au](mailto:rivercityclassaction@mauriceblackburn.com.au) or by telephoning Maurice Blackburn on +61 2 9261 1488 and asking to speak with a member of the RiverCity class action team. You should not delay making your decision.

## Schedule 1

### Holding Verification Notice

Group Member ID: [ ]

Plaintiff ID: [ ]

Applicant: [ ]

### Claim Data:

Relevant RCY trades <sup>1</sup>	Units or \$return
IPO units allotted on or around 4 August 2006	[ ]
Candidate DRP units issued on 26 February 2007	[ ]
Total distributions flowing from Candidate Units	[ ]
Total returns on sales of Candidate Units <sup>2</sup>	[ ]

### Provisional Assessment Notice

Your estimated Net Loss as per the Loss Assessment Formula	[ ]
Your estimated pro rata share of the Settlement Sum	[ ]
Your estimated pro rata share of legal costs, IMF's project costs and project management fee and GST	[ ]
Your estimated IMF Consideration (as per % in your IMF Funding Agreement)	[ ]
<b>Your estimated return in hand</b>	[ ]

### Notes on Holding Verification Notice and Provisional Assessment Notice

1. If you believe that there is an error in the Claim Data you should notify Maurice Blackburn in writing to [riverscityclassaction@mauriceblackburn.com.au](mailto:riverscityclassaction@mauriceblackburn.com.au) by **4pm on 26 July 2016**, and provide documentary evidence to support any correction which you contend ought be made.
2. If you believe an error has been made in calculating your estimated return in hand in the Provisional Assessment Notice, you may request a recalculation by writing to Maurice Blackburn at [riverscityclassaction@mauriceblackburn.com.au](mailto:riverscityclassaction@mauriceblackburn.com.au) by **4pm on 26 July 2016** and setting out the reasons that you believe the Loss Assessment Formula has been applied incorrectly.

<sup>1</sup> The Loss Assessment Formula (LAF) calculates Group Member loss in relation to Candidate Units, being those units acquired in the RiverCity IPO and under the initial Distribution Reinvestment Plan (DRP) allotment on 26 February 2007. Loss is reduced by returns from Distributions flowing from Candidate Units and any Sales of Candidate Units. The LAF treats any on-market trading of RCY Units on a 'last in, first out' (LIFO) basis.

<sup>2</sup> RCY Units traded on-market (if any) and any DRP allotments resulting from same are used for LIFO calculations only. Such trades may affect the calculation of your loss. If you have not already provided information concerning any on-market trades of RCY Units, you should provide it to us before **4pm on 26 July 2016**.

**Remittance Details**

I wish to have my compensation from the Settlement paid as follows:

**Please tick only one of OPTION 1, OPTION 2 or OPTION 3.**

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**Option 1: Direct bank transfer**

You can provide your EFT details by going to <https://classaction.mauriceblackburn.com.au/Rivercity/BankDetails> and logging in by using your unique access code:

**UNIQUE ACCESS CODE:** [ ]

Alternatively, you may fill in the below form:

**Account Name:** .....  
.....  
**BSB:** .....  
**Account Number:** .....

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**Option 2: Cheque made payable as below**

**Payee:** [ ]  
**Address:** [ ]

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**Option 3: Cheque made payable as below**

If the payee and/ or address details listed at Option 2 above are incorrect and you wish to be paid by cheque, you can change your details by going to the link provided in Option 1 and logging in by using your unique access code set out above in Option 1.

Alternatively, you may fill in the below form:

**Payee:** .....  
.....  
**Address:** .....  
.....  
.....

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**Signature** .....  
**Name** ..... **Date** .....

**Notes on Remittance Details**

1. Please log in to the link provided above in Option 1 and complete your remittance details **OR** complete and return the remittance details to Maurice Blackburn at [rivercityclassaction@mauriceblackburn.com.au](mailto:rivercityclassaction@mauriceblackburn.com.au) by 4pm on **26 July 2016**.
2. If you select remittance options 1 or 3 above and provide an account name or payee which differs from the name of the entity which signed the IMF Funding Agreement, the beneficiaries of the account or the payee must be the beneficiaries of the entity which signed the IMF Funding Agreement. If this is not self-evident, please provide documentation to establish this along with your remittance details.
3. Please note that if your unitholding is held by a/your self-managed super fund (**SMSF**) you should provide details for the SMSF account, not a/your personal account.