

Annexure A

FEDERAL COURT OF AUSTRALIA

CLASS ACTION AGAINST MACMAHON HOLDINGS LIMITED

NOTICE OF PROPOSED SETTLEMENT

This notice contains important information about the proposed settlement of the class action against Macmahon Holdings Limited (**Macmahon Class Action**). You should read this notice carefully as you have legal rights that may be affected by the proposed settlement. If there is anything in this notice that you do not understand, you should seek legal advice.

A. WHY ARE YOU RECEIVING THIS NOTICE?

1. This notice is provided to you pursuant to orders made by the Federal Court of Australia on _____ 2018. This notice is an important legal document and you should read it carefully as it concerns your legal rights.
2. **On _____ 2018, the Court will be asked to approve a proposed settlement of the Macmahon Class Action. If approved, the settlement will affect the legal rights of Group Members in the Macmahon Class Action.**
3. This notice contains important information about the background to the Macmahon Class Action, its proposed settlement, and your rights as a Group Member. In particular, it tells you:
 - a. about your right to object to the proposed settlement; and
 - b. if you are registered, that you do not need to do anything further to participate in the settlement of the Macmahon Class Action and receive compensation if the settlement is approved by the Court.
4. It is essential that you read the rest of this notice very carefully. This notice explains ways in which the settlement of the class action will affect your legal rights, especially your rights to claim compensation from Macmahon Holdings Ltd (**Macmahon**) for any losses you suffered in relation to the fall in the price of Macmahon shares on 19 September 2012.

B. SUMMARY OF THE CLASS ACTION

5. The Class Action against Macmahon is brought by Mr Hopkins on behalf of himself and Group Members, being all persons who.

- a. Macmahon agrees to pay a settlement sum of \$6,700,000 (inclusive of interest and legal costs);
 - b. the Applicant and Group Members release Macmahon from any claims made against it in, or arising out of, the Macmahon Class Action; and
 - c. Macmahon makes no admissions in relation to the subject matter of the Macmahon Class Action.
11. The settlement requires court approval in accordance with the *Federal Court of Australia Act 1976* (Cth). In considering the approval application, the Court must determine whether the proposed settlement is fair and reasonable and in the interests of group members. If the proposed settlement is not approved by the Court, the Macmahon Class Action will continue and there will be no distribution of compensation to Registered Group Members. If the proposed settlement is approved, all group members will be bound by the settlement. It is important that you are aware that a result of the proposed settlement is that you will not be able to commence your own proceedings against Macmahon for compensation relating to the subject matter of the Macmahon Class Action at a later date.
12. The payment that you will receive under the settlement, if approved, would represent your share of the settlement sum calculated in accordance with a Settlement Distribution Scheme which will be reviewed by the Court as part of the approval process. A copy of the Settlement Distribution Scheme can be given to you on request to ACA Lawyers.
13. It is the opinion of those advising the Applicant that the proposed settlement is fair and reasonable and in the interests of Group Members.

D. LEGAL COSTS AND FUNDING COMMISSION

14. The vast majority of Registered Group Members have previously entered into a retainer agreement with the Applicant's solicitors, ACA Lawyers, and a funding agreement with Harbour. The funding agreement provides that Harbour will pay the legal costs associated with running the Macmahon Class Action and in exchange for payment of those fees and the risk of adverse costs, if the Macmahon Class Action is successfully resolved, the Applicant and Group Members who have entered into funding agreements must pay a funding fee and reimburse Harbour for the legal costs that it has paid.
15. Pursuant to the orders made by the Court on 5 December 2016 and/or 30 July 2018, the Court made orders that all group members who registered would be bound (subject to further order) to pay a share of the costs paid by Harbour in running the Macmahon Class Action, and to pay a commission to Harbour on the same basis as if they had signed a funding agreement with Harbour. The effect of these orders (**Common Fund Orders**) is to treat all settlement proceeds as a "common fund" from which common deductions are made before any distributions are made to group members. If you are a Registered Group Member you are bound by this order.

16. In applying for approval of the proposed settlement, the Applicant intends to ask the Court to make an order that a Settlement Distribution Scheme be approved which provides for the following deductions from the \$6.7 million settlement sum:
 - a. approximately \$3 million be used to pay the legal costs incurred by the Applicant in conducting the Macmahon Class Action, having the settlement approved, and for the estimated costs of administering the settlement. This is an amount which represents a reduction to the actual costs incurred in running the Macmahon Class Action (as settlement was only able to be reached after significant costs were incurred in compliance with the Court timetable in preparation for the trial scheduled to commence in December 2018), but ACA Lawyers has agreed to not claim the entirety of the legal costs earned by it (some of which were deferred and not paid by Harbour through the course of the proceeding) in order to increase the overall net return to Registered Group Members; and
 - b. approximately \$1.295 million be paid to Harbour as funding commission. This is an amount which is less than the total amount Harbour contends it would otherwise have been entitled to recover pursuant to the terms of the funding agreements from those Registered Group Members who have entered into such agreements (and from all Group Members pursuant to the Common Fund Orders). Harbour has agreed to this to increase the overall net return to Registered Group Members.
17. If the Court approves the above deductions, the net amount which will be available for distribution to Registered Group Members will be approximately \$2.4 million (approximately 36% of the total settlement sum)

E. WHO THIS NOTICE AFFECTS

18. This notice affects the Applicant and all Group Members in the Macmahon Class Action.
19. For the purposes of the proposed settlement, the Group Members in the Macmahon Class Action can be divided into three separate categories, each of whom will be affected in different ways if the proposed settlement is approved by the Court:
 - a. ***Registered Group Members (see Section F below)*** – Registered Group Members are those Group Members who, prior to 24 August 2018, registered their claim with ACA Lawyers (as described in Section C above).
 - b. ***Unregistered Group Members (see Section G below)*** – Unregistered Group Members are those Group Members who, prior to 24 August 2018, did not either: (i) register their claim with ACA Lawyers; or (ii) file with the Court a valid opt out notice, indicating their desire to opt out of the Macmahon Class Action. For the avoidance of doubt, Unregistered Group Members include those Group Members who registered, or sought to register, their claim with ACA Lawyers after 4.00 pm (AEST) on 24 August 2018.
 - c. ***Former Group Members (see Section H below)*** – Former Group Members are those persons who otherwise meet the definition of a Group Member (set out

on the first page of this notice), but who, prior to 24 August 2018, filed with the Court a valid opt out notice, indicating their desire to opt out of the Macmahon Class Action.

F. WHAT MUST REGISTERED GROUP MEMBERS DO?

20. For Registered Group Members, there is nothing which you need to do at this stage in order to progress your claim or participate in the proposed settlement. If the proposed settlement is approved by the Court, ACA Lawyers will be in touch with you soon to outline your expected entitlement (if any) from the settlement amount.
21. If, however, you wish to make submissions on why the Court should not approve the proposed settlement, or should not approve the payments referred to above to be paid to Harbour and ACA Lawyers out of the settlement amount:
 - a. You are required to file with the Court, and serve on ACA Lawyers, by no later than **19 November 2018**, any affidavit evidence which you wish to rely on and/or a written outline of your grounds for supporting or opposing the application. The address of the Court and of ACA Lawyers are set out in Section I below.
 - b. You may also, if you wish, attend and make submissions to the Court at the hearing of the application for approval of the proposed settlement. That hearing has been scheduled for _____ 2018 in Sydney. You or your representative will need to be in a position on _____ 2018 to explain to the Court why you consider that the settlement should not be approved. You should also be in a position to inform the Court whether you are willing to become the 'representative applicant' and take over the conduct of the Macmahon Class Action.

G. WHAT MUST UNREGISTERED GROUP MEMBERS DO?

22. As described above, pursuant to orders made by the Federal Court on 5 December 2016 and/or 30 July 2018, Group Members were given an opportunity to register their details and provided trading data to ACA Lawyers by a certain date fixed by the Court if they were to benefit from any settlement of the Macmahon Class Action, and informed of their right to opt out of the class action. If you did not register, or opt out, you are an Unregistered Group Member.
23. For Unregistered Group Members, if the proposed settlement is approved by the Court, and in the absence of any further order of the Court:
 - a. you will be bound by the settlement, which means that you will not be able to pursue a claim against Macmahon in relation to the matters that are the subject of the releases referred to above; and
 - b. you will not be entitled to participate in the settlement, and will therefore not be entitled to receive any distribution from the settlement amount (unless you can persuade the Court that there exists a reason why the earlier orders made limiting participation to those who registered in time should not apply to you).

24. If you wish to make submissions on why the Court should not approve the proposed settlement, or should not approve the payments referred to above to be paid to Harbour and ACA Lawyers out of the settlement amount; and/or why the Court should allow you to participate in the proposed settlement (assuming it is approved by the Court), notwithstanding that you did not register your claim prior to the two registration deadlines:
- a. You are required to file with the Court, and serve on ACA Lawyers, by no later than **19 November 2018**, any affidavit evidence which you wish to rely on and/or a written outline of your grounds for supporting or opposing the application. The address of the Court and of ACA Lawyers are set out in Section I below.
 - b. You may also, if you wish, attend and make submissions to the Court at the hearing of the application for approval of the proposed settlement. That hearing has been scheduled for _____ 2018 in Sydney. You or your representative will need to be in a position on _____ 2018 to explain to the Court why you consider that the settlement should not be approved. If you are seeking that the settlement not be approved, you should also be in a position to inform the Court whether you are willing to become the 'representative applicant' and take over the conduct of the Macmahon Class Action.

H. WHAT MUST FORMER GROUP MEMBERS DO?

25. Those Group Members who filed with the Court a valid opt out notice are no longer a Group Member in the Macmahon Class Action and are not bound by the outcome. Accordingly, if the proposed settlement is approved by the Court, you will not be entitled to participate in the settlement, and will therefore not be entitled to receive any distribution from the settlement amount, but you will also not be precluded from pursuing a separate claim against Macmahon in relation to the matters that are the subject of the releases referred to above, should you wish to do so.

I. HOW TO GET MORE INFORMATION

26. You can obtain further information about the matters referred to in this notice or ask any questions about the proposed settlement by contacting Craig Allsopp at ACA Lawyers on +61 2 8754 7271 or using the details above.
27. The address for ACA Lawyers is:

Email: craig.allsopp@acalawyers.com.au

Mail: Craig Allsopp
ACA Lawyers
Level 6, 299 Elizabeth Street
Sydney NSW 2000

28. The address for the Court is:

Federal Court of Australia

Law Courts Building
Queens Square
SYDNEY NSW 2000

29. Please note that the Court cannot answer any questions about the process or provide legal advice to you.