

**Form 603**  
Corporations Act 2001  
Section 671B

## Notice of initial substantial holder

To Company Name/Scheme BWX Limited

ACN/ARSN ACN 163 488 631

### 1. Details of substantial holder (1)

Name Aaron Finlay  
Sol Capital Pty Ltd (ACN 129 790 478) ("Sol Capital")  
Fairlight Capital Pty Ltd (ACN 127 252 699) ("Fairlight Capital")

ACN/ARSN (if applicable) N/A

The holder became a substantial holder on 19 May 2018

### 2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Fully paid ordinary shares ("Shares")	12,743,696	12,743,696	10.38% (based on 122,731,270 Shares on issue)

### 3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Aaron Finlay	<p>Relevant interest in 560,000 Shares under s 608(1) of the <i>Corporations Act 2001</i> (Cth) ("<b>Corporations Act</b>").</p> <p>Relevant interest in 631,848 Shares under s608(3) of the <i>Corporations Act</i> in the Shares held by Sol Capital as Aaron Finlay and Sophie Finlay hold all of the issued shares in Sol Capital.</p> <p>Relevant interest in 751,848 Shares under s608(3) of the <i>Corporations Act</i> in the Shares held by Fairlight Capital as Aaron Finlay and Sophie Finlay hold all of the issued shares in Fairlight Capital.</p> <p>Relevant interest in 10,800,000 Shares under s 608(8) of the <i>Corporations Act</i> pursuant to the Co-operation Agreement dated 19 May 2018 ("<b>Co-operation Agreement</b>"), a copy of which is attached to this notice as <b>ANNEXURE A</b>.</p>	12,743,696 Shares
Leisure & Hospitality Services Pty Ltd (ACN 061 601 018) as trustee for the Humble Family Trust ("LHS")	<p>Relevant interest in 10,250,000 Shares under s 608(1) of the <i>Corporations Act</i>.</p> <p>Relevant interest in 2,493,696 Shares under s 608(8) of the <i>Corporations Act</i> pursuant to the Co-operation Agreement.</p>	12,743,696 Shares

John Humble	<p>Relevant interest in 550,000 Shares under s 608(1) of the Corporations Act.</p> <p>Relevant interest in 10,250,000 Shares under s 608(3) of the Corporations Act in the Shares held by LHS as John Humble holds 50% of the issued shares in LHS.</p> <p>Relevant interest in 1,943,696 Shares under s 608(8) of the Corporations Act pursuant to the Co-operation Agreement.</p>	12,743,696 Shares
Sol Capital	<p>Relevant interest in 631,848 Shares under s 608(1) of the Corporations Act.</p> <p>Relevant interest in 12,111,848 Shares under s 608(8) of the Corporations Act pursuant to the Co-operation Agreement.</p>	12,743,696 Shares
Fairlight Capital	<p>Relevant interest in 751,848 Shares under s 608(1) of the Corporations Act.</p> <p>Relevant interest in 11,991,848 Shares under s 608(8) of the Corporations Act pursuant to the Co-operation Agreement.</p>	12,743,696 Shares
Bain Capital Private Equity, L.P. ("BCPE")	Relevant interest in 12,743,696 Shares under s 608(8) of the Corporations Act pursuant to the Co-operation Agreement.	12,743,696 Shares

#### 4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
LHS, John Humble, Sol Capital, Fairlight Capital, Aaron Finlay, BCPE	LHS	LHS	10,250,000 Shares
LHS, John Humble, Sol Capital, Fairlight Capital, Aaron Finlay, BCPE	John Humble	John Humble	550,000 Shares
LHS, John Humble, Sol Capital, Fairlight Capital, Aaron Finlay, BCPE	Sol Capital	Sol Capital	631,848 Shares
LHS, John Humble, Sol Capital, Fairlight Capital, Aaron Finlay, BCPE	Fairlight Capital	Fairlight Capital	751,848 Shares
LHS, John Humble, Sol Capital, Fairlight Capital, Aaron Finlay, BCPE	Aaron Finlay	Aaron Finlay	550,000 Shares
LHS, John Humble, Sol Capital, Fairlight Capital, Aaron Finlay, BCPE	Aaron Finlay and Sophie Finlay	Aaron Finlay and Sophie Finlay	10,000 Shares

#### 5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
LHS, John Humble	22 February 2018	\$5.1838 per share	N/A	193,373 Shares

Aaron Finlay and Sophie Finlay	27 February 2018	\$5.10 per share	N/A	10,000 Shares
LHS, John Humble	13 April 2018	\$4.859 per share	N/A	164,754 Shares
BCPE	19 May 2018	N/A	N/A – acquisition of relevant interest by virtue of Co-operation Agreement	12,743,696 Shares

#### 6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
LHS, John Humble, Sol Capital, Fairlight Capital, Aaron Finlay and BCPE	Associates of each other pursuant to s 12(2) of the Corporations Act as a result of and upon the entry into the Co-operation Agreement.

#### 7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
BCPE	John Hancock Tower, 200 Clarendon Street, Boston, MA 02116 United States
John Humble	c/o The Accountant Group Pty Limited, 351 Moorabool Street, Geelong, Victoria 3220
LHS	The Accountant Group Pty Limited, 351 Moorabool Street, Geelong, Victoria 3220
Sol Capital, Fairlight Capital, Aaron Finlay, Sophie Finlay	34 Webster Street, Nedlands WA 6009

## Signature

print name

AARON FINLAY

capacity

SUBSTANTIAL HOLDER  
AND AGENT FOR  
SUBSTANTIAL HOLDERS

sign here



date

21 May 2018

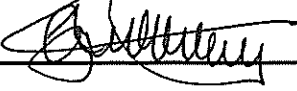
### DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
  - (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
  - (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
  - (4) The voting shares of a company constitute one class unless divided into separate classes.
  - (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
  - (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
  - (7) Include details of:
    - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
    - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).
- See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown."
  - (9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

## Annexure A

This is Annexure "A" of 20 pages (including this page) referred to in the accompanying Form 603.

### Signature

print name	AARON FINLAY	capacity	SUBSTANTIAL HOLDER AND AGENT FOR SUBSTANTIAL HOLDERS
sign here		date	21 May 2018

Mr. John Humble

Mr. Aaron John Finlay

Leisure & Hospitality Services Pty Ltd as trustee for the Humble Family Trust

Sol Capital Pty Ltd

Fairlight Capital Pty Ltd

Bain Capital Private Equity, L.P.

## Co-operation Agreement

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
T +61 2 9230 4000  
F +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

© Allens Australia 2018

**Contents**

<b>1</b>	<b>Definitions and interpretation</b>	<b>2</b>
1.1	Definitions	2
1.2	Interpretation	4
<b>2</b>	<b>Proposed transaction</b>	<b>5</b>
<b>3</b>	<b>Conduct of the Proposal</b>	<b>5</b>
3.1	Non-Binding Indicative Offer	5
3.2	Conduct of the Proposal	5
3.3	Disclosure	6
<b>4</b>	<b>Exclusivity</b>	<b>6</b>
4.1	Exclusivity	6
4.2	No shop, no talk and no due diligence	6
4.3	Manager fiduciary and employment obligations	6
4.4	Post-employment arrangements	7
4.5	BCPE exception	7
<b>5</b>	<b>Standstill</b>	<b>8</b>
<b>6</b>	<b>Term and Termination</b>	<b>8</b>
6.1	Termination	8
6.2	Rights and obligations surviving termination	9
<b>7</b>	<b>Confidentiality</b>	<b>9</b>
<b>8</b>	<b>Warranties</b>	<b>9</b>
<b>9</b>	<b>Relationship between the parties</b>	<b>10</b>
9.1	No authority to bind	10
9.2	Separate tax and accounting obligations	10
<b>10</b>	<b>General</b>	<b>10</b>
10.1	Notices	10
10.2	Governing law	11
10.3	Amendments	11
10.4	Waiver	11
10.5	Costs	11
10.6	Further acts and documents	11
10.7	Consents	11
10.8	Specific performance	12
10.9	Counterparts	12
10.10	Assignment	12
10.11	Severability	12
10.12	Entire Agreement	12
<b>Schedule</b>		<b>1</b>
	Key terms of the Proposal	1

**This Agreement** is made on 19 May 2018

#### **Parties**

- 1 **Mr. John Humble** of c/o The Accountant Group Pty Limited 351 Moorabool Street, Geelong Victoria 3220 (**John Humble**)
- 2 **Mr. Aaron John Finlay** of 34 Webster Street, Nedlands, Western Australia 6009 (**Aaron Finlay**)
- 3 **Leisure & Hospitality Services Pty Ltd** (ACN 061 601 018) as trustee for the **Humble Family Trust** of The Accountant Group Pty Limited 351 Moorabool Street, Geelong Victoria 3220 (**Humble Trust**)
- 4 **Sol Capital Pty Ltd** (ACN 129 790 478) of 34 Webster Street, Nedlands, Western Australia 6009 (**Sol Capital**)
- 5 **Fairlight Capital Pty Ltd** (ACN 127 252 699) of 34 Webster Street, Nedlands, Western Australia 6009 (**Fairlight Capital**)
- 6 **Bain Capital Private Equity, L.P.** of John Hancock Tower, 200 Clarendon Street, Boston, MA 02116 United States (**BCPE**)

#### **Recitals**

- A John Humble is the Chief Executive Officer and Managing Director of BWX, and Aaron Finlay is the Finance Director of BWX.
  - B Over the past 5 years, BWX has been on a journey to develop itself as a vertically integrated, globally relevant personal care company focused on the "Natural" category of skin, face, hair and bodycare products. Over this time, BWX has employed a growth strategy encompassing organic growth via channel and geographic expansion along with strategic M&A activity.
  - C In the rapidly developing landscape of "Natural" personal care, characterised by accelerating M&A activity across all levels of the industry, the Managers firmly believe that the long term future of BWX is best served by continuing to implement this strategy based on investing in the expansion of the size and number of our international markets, as well as maintaining a focus on strategic acquisitions.
  - D Following the release of BWX's first half year 2018 financial results, the Managers have had very clear feedback from BWX's institutional investor base that, despite their previous robust endorsement of BWX's pre-existing growth strategy, they are no longer supportive of further near term M&A and heightened levels of investment, resulting in a very material divergence in views of the appropriate strategic direction of BWX. The Managers have carefully deliberated in recent months on how BWX can be structured for the future, and these considerations have included a review of a variety of new ownership options and a range of investment partners. As a result of these considerations, Aaron and myself have become convinced that the Company can best prosper as a private company, supported by a well-funded investor who supports its aspirations and is an experienced investor in the sector. The Managers consider it to be in the best interests of both BWX shareholders and BWX that the Proposal, which will facilitate the privatisation of BWX at an attractive premium, be considered by the Board.
  - E The Managers have had discussions with BCPE for it to act as a financing partner who endorses their strategy to participate with them on a mutually exclusive basis in the negotiation and implementation of the Proposal in accordance with the terms of this Agreement.
-



- F The Managers have submitted a Proposal that attributes a value to BWX of **A\$6.60** per share (**Offer Price**), less the value of any dividends or other distributions declared, proposed or paid after the date of the Proposal.
- At A\$6.60 per share, the Offer Price represents a:
- 50% premium to the BWX closing price of A\$4.41 per share on 18 May 2018, the last trading day prior to the date of the Proposal;
  - 34% premium to BWX's one month volume weighted average price (**VWAP**) up to and including 18 May 2018;
  - 30% premium to BWX's VWAP from and including 21 February 2018 (being the date of BWX's first half year 2018 results announcement);
  - 28x multiple of enterprise value to LTM December 2017 EBITDA;
  - 29x multiple of enterprise value to LTM December 2017 EBIT; and
  - 40x multiple of equity value to LTM December 2017 NPAT,
- (each multiple based on financial data as reported in BWX's first half year 2018 financial results presentation).
- G In preparing the Proposal, the Managers have determined that it is important that all BWX shareholders are offered two alternative forms of consideration, being cash consideration at an attractive premium and the Scrip Alternative which the Managers have elected to receive, being 75% unlisted scrip and the remainder cash. The Scrip Alternative is being proposed to appeal to Shareholders, such as the Managers, who wish to remain invested in BWX during private ownership. The Scrip Alternative would be subject to a cap of an overall maximum scrip holding in Topco of 25%.
- H The Managers and BCPE are very conscious of the duties and obligations of the Managers as directors and senior executives of the BWX Group. As a result, this Agreement provides that each Manager must do all things necessary or required to comply with their legal, fiduciary and statutory duties, and contemplates that in the event that such compliance may result in a conflict between those duties and adherence to this Agreement, ultimately a Manager may need to resign from each of his positions as a director and senior executive of the BWX Group.
- I This Agreement governs the relationship between parties for the purposes of making and progressing the Proposal.

**It is agreed** as follows.

## **1 Definitions and interpretation**

### **1.1 Definitions**

The following definitions apply unless the context requires otherwise.

**Associate** has the meaning given to that term in the Corporations Act.

**Board** means the board of directors of BWX.

**Business Day** is a day other than a Saturday, or Sunday, or a public or bank holiday in Sydney, Australia.

**BWX** means BWX Limited (ABN 13 163 488 631) of Level 17, 525 Collins Street, Melbourne Victoria 3000.

---

**BWX Group** means BWX and each of its subsidiaries.

**BWX Loan Plan Shares** means BWX Shares issued in accordance with the BWX Employee Loan Plan.

**BWX Shares** means fully paid ordinary shares in the capital of BWX.

**Competing Proposal** means an offer, proposal, expression of interest, transaction or arrangement which is proposed by a Third Party pursuant to which a Third Party will, if the offer, proposal, expression of interest, proposed transaction or arrangement is implemented:

- (a) acquire control of BWX or the BWX Group within the meaning of section 50AA of the Corporations Act;
- (b) directly or indirectly acquire, merge with, or acquire (or have the right to so merge with or acquire) a significant economic interest in BWX or all or a significant part of the business of the BWX Group, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back, sale or purchase of significant part of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for the BWX Group or other synthetic merger or any other transaction or arrangement;
- (c) otherwise cause the Proposal to not proceed; or
- (d) have a Relevant Interest in 10% or more of the BWX Shares.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Exclusivity Period** means the period from the date of this Agreement to the earlier of:

- (a) the date on which all of the parties have each agreed in writing to cease to pursue the Proposal;
- (b) the date on which BCPE notifies the other parties in writing that it has ceased to pursue the Proposal;
- (c) if the Board has rejected the Proposal, the date that is 12 months after one of the parties has been advised in writing that the Proposal is rejected;
- (d) if a Scheme Implementation Deed is entered into with BWX:
  - (i) the date of successful completion of the Proposal; or
  - (ii) the date that is 12 months after the Scheme Implementation Deed has been terminated; and
- (e) the date that is 12 months after the date of this Agreement,  
unless otherwise agreed in writing between all the parties to this Agreement.

**Guidance Note 19** means Takeovers Panel Guidance Note 19: Insider Participation in Control Transactions.

**Manager** means each of John Humble and Aaron Finlay.

**Offer Letter** means the letter dated on or about the date of this Agreement from John Humble and Aaron Finlay, on behalf of a special purpose vehicle, to BWX in respect of the Proposal in the form agreed between the parties.

**Proposal** means the proposal made by the Managers in the Offer Letter setting out, among other things, the key terms set out in the Schedule (or any variation of the terms subsequently proposed as agreed by the parties under clause 3.2(a)(ii)) under which the parties (via a special purpose vehicle) will acquire BWX via a scheme of arrangement or any other transaction pursuant to which the parties (via a special purpose vehicle) will acquire all or a substantial part of

---

BWX or its assets and business. For the avoidance of doubt, any improved proposal delivered to the Board is a Proposal from that time.

**Protocols** means the communications and process protocols which may be established by the Board in accordance with Guidance Note 19.

**Related Bodies Corporate** has the meaning given in the Corporations Act.

**Relevant Interest** has the meaning given in the Corporations Act.

**Representatives** means in relation to a party:

- (a) the directors, officers and employees of that party and its Related Bodies Corporate; and
- (b) the agents and advisers of that party and its Related Bodies Corporate in connection with the Proposal.

**Retainer Fee** means, in respect of:

- (a) John Humble, a weekly amount of \$10,769.23; and
- (b) Aaron Finlay, a weekly amount of \$8,653.85,

such amounts which equate to the Manager's annual base salary from BWX.

**Scheme Implementation Deed** means the agreement or deed (as the case may be) between BWX and a special purpose vehicle to be incorporated by the parties pursuant to which BWX will be acquired via a scheme of arrangement.

**Scrip Alternative** means the scrip alternative under the Proposal.

**Third Party** means a person other than:

- (a) a party or any of its Related Bodies Corporate or Associates; or
- (b) a consortium, partnership, limited partnership, syndicate or other group in which neither a party nor any of its Related Bodies Corporate has agreed in writing to be a participant.

**Topco** has the meaning given to such term in the Schedule.

**Transaction Documents** means the Scheme Implementation Deed, any shareholders agreement among the parties in relation to BWX (and the special purpose vehicle to be incorporated by one of the parties for the purposes of the Proposal) and any financing agreements in relation to the Proposal.

**VWAP** has the meaning given to such term in the Recitals.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
  - (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
  - (c) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.
  - (d) The following rules apply unless the context requires otherwise:
    - (i) The singular includes the plural, and the converse also applies.
    - (ii) A gender includes all genders.
    - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
-

- (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (v) A reference to a clause or Schedule is a reference to a clause of, or Schedule to, this Agreement.
- (vi) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible and tangible form.
- (viii) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (x) A reference to *dollars* or \$ is to Australian currency.

## 2 Proposed transaction

- (a) As outlined above, John Humble and Aaron Finlay have had discussions with BCPE for it to act as a financing partner to participate with them on a mutually exclusive basis in the negotiation and implementation of the Proposal in accordance with the terms of this Agreement.
- (b) This Agreement governs the relationship between parties for the purposes of making and progressing the Proposal.

## 3 Conduct of the Proposal

### 3.1 Non-Binding Indicative Offer

- (a) Each party irrevocably and unconditionally authorises the Managers to submit the Offer Letter to BWX.
- (b) Each Manager agrees that, if the Proposal proceeds, they will elect to receive the Scrip Alternative in respect of all the BWX Shares that they own or control, including:
  - (i) in the case of John Humble:
    - (A) the 10,250,000 BWX Shares owned by the Humble Trust;
    - (B) the 550,000 BWX Loan Plan Shares owned by John Humble; and
  - (ii) in the case of Aaron Finlay:
    - (A) the 631,848 BWX Shares owned by Sol Capital;
    - (B) the 751,848 BWX Shares owned by Fairlight Capital;
    - (C) the 550,000 BWX Loan Plan Shares owned by Aaron Finlay; and
    - (D) the 10,000 BWX Shares owned by Aaron Finlay together with Sophie Finlay.

### 3.2 Conduct of the Proposal

- (a) Subject to and in accordance with the Protocols:
-



- (i) the parties will regularly update and consult with each other in respect of the status of their discussions with BWX and their due diligence investigations in relation to BWX; and
  - (ii) the parties will make all material decisions in relation to the Proposal jointly. Without limiting the previous statement, there may be no material change to the key terms of the Proposal without the agreement of all parties.
- (b) No party may legally bind any other party. Any decisions in relation to the content of any binding agreement in relation to the Proposal is to be agreed in writing jointly among the parties.

### **3.3 Disclosure**

The parties will use reasonable efforts to co-operate with each other to make the disclosures required by, and within the time limits prescribed by, Part 6C.1 of the Corporations Act, and any other disclosure required by law.

## **4 Exclusivity**

### **4.1 Exclusivity**

During the Exclusivity Period, subject to clause 4.5, a party must not, and must ensure that its Related Bodies Corporate and Representatives (alone or acting in concert with any Third Party) do not directly or indirectly, except with the prior written consent of the other parties, enter into any agreement, arrangement or understanding (including but not limited to participating in any consortium, joint bidding structure or any other structure) in relation to an actual, proposed or potential Competing Proposal.

### **4.2 No shop, no talk and no due diligence**

During the Exclusivity Period, subject to clause 4.5, a party must not, and must ensure that its Related Bodies Corporate and Representatives, do not directly or indirectly, except with the prior written consent of the other parties:

- (a) propose, encourage, initiate, solicit or invite any Competing Proposal or initiate discussions with any Third Party with a view to obtaining any expressions of interest, offer or proposal from any Third Party in relation to a Competing Proposal or which may reasonably be expected to lead to a Competing Proposal;
- (b) participate in any negotiations or discussions with a Third Party in relation to a Competing Proposal or which may reasonably be expected to lead to a Competing Proposal;
- (c) provide any information to a Third Party for the purpose of enabling any Third Party to make a Competing Proposal; or
- (d) communicate its willingness or intention to do any of the things listed in clauses 4.2(a), 4.2(b) or 4.2(c).

### **4.3 Manager fiduciary and employment obligations**

- (a) Each party acknowledges the duties and obligations of the Managers as directors and senior executives of the BWX Group.
  - (b) Subject to clause 4.3(c), each Manager must do all things necessary or required to comply with their legal, fiduciary and statutory duties to the BWX Group, and all reasonable requirements of the Board in accordance with Guidance Note 19, including without limitation:
-

- (i) complying with any reasonable directions given by the Board and any independent board committee (**IBC**) established by the Board in relation to the Proposal;
  - (ii) not participating in, or voting on, any consideration by the Board of the Proposal or any Competing Proposal;
  - (iii) adhering to rules established by the Board or IBC concerning information disclosure and access, confidentiality, communications and related matters; and
  - (iv) not discussing the Proposal with customers, suppliers or other employees of the BWX Group unless specifically requested to do so by the IBC, and only on terms and conditions approved by the IBC.
- (c) Each Manager agrees that, in the event that compliance with their duties and obligations to the BWX Group as outlined in clause 4.3(b) and adherence to their material obligations under this Agreement would be reasonably likely to result in a conflict (a **Conflict Situation**):
  - (i) to the extent that it does not result in a breach of the Manager's legal, fiduciary and statutory duties to the BWX Group, the Manager must immediately notify the Board and BCPE of the Conflict Situation, and the Manager will discuss in good faith with each of the Board and BCPE whether or not the Conflict Situation can be resolved in a mutually acceptable manner; and
  - (ii) if the Conflict Situation cannot be resolved in a mutually acceptable manner or the relevant Manager determines that it cannot give notice to BCPE of the Conflict Situation, the relevant Manager will, before breaching either their legal, fiduciary or statutory duties to the BWX Group or any material obligation under this Agreement, resign from each of his positions as a director and senior executive of the BWX Group.

#### 4.4 Post-employment arrangements

As a result of the Managers' contractual obligations under this Agreement, in a Conflict Situation, in order to mitigate any personal cash flow considerations (and consequences) for a Manager in the circumstances where they have been required or have otherwise determined to resign from each of his positions as a director and senior executive of the BWX Group in order to avoid breaching their legal, fiduciary, and statutory duties to the BWX Group:

- (a) BCPE must pay to each relevant Manager the Retainer Fee for the period commencing on the date in respect of which the Manager ceases to receive any base salary from BWX until the end of the Exclusivity Period; and
- (b) the Retainer Fee must be paid on a monthly basis to the relevant Manager at the time the base salary payment would have otherwise been made by BWX to that Manager had the employment of that Manager not been terminated or the Manager not resigned.

#### 4.5 BCPE exception

Clauses 4.1 and 4.2 shall not in any way restrict or prohibit any activities of BCPE, its Related Bodies Corporate or Representatives (each a **Relevant Person**), or require BCPE or any other Relevant Person to take any action (including procuring any restriction on any person in connection with) where the activity is undertaken:

- (a) by any individual outside the private equity business of BCPE; or
-

- (b) by any individual within a BCPE portfolio company, provided that the relevant individual was not in possession of confidential information in relation to the Proposal at the time it undertook that activity.

## 5 Standstill

- (a) Subject to clause 5(b), during the Exclusivity Period, each party must not, and must ensure that their Related Bodies Corporate (alone or acting in concert with any Third Party) do not:
  - (i) directly or indirectly sell or otherwise dispose of a Relevant Interest in any BWX Shares owned or controlled by that party;
  - (ii) accept, vote in favour, or otherwise support a Competing Proposal;
  - (iii) acquire a Relevant Interest in any BWX Shares other than in accordance with any employee incentive scheme of BWX in place as at the date of this Agreement;
  - (iv) enter into any derivative, swap or synthetic agreement, deed or other arrangement under which payments may be made that are referable (in whole or part) to the trading price, or the economic value, of BWX Shares; or
  - (v) aid, abet, counsel, assist, facilitate or induce any other person in doing, or publicly announce that it will do, any of the things mentioned in this clause 5(a).
- (b) Nothing in clause 5(a) restricts or prohibits:
  - (i) any decision to acquire or dispose of any interest in BWX Shares that is taken by an individual:
    - (A) outside the private equity business of BCPE; or
    - (B) within a BCPE portfolio company, provided that the relevant individual was not in possession of confidential information in relation to the Proposal at the time it undertook that activity;
  - (ii) any party (or any of their Related Bodies Corporate) from taking any steps to implement the Proposal;
  - (iii) any party (or any of their Related Bodies Corporate) acquiring a Relevant Interest in BWX Shares as a result of:
    - (A) acceptance of the Proposal;
    - (B) the terms of this Agreement; or
    - (C) with the prior written consent of the other parties; or
  - (iv) any disposal of any Relevant Interest in any BWX Shares in accordance with the Corporations Act over which the relevant party has no direct control including:
    - (A) in connection with the implementation of a scheme of arrangement in accordance with section 411 of the Corporations Act; and
    - (B) a compulsory buy-out of securities in accordance with Chapter 6A.1 of the Corporations Act.

## 6 Term and Termination

### 6.1 Termination

- (a) This Agreement terminates at the end of the Exclusivity Period.
-

- (b) On termination of this Agreement, this Agreement will become void and of no further effect, other than as set out in clause 6.2.

## **6.2 Rights and obligations surviving termination**

The following rights and obligations survive the termination or withdrawal of this Agreement under clauses 6.1(a):

- (a) any claim that a party has against another party or its related entity at the time of termination; and
- (b) any rights to obligations which have accrued at the time of termination.

## **7 Confidentiality**

Each party must keep confidential and must not disclose, and must procure that its Related Bodies Corporate and its Representatives who receive any confidential information in relation to the Proposal, keep confidential and do not disclose this Agreement, or the Transaction Documents or the terms thereof, the status of negotiations (and any other agreements) with BWX and between the parties and any confidential information provided by one party to another or to any person except:

- (a) with the prior written consent of the other parties;
- (b) where the information is in or has come into the public domain other than due to a breach of any obligation of confidentiality owed by that party; or
- (c) to the extent required by any applicable law, order or rule of any court or government agency or the rules of a recognised stock exchange provided that before a party makes any disclosure under this clause 7(c), it must, to the extent practicable having regard to the required timing of the disclosure, consult in good faith with the other parties as to the need for and form of that disclosure and such disclosure shall only be to the extent required by such law, order or rule. This applies, among other things, to any notice required to be issued by a party under Part 6C.1 of the Corporations Act and any public disclosure required for implementation of the Proposal.

## **8 Warranties**

Each party represents and warrants to the other that, as at the date of this Agreement:

- (a) if it is a corporation, it is duly incorporated under the laws of the place of its incorporation;
  - (b) it has the power and authority to execute and deliver this Agreement and perform and observe all its terms;
  - (c) if it is a corporation, the execution and delivery of this Agreement has been properly authorised by all necessary corporate action;
  - (d) subject to laws generally affecting creditors' rights and the principles of equity, this Agreement has been duly executed and is a legal valid and binding agreement enforceable against it in accordance with its terms;
  - (e) other than as contemplated by clause 4.3 in respect of the Managers, it is not bound by any contract which may restrict its right or ability to enter into or perform this Agreement;
  - (f) this Agreement does not conflict with or result in the breach of or a default under any provision of its constitution (if applicable) or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it is bound; and
  - (g) it and its Related Bodies Corporate (in the case of BCPE, other than any BCPE portfolio company) do not hold any BWX Shares, rights to acquire BWX Shares or any economic
-



interest in BWX Shares (through a cash settled equity swap, derivative or otherwise which would require disclosure under the Australian Takeovers Panel's Guidance Note 19: Equity Derivatives) other than:

- (i) the Humble Trust which owns 10,250,000 BWX Shares;
- (ii) John Humble who owns 550,000 BWX Loan Plan Shares;
- (iii) Sol Capital which owns 631,848 BWX Shares;
- (iv) Fairlight Capital which owns 751,848 BWX Shares;
- (v) Aaron Finlay who owns:
  - (A) 550,000 BWX Loan Plan Shares; and
  - (B) 10,000 BWX Shares together with Sophie Finlay.

## **9 Relationship between the parties**

### **9.1 No authority to bind**

- (a) The parties agree that this Agreement is not to be interpreted as constituting:
  - (i) the relationship of the parties as a partnership, quasi partnership, fiduciary, association or any other relationship in which one or more of the parties may (except as specifically provided for in this Agreement) be liable generally for the acts or omissions of any other party; or
  - (ii) any party as the general agent or representative of any other party with the exception of any powers of attorney specifically granted or contemplated by this Agreement.
- (b) Without limitation to clause 9.1(a), no party has the authority to pledge or purport to pledge the credit of any other party or to make or give (or purport to make or give) any representations, warranties or undertakings for or on behalf of any other party.

### **9.2 Separate tax and accounting obligations**

- (a) Each party is responsible for its own tax, accounting and record keeping obligations.
- (b) No party is responsible for the obligations of the other party under the tax laws of any relevant jurisdiction, unless otherwise specifically provided for in a Transaction Document.

## **10 General**

### **10.1 Notices**

#### **How notice to be given**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing;
  - (b) must be addressed:
    - (i) in the case of hand delivery, to the address last notified by that party to each other party; and
    - (ii) in the case of email, to the email address last notified by that party to each other party,
-

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (d) must be delivered by hand or sent by email to the address, in accordance with clause 10.1(b).

**When notice taken to be received**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (e) (in the case of email),
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered; and
- (f) (in the case of delivery by hand) on delivery,  
but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

**10.2 Governing law**

This Agreement is governed by and must be construed according to the law applying in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

**10.3 Amendments**

Any amendment or variation of this Agreement must be agreed in writing by all parties.

**10.4 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.
- (b) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

**10.5 Costs**

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

**10.6 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Agreement.

**10.7 Consents**

Consents required under this Agreement must not be unreasonably withheld.

---

**10.8 Specific performance**

The parties acknowledge that damages will not be a sufficient remedy for breach of this Agreement. Specific performance or injunctive relief is available as a remedy for a breach or threatened breach of this Agreement by either party.

**10.9 Counterparts**

This Agreement may be executed in a number of counterparts and signatures on behalf of a party may be on different counterparts.

**10.10 Assignment**

A party may not assign its rights or delegate its obligations under this Agreement without the written consent of each other party.

**10.11 Severability**

Any provision of, or the application of any provision of, in this Agreement that is void, illegal or unenforceable in any jurisdiction is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity, illegality or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

**10.12 Entire Agreement**

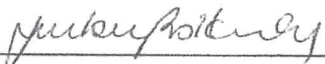
This Agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, with respect to the subject matter of this Agreement.

---

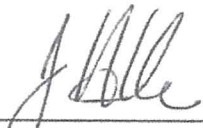
**Execution Pages**

Each attorney executing this Agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

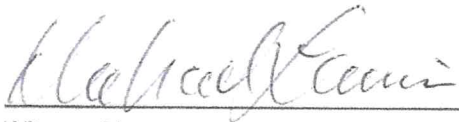
**Signed by John Humble** in the presence of:

  
\_\_\_\_\_  
Witness Signature

Jackie Bottomley  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Signature

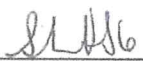
**Signed by Aaron John Finlay** in the presence of:

  
\_\_\_\_\_  
Witness Signature

MICHAEL AARON LEWIN  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Signature

**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Leisure & Hospitality Services Pty Ltd** as trustee for the **Humble Family Trust**:

  
\_\_\_\_\_  
Director Signature

SUZANNE HUMBLE  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director/Secretary Signature

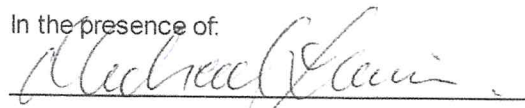
JOHN HUMBLE  
\_\_\_\_\_  
Print Name

**Executed** in accordance with section 127 of the  
*Corporations Act 2001* by **Sol Capital Pty Ltd** in  
the presence of:

  
\_\_\_\_\_  
Sole Director and Sole Secretary Signature

AARON FINLAY  
\_\_\_\_\_  
Print Name

In the presence of:

  
\_\_\_\_\_  
Witness Signature

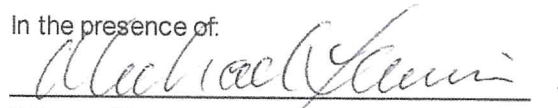
MICHAEL ALAN LEWIN  
\_\_\_\_\_  
Print Name

**Executed** in accordance with section 127 of the  
*Corporations Act 2001* by **Fairlight Capital Pty**  
**Ltd** in the presence of:

  
\_\_\_\_\_  
Sole Director and Sole Secretary Signature

AARON FINLAY  
\_\_\_\_\_  
Print Name

In the presence of:

  
\_\_\_\_\_  
Witness Signature

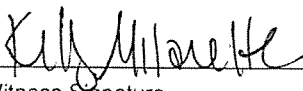
MICHAEL ALAN LEWIN  
\_\_\_\_\_  
Print Name

\_\_\_\_\_

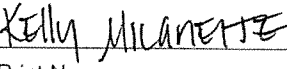
Co-operation Agreement

Allens & Linklaters

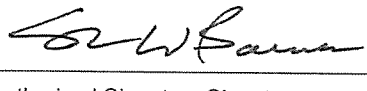
Signed for Bain Capital Private Equity,  
L.P. by its authorised signatory in the  
presence of:



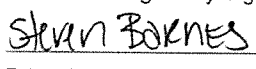
Witness Signature



Print Name



Authorised Signatory Signature



Print Name

## Schedule

### Key terms of the Proposal

- Indicative offer price of A\$6.60 per share, less the value of any dividends or other distributions declared, proposed or paid after the date of the Proposal. The indicative offer price represents a:
    - 50% premium to the BWX closing price of A\$4.41 per share on 18 May 2018, the last trading day prior to the date of the Proposal;
    - 34% premium to BWX's one month VWAP up to and including 18 May 2018;
    - 30% premium to BWX's VWAP from and including 21 February 2018 (being the date of BWX's first half year 2018 results announcement);
    - 28x multiple of enterprise value to LTM December 2017 EBITDA;
    - 29x multiple of enterprise value to LTM December 2017 EBIT; and
    - 40x multiple of equity value to LTM December 2017 NPAT,(each multiple based on financial data as reported in BWX's first half year 2018 financial results presentation).
  - Two alternative forms of consideration to be made available to all BWX shareholders on an equal access basis, being:
    - a full cash consideration option; or
    - a scrip alternative in a newly incorporated acquisition entity (**Topco**) of 75% scrip and 25% cash (the **Scrip Alternative**).
  - The Scrip Alternative to be subject to a cap of an overall maximum scrip holding in Topco of 25%.
  - Entry into any Scheme Implementation Deed with BWX will be subject to the following conditions being met in the period commencing on the date of the Proposal and ending on the date that the Scheme Implementation Deed is executed:
    - satisfactory completion of due diligence;
    - BWX does not sell or agree to sell any material asset of BWX;
    - BWX does not issue additional shares or other securities convertible or exchangeable into shares;
    - no transaction cost reimbursement arrangements are offered or provided to any party which may be exploring the possibility of acquiring BWX Shares;
    - debt commitments for the transaction are finalised;
    - BCPE receives final approval to submit a binding proposal from its investment committee; and
    - the Board agrees unanimously to recommend that BWX shareholders vote in favour of the proposed scheme of arrangement the absence of a superior proposal, subject to an independent expert concluding that the proposed scheme is in the best interests of shareholders.
  - The Scheme Implementation Deed would include customary terms and conditions, including, but not limited to, the following:
    - unanimous recommendation by the Board that BWX shareholders vote in favour of the scheme in the absence of a superior proposal, subject to an independent expert concluding that the proposal is in the best interests of shareholders;
-

- BWX shareholder approval;
  - receipt of all necessary regulatory and court approvals associated with the proposed scheme, including Foreign Investment Review Board approval;
  - there being no material adverse change to the business, assets or prospects of BWX or financial markets;
  - no material litigation or regulatory action arising;
  - mutual facilitation arrangements under which both parties co-operate and work together to facilitate and implement the proposed scheme, including provisions dealing with the conduct of business after execution of the Scheme Implementation Deed;
  - deal protection mechanisms including exclusivity arrangements, no-shop / no-talk, notification of rival proposals, matching rights and a 1% break fee;
  - BWX does not issue additional shares or other securities convertible or exchangeable into shares after the Scheme Implementation Deed is executed;
  - all existing performance rights, options and other securities convertible or exchangeable into shares held by BWX's employees, officers or other persons (if any) being acquired or cancelled on terms acceptable to BCPE;
  - BWX does not make, declare or pay any dividend, distribution or return of capital (unless otherwise agreed or waived);
  - BWX not undertaking any material transactions after the Scheme Implementation Deed is executed; no prescribed occurrences; no material breach of representations and warranties and other customary conditions; and
  - specific conditions, if any, required to address matters arising from due diligence.
-