

## Brisbane Floods Class Action (Wivenhoe Dam) seeks special leave to appeal Seqwater judgment

- Omni Bridgeway announces that an application has been lodged seeking special leave to appeal to the High Court from the recent Court of Appeal decision in favour of Seqwater
- Omni Bridgeway confirms that its recognised income in FY21 of \$95.3 million and its unrecognised estimated further income in FY22 of approximately \$18 million from the unconditional Partial Settlement with the State and Sunwater are unaffected by the Appeal Judgment

Omni Bridgeway Limited (ASX:OBL) (**Omni Bridgeway**) refers to its previous announcement of 9 September 2021, regarding the judgment of the Supreme Court of New South Wales Court of Appeal (**Court of Appeal**) overturning the first instance decision in finding the remaining defendant, Seqwater, not liable to the group members in the Brisbane Floods Class Action (Wivenhoe Dam) in Australia (**Appeal Judgment**).

An application for special leave to appeal (**Application**) to the High Court of Australia (**High Court**) has been lodged on 6 October 2021. It is expected that the outcome of the Application will be known in FY22 and, if successful, the High Court appeal is likely to be heard in FY23.

### Financial impact

It is anticipated that both the costs of the Application and any High Court appeal will ultimately be met from the settlement amount paid by the State of Queensland (**State**) and Sunwater (**Partial Settlement**) or from the successful outcome of the High Court appeal. It is also anticipated that any liability for the legal costs of the proceedings of Seqwater, which will depend upon the outcome of the Application and any High Court appeal, will also be met from the Partial Settlement. It is anticipated that none of these costs will be ultimately payable by Omni Bridgeway.

Omni Bridgeway will continue to review the Appeal Judgment and its financial implications, including the estimated portfolio value and the estimated completion timing ascribed to this investment within our investment portfolio, and relevant assumptions will be clarified in our Investment Portfolio Update at 30 September 2021.

If the Application is granted and the High Court appeal is successful, not all of the findings of the first instance decision would be reinstated due to the scope of the appeal. Consequently, in that

circumstance, Omni Bridgeway estimates, based on a number of assumptions<sup>1</sup>, that its total income from the Seqwater component of this investment would be approximately \$85 million, which is at the lower end of the previously estimated approximate income range.

Following the \$440 million settlement with the State and Sunwater for their combined 50% of apportioned liability, approved by the Supreme Court of New South Wales (**Supreme Court**) on 3 May 2021, half of the investment was derecognised with \$95.3 million of income recognised in FY21.

Omni Bridgeway has received \$30.3 million of this income in cash with the balance of \$65 million remaining a current receivable and anticipates receiving approximately \$18 million of further (and as yet unrecognised) income in FY22 from the Partial Settlement during the finalisation of the distribution scheme, administered by Maurice Blackburn. We reconfirm that the income is unaffected by the Appeal Judgment.

### Background

The case related to the operation of the Wivenhoe and Somerset dams in January 2011 and the severe flooding in the Brisbane region which caused damage and loss to thousands of people and businesses.

The claim was brought in 2014 as a class action by a representative claimant on behalf of group members. The trial commenced in December 2017 and took over a year to complete.

On 29 November 2019, the Supreme Court found the State, Sunwater and Seqwater, liable in negligence to the group members.

Seqwater lodged an appeal against the decision, whilst the State and Sunwater settled the judgment against them through the Partial Settlement.

The Seqwater appeal was heard in the Court of Appeal in May 2021 and the Appeal Judgment was handed down on 8 September 2021. The Court of Appeal found the remaining defendant, Seqwater, not liable to the group members in the Brisbane Floods Class Action (Wivenhoe Dam) in Australia.

The litigation has been funded by Omni Bridgeway (with a 50% co-funder) and the investment forms part of Omni Bridgeway's balance sheet portfolio.

**This announcement is authorised for release to the market by the Disclosure Committee.**

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<sup>1</sup> Refer to the assumptions detailed in Omni Bridgeway's announcement dated 10 May 2021, noting that the group members' lawyers best estimate of Seqwater's 50% portion of the aggregate damages, including interest and costs, has been updated to reflect the grounds of appeal detailed in the Application.