

Applicant: [Redacted]
Respondent: [Redacted]

ADJUDICATOR'S DETERMINATION

Pursuant to the *Construction Contracts (Security of Payments) Act 2004* (NT)

Adjudication Number	AIQS NT 35-26-01
Prescribed Appointor	Australian Institute of Quantity Surveyors
Adjudicator	John Tuhtan ¹
Applicant:	[Redacted] ABN: [Redacted] [Redacted] Contact: [Redacted] Telephone: [Redacted] Email: [Redacted]
Respondent:	[Redacted] ABN: [Redacted] [Redacted] Contact: [Redacted] Telephone: Contact: [Redacted] Email: Contact: [Redacted]
Project:	Civil Works performed at [Redacted] a remote site in NT
Amount to be paid by Respondent	\$1,055,075.47 including GST (\$959,159.52 excl. GST)
Due date for payment	30 April 2026
Adjudicator's Fees	Applicant: 50% Respondent: 50%
Date of Determination or Dismissal	12 June 2026
Payment Claim (amount in dispute)	Claimed Amount: \$2,465,294.27 including GST [\$2,241,176.61 excluding GST] Dated: 31 March 2026

¹ Registered Adjudicator Number 35

Applicant: [Redacted]
Respondent: [Redacted]

Notice of Dispute / Response to Payment Claim	Notice of Dispute Amount: \$0.00 Dated: 14 April 2026
Adjudication Application	Dated: 8 May 2026
Adjudicator Acceptance	Dated: 13 May 2026
Adjudication Response	Dated: 25 May 2026

Applicant: [Redacted]
 Respondent: [Redacted]

TABLE OF CONTENTS

ADJUDICATOR'S DETERMINATION	0
TABLE OF CONTENTS	2
DETERMINATION	3
INTRODUCTION	4
APPOINTMENT OF ADJUDICATOR	4
DOCUMENTS	6
BACKGROUND	7
THE CONTRACT	11
THE PAYMENT CLAIM	13
NOTICE OF THE PAYMENT DISPUTE	19
APPLICATION FOR ADJUDICATION	22
RESPONSE TO THE ADJUDICATION APPLICATION	24
JURISDICTION	25
REASONS FOR THE DETERMINATION	26
DETERMINATION OF THE PAYMENT DISPUTE	26
REQUESTS FOR FURTHER SUBMISSIONS	26
EXTENSION OF TIME TO MAKE THE DETERMINATION	32
PAYMENT DISPUTES	33
LUMP SUM & RE-MEASURABLE ITEMS	36
DAYWORKS	38
CLAIM 1 – ONBOARDING	40
CLAIM 2 – LOADER INCIDENT	76
CLAIM 3 – EXCAVATOR INCIDENT	84
CLAIM 4 – SHUTDOWN	92
CLAIM 5 – POST 11 DECEMBER DAYWORKS	98
CLAIM 6 – WEATHER IMPACTS	104
CLAIM 7– DESCOPE ADJUSTMENT	108
CLAIM 8 – LUBRICANTS	110
SUMMARY OF DETERMINATIONS OF THE PAYMENT DISPUTES	112
DUE DATE FOR PAYMENT	114
INTEREST ON UNPAID AMOUNTS	115
ADJUDICATION COSTS	117
CONFIDENTIAL INFORMATION	117

Applicant:

[Redacted]

Respondent:

[Redacted]

DETERMINATION

- 1) I, John Tuhtan², the adjudicator appointed pursuant to section 30(1)(a) of the *Construction Contracts (Security of Payments) Act* (NT) (the **Act**), for the reasons set out below, determine that:
- a) The amount to be paid by the Respondent to the Applicant is \$1,055,075.47 including GST.
 - b) Interest is payable on the adjudicated amount at a rate of 9.60% per annum commencing on the day after 30 April 2026 and up until 12 June 2026 (being the date of this determination) under section 35 of the Act. Furthermore, pursuant to section 33(1)(b)(i) of the Act, the interest payable is the amount of \$11,012.48.
 - c) The Respondent is to pay the adjudicated amount to the Applicant within 7 calendar days of the date of the notice advising that the determination has been released.
 - d) The Adjudicator's fees and expenses are to be apportioned as follows:
 - i) Applicant 50%
 - ii) Respondent 50%.

² Registered Adjudicator Number 35

Applicant: [Redacted]
Respondent: [Redacted]

INTRODUCTION

- 2) On or about 21 July 2025, the Applicant entered into a construct only contract (the **Contract**) with the Respondent to carry out civil works for its project at [Redacted] a remote site in NT (the **Site**).
- 3) The Contract was part lump sum and part to be performed on a schedule of rates and was to be performed during the period 1 August 2025 to 10 October 2025³.
- 4) The Adjudication Application arises from an unpaid payment claim made by the Applicant on the Respondent under section 8(a) of the Act for construction work carried out under a construction contract at [Redacted] the Site.

APPOINTMENT OF ADJUDICATOR

- 5) Pursuant to section 34(6) of the Act, I engaged Australian Building and Construction Dispute Resolution Service Pty Ltd (**ABCDRS**) as my agent for the administrative functions under the Act.
- 6) Pursuant to section 28(1)(c)(iii) of the Act, the Applicant served its Adjudication Application on the AIQS, which is a prescribed appointor under the Act, on 8 May 2026.
- 7) The Adjudication Application was referred to me as adjudicator on 13 May 2026 by the AIQS pursuant to section 30(1)(a) of the Act.

³ Per Schedule 6 of the Contract

Applicant: [Redacted]
Respondent: [Redacted]

- 8) Pursuant to section 30(3) of the Act, the AIQS served a notice of my acceptance of the Adjudication Application on the Applicant, the Respondent and the Registrar on 13 May 2026.

Applicant:
Respondent:

[Redacted]
[Redacted]

DOCUMENTS

9) The following documents were provided to me by the Applicant in electronic form of 490.7 Mb including the following:

- a) The Adjudication Application signed by the agent of the Applicant and submissions dated 8 May 2026 (about 1018 pages);
- b) The Payment Claim comprised of the following;

-  1 - RE- March 2026 Payment Claim - [Redacted] - 2511 Claim 7.eml
-  2 - Email 2 of 2 March 2026 Payment Claim - [Redacted] - 2511 Claim 7 1.eml
-  3 - Email 2 of 2 March 2026 Payment Claim - [Redacted] - 2511 Claim 7 3.eml
-  4 - March 2026 Payment Claim - [Redacted] - 2511 Claim 7.eml
-  5 - [Redacted]-PCO-PGC-001_Claim7_March.xlsx
-  6 - Claim 7 March 26 PC Substantiation Register.xlsx
-  7 - Claim 7 March 26 Resource Calendar.xlsx
-  8 - Dayworks Report Summary.xlsx
-  1 - RE- March 2026 Payment Claim - [Redacted] - 2511 Claim 7.pdf
-  2 - Email 2 of 2 March 2026 Payment Claim - [Redacted] - 2511 Claim 7 1.pdf
-  3 - Email 2 of 2 March 2026 Payment Claim - [Redacted] - 2511 Claim 7 3.pdf
-  4 - March 2026 Payment Claim - [Redacted] - 2511 Claim 7.pdf
-  Claim 1 Onboarding.zip
-  Claim 2 Loader.zip
-  Claim 3 Excavator.zip
-  Claim 4 Shutdown.zip
-  Claim 5 Post 251211 Dayworks.zip
-  Claim 6 Weather Zip1.zip
-  Claim 6 Wheather Zip2.zip
-  Pre 251211 Dayworks.zip

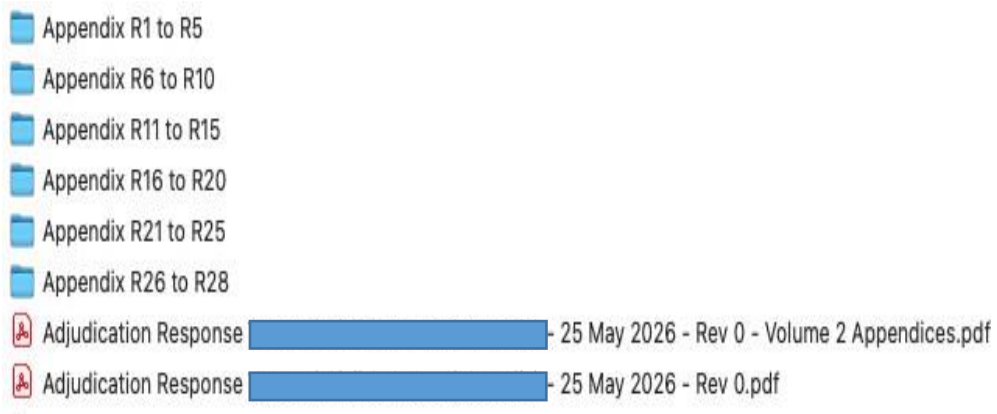
- c) The Payment Schedule comprised of the following;

-  Fwd_ Mar...aim 7.msg
-  2511-[Redacted]..2026.pdf

Applicant:
Respondent:

[Redacted]
[Redacted]

- d) A copy of the Contract.
- 10) The Respondent provided its Response by way of internet (191.3 Mb) and was comprised of the following;



BACKGROUND

- 11) On or about 21 July 2025, the Applicant entered into a construct only contract (the **Contract**) with the Respondent to carry out civil works for its project at [Redacted] the Site as set out in Schedule 2 of the Contract.
- 12) The Contract was comprised as follows;
- a) part lump sum (for the preliminaries items, which are set out in Schedule 3 of the Contract);
 - b) part to be performed on a schedule of unit rates (for the works items, which are set out in Schedule 3 of the Contract); and
 - c) part to be performed on a schedule of hourly rates (for variations, which are set out in Schedule 4 of the Contract).

Applicant:

[Redacted]

Respondent:

[Redacted]

- 13) The work under the Contract was to be performed during the period 1 August 2025 to 10 October 2025, which was set out in Schedule 6 of the Contract.
- 14) The Contract Particulars indicates that;
 - a) The Commencement Date was 21 July 2025; and
 - b) The date for Practical Completion was 14 December 2025.
- 15) Clause 9.4 of the Contract and the Contract Particulars indicates that;
 - a) The Applicant would become liable for liquidated damages if it failed to achieve Practical Completion by the Date for Practical Completion.
 - b) Schedule 6 of the Contract provides a schedule of start/finish times for carrying out activities referred to in Schedule 2, but the Contract does not expressly state the Applicant's obligation to perform the articulated activities within the times or in the order provided in Schedule 6. The Contract does not set out how Schedule 6 relates to the terms and conditions of Contract and only mentions Schedule 6 once in the Index.
 - c) Clause 9 sets out the process the Applicant was to follow if it suffered delays and it believed it was entitled to an extension of time to the Date for Practical Completion.
- 16) The Applicant asserts that the Respondent caused substantial delays and the works remained incomplete as of 12 March 2026.
- 17) The Applicant further asserts that from 12 December 2025, the Respondent directed the Applicant's supervision, labour and equipment to continue performing the work under the Contract

Applicant:
Respondent:

[Redacted]
[Redacted]

albeit the valuation of that work was to be on the basis of the schedule of hourly rates contained in Schedule 4 of the Contract.

- 18) The Applicant further asserts that on 10 March 2026, the Respondent terminated the hire of the Applicant's supervision, labour and equipment save for some items of dry-hire equipment that were not returned until April 2026.
- 19) The Applicant also asserts that on 10 March 2026, the Respondent agreed that the Applicant had completed its scope of work as indicated in Schedule 2 of the Contract.
- 20) On 31 March 2026, the Applicant submitted its payment claim # 7 (the **Payment Claim**).

Applicant:
Respondent:

[Redacted]
[Redacted]

- 21) The following is a summary of the Payment Claim:

PAYMENT CLAIM # 7	
Work Item	Payment Claim - Total value claimed to date
Original Contract – claimed to date;	
Lump sum items	\$540,641.95
Re-measurable items	\$381,389.37
Dayworks	\$315,091.60
	<u>\$1,237,122.92</u>
Schedule of Rates – claimed to date;	\$15,470.00
Claim 1 - Onboarding Delays;	\$248,710.00
Claim 2 – Loader incident;	\$63,518.00
Claim 3 – Excavator incident;	\$804,304.00
Claim 4 – Shutdown delays;	\$190,672.00
Claim 5 – Post 11 Dec dayworks;	\$641,580.00
Claim 6 – Weather Impacts;	\$233,098.65
Claim 7 – Descope adjustment;	\$196,363.04
Claim 8 – Lubricants;	\$18,491.23
	<u>\$3,649,329.84</u>
Less previously certified	\$1,408,153.23
This Payment Claim	<u>\$2,241,176.61</u>

- 22) The total amount claimed under the Payment Claim is the Applicant's valuation of completed original work as \$1,237,122.92 plus the Applicant's valuation of completed schedule of rates items and variations as \$2,412,206.92 amounting

Applicant:
Respondent:

[Redacted]
[Redacted]

to \$3,649,329.84 less \$1,408,153.23 previously certified is the amount claimed \$2,241,176.61 excl. GST.

- 23) On 14 April 2026, the Respondent issued is response to the Payment Claim.
- 24) In the response to the Payment Claim, the Respondent indicated it would not make any payment relating to the Payment Claim.
- 25) The Adjudication Application arises from an unpaid payment claim made by the Applicant on the Respondent under section 8(a) of the Act for construction work carried out under a construction contract at [Redacted] the Site.

THE CONTRACT

- 26) The parties entered into a construction contract for the performance of certain civil works on the Respondent's project at [Redacted] the Site on or about 12 September 2025 (the **Contract**).
- 27) The Contract is comprised of a Purchase Order referenced PO # 53926, a bespoke form of agreement dated 21 July 2025, 8 schedules attached thereto and some final minor pricing by way of emails dated 11 and 12 September 2025. The Contract was sent to the Applicant on 12 September 2025.
- 28) The original quantities for each item and the unit rates are set out in Purchase Order # 53926 and Schedule 4 to the Contract.
- 29) The valuation of the work performed under the Contract is carried out on the basis of lump sum items, unit rates and hourly rates provided in the Purchase Order, Schedule 4 and the emails sent on 11 and 12 September 2026.

Applicant:

[Redacted]

Respondent:

[Redacted]

- 30) Each unit rate includes an amount for customs fees, materials, consumables, tools, plant and equipment, labour, overhead and profit and other incidental and necessary items to perform the work.

Applicant: [Redacted]
 Respondent: [Redacted]

THE PAYMENT CLAIM

- 31) On 31 March 2026, the Applicant served the Respondent its payment claim number 7. The amount claimed for the period following the previous payment claim was \$2,241,176.61. excl. GST (the **Payment Claim**).
- 32) The following is a summary of the Payment Claim:

PAYMENT CLAIM # 7

Work Item	Payment Claim - Total value claimed to date
Original Contract – claimed to date;	
Lump sum items	\$540,641.95
Re-measurable items	\$381,389.37
Dayworks	\$315,091.60
	\$1,237,122.92
Schedule of Rates – claimed to date;	\$15,470.00
Claim 1 - Onboarding Delays;	\$248,710.00
Claim 2 – Loader incident;	\$63,518.00
Claim 3 – Excavator incident;	\$804,304.00
Claim 4 – Shutdown delays;	\$190,672.00
Claim 5 – Post 11 Dec dayworks;	\$641,580.00
Claim 6 – Weather Impacts;	\$233,098.65
Claim 7 – Descope adjustment;	\$196,363.04
Claim 8 – Lubricants;	\$18,491.23
	<u>\$3,649,329.84</u>
Less previously certified	\$1,408,153.23
This Payment Claim	<u>\$2,241,176.61</u>

Applicant: [Redacted]
Respondent: [Redacted]

Applicant:
Respondent:

[Redacted]
[Redacted]

33) Section 4 of the Act defines a “payment claim” as;

“payment claim” means a claim made under a construction contract:

- (a) *by the contractor to the principal for payment of an amount in relation to the performance by the contractor of its obligations under the contract; or*
- (b) *by the principal to the contractor for payment of an amount in relation to the performance or non-performance by the contractor of its obligations under the contract.”*

34) Clause 4.1 of the Contract provides the requirements for a valid progress claim under the Contract as follows:

4.1 Contractor to submit Payment Claims

- (a) *The Contractor must submit to [Redacted] the Respondent, on the Payment Claim Date, its claims for payment (Payment Claim) for Works performed since the last Payment Claim Date, which must include:*
 - (i) *calculations and evidence substantiating the amount claimed;*
 - (ii) *an itemised schedule of all Variations and any other claims for payment;*
 - (iii) *demonstrated progress against the approved Program; and*
 - (iv) *any other information [Redacted] the Respondent may reasonably require.*
- (b) *The Payment Claim must be in a form approved by [Redacted] the Respondent.*

Applicant:

[Redacted]

Respondent:

[Redacted]

(c) *If a Payment Claim is made before the relevant Payment Claim Date, it will instead be deemed to have been submitted on the next Payment Claim Date, provided that in no circumstance may more than one Payment Claim be submitted for any Payment Claim Date.*

- 35) The Contract Particulars provides that the “Payment Claim Date (Clause 4.1)” is “Per Schedule 3”.
- 36) Schedule 3 is entitled “Contract Sum” and provides “Refer to attached schedule below”. There is no attached schedule below and the Purchase Order referenced PO 53926, which forms a part of the Contract, provides no guidance on this issue.
- 37) Regardless that the Contract does not expressly provide a Payment Claim Date, section 19 and section 3 of schedule 1 of the Act implies to following provision into the Contract;

“19 Making payment claims

The provisions in Schedule 1, Division 4 are implied in a construction contract that does not have a written provision about how a party must make a claim to another party for payment.

...,

Division 2 Implied provisions

...

3 Entitlement to make claim

The contractor is entitled to make one or more claims for a progress payment in relation to the contractor’s obligations it has performed and for which it has not been paid by the principal.

Applicant:

[Redacted]

Respondent:

[Redacted]

..."

- 38) The Payment Claim was sent to the Respondent on 31 March 2026 and was for work carried out on or in relation to the Respondent's [Redacted] Site operations in the NT under the Contract, which was a valid Payment Claim Date for the purposes of the Act and the Contract.
- 39) The Payment Claim particularised the work and variations in accordance with clause 4.1 of the Contract.
- 40) The Payment Claim is in writing, sets out an itemised account of the amounts claimed including a description of the item, the hours claimed and the relevant rate provided by the Contract. The details provided in the Payment Claim sufficiently explained to the Respondent what was being claimed in the form required under clause 4.1(a) of the Contract.
- 41) Notwithstanding the requirements of clause 4.1 of the Contract, the New South Wales Court of Appeal provided guidance about the sufficiency of detail required in a payment claim to communicate its claims for payment to the Respondent. *In Multiplex Constructions Pty Ltd v Luikens & Anor* [\[2003\] NSWSC 1140](#) at [76], Palmer J set out the following test for sufficiency of detail:

"76 A payment claim and a payment schedule are, in many cases, given and received by parties who are experienced in the building industry and are familiar with the particular building contract, the history of construction of the project and the broad issues which have produced the dispute as to the claimant's payment claim. A payment claim and a payment schedule must be produced quickly; much that is contained therein in an abbreviated form which would be meaningless to the uninformed reader will be understood readily by the parties themselves. A

Applicant:

[Redacted]

Respondent:

[Redacted]

payment claim and a payment schedule should not, therefore, be required to be as precise and as particularised as a pleading in the Supreme Court. Nevertheless, precision and particularity must be required to a degree reasonably sufficient to apprise the parties of the real issues in the dispute."

- 42) **The Payment Claim was made in accordance with clause 4.1(a) of the Contract and section 4 of the Act and was therefore, a payment claim for the purposes of the Act.**

Applicant: [Redacted]
Respondent: [Redacted]

NOTICE OF THE PAYMENT DISPUTE

- 43) On 14 April 2026, the Respondent served its response to the Payment Claim (the **Payment Schedule**).
- 44) The Payment Schedule indicates the Respondent did not intend to pay any part of the Payment Claim.
- 45) Clause 4.3 of the Contract provides;

4.3 Payment Schedule

- (a) *Subject to clause 4.6, [Redacted] the Respondent will within 10 Business Days, issue to the Contractor a payment schedule stating:*
 - (i) *the Payment Claim or Final Payment Claim to which the payment schedule applies;*
 - (ii) *the amount of the Payment Claim or Final Payment Claim which in the opinion of [Redacted] the Respondent (subject to clause 4.7), is payable; and*
 - (iii) *if the amount in the payment schedule is less than that in the Payment Claim or Final Payment Claim, why the amount proposed to be paid is less, including the reasons for withholding any payment (Payment Schedule).*
- (b) *At any time up to the expiry of the Defects Liability Period, [Redacted] the Respondent may, by the issue of a Payment Schedule, correct an error in an earlier Payment Schedule ..."*

- 46) I do not consider the Payment Schedule was ambiguous about whether it intended to make any payment in response to the

Applicant:
Respondent:

[Redacted]
[Redacted]

Payment Claim. The Payment Schedule asserted the Respondent could not understand the Payment Claim and indicated no payment would be made.

- 47) That may not be a valid reason for withholding payment but nonetheless it is a reason for withholding payment and satisfies the requirements of the Contract.
- 48) Section 8 of the Act provides a definition of a payment dispute as follows;

"A payment dispute arises if:

- (a) *a payment claim has been made under a contract and either:*
- (i) *the claim has been rejected or wholly or partly disputed;* or
- (ii) *when the amount claimed is due to be paid, the amount has not been paid in full; or*
- (b) *when an amount retained by a party under the contract is due to be paid under the contract, the amount has not been paid; or*
- (c) *when any security held by a party under the contract is due to be returned under the contract, the security has not been returned.*

- 49) Section 20 of the Act sets out the requirements for responding to payment claims and the time for payment as follows:

"The provisions in Schedule 1, Division 5 about the following matters are implied in a construction contract that does not have a written provision about the matter:

- (a) *when and how a party must respond to a payment claim made by another party;*

Applicant:

[Redacted]

Respondent:

[Redacted]

(b) *by when a payment must be made.*

- 50) In this case, the Contract provides the procedure for when and how the Respondent must respond to the Payment Claim.
- 51) The Payment Schedule was served on the Respondent on 14 April 2026 in accordance with clause 4.3 of the Contract.
- 52) In the Payment Schedule, the Respondent made it clear to the Applicant that it would not be paying any of the amount claimed in the Payment Claim and provided the following reasons;
- a) “1) *...Claim correspondence [is].. disconnected, contradictory, and erroneous to the extent that it cannot be reasonably assessed..*”
- b) “3) **[Redacted]** *The Respondent will not accept any claims for standby, delay, or ongoing resource costs arising after the 10th of March where such costs are not associated with:*
- a. Works directed in writing by **[Redacted]** the Respondent;*
- or*
- b. obligations expressly required under the Agreement.*
- ...
- c) “7) **[Redacted]** *The Respondent does not accept any entitlement to claims not submitted in strict accordance with the agreement including notice and substantiation requirements.*
- ...”
- 53) Pursuant to section 8(a) of the Act, the payment dispute occurred on the day the amount claimed in the Payment Claim was wholly rejected, which was 14 April 2026.

Applicant:

[Redacted]

Respondent:

[Redacted]

APPLICATION FOR ADJUDICATION

- 54) Section 28(1) of the Act entitles an Applicant to make an application for adjudication of a payment dispute within 65 working days of the payment dispute arising.
- 55) I am satisfied that the payment dispute arose on 14 April 2026, which is the date the Respondent notified the Applicant (by way of the Payment Schedule) that it disputed the Payment Claim and would not pay any part of the claimed amount.
- 56) The Applicant applied for adjudication of the payment dispute on 8 May 2026, which is within the time permitted under section 28(1) of the Act (the **Adjudication Application**).
- 57) The Adjudication Application complies with the requirements of the Act for the following reasons:
- a) The Adjudication Application is in writing as required by section 28(1)(a) and 28(2) of the Act.
 - b) The Adjudication Application was served on the Respondent on 11 May 2026, pursuant to section 28(1)(b) of the Act.
 - c) The Adjudication Application was served on the Australian Institute of Quantity Surveyors on 8 May 2026, pursuant to section 28(1)(c)(iii) of the Act.
- 58) On 28 May 2026, the adjudicator requested an equal deposit or security for the costs of the adjudication from the Applicant and the Respondent. Both parties duly provided the deposit as requested.

Applicant: [Redacted]
Respondent: [Redacted]

- 59) I am, therefore, satisfied that the Adjudication Application satisfies the requirements of section 28 of the Act.

Applicant:
Respondent:

[Redacted]
[Redacted]

RESPONSE TO THE ADJUDICATION APPLICATION

- 60) The Applicant served the Adjudication Application on the Respondent on 11 May 2026.
- 61) Pursuant to section 29(1) of the Act, the Respondent has 15 working days after the date on which it is served with an application for adjudication to prepare and serve its written response on the adjudicator and the Applicant.
- 62) The Respondent served its adjudication response (the **Response**) on ABCDRS (acting as agent for the adjudicator) and the Applicant on 25 May 2026.
- 63) Pursuant to section 29(2) of the Act, the Response must;
 - “(a) be prepared in accordance with, and contain the information prescribed by, the Regulations; and*
 - (b) state the details of, or have attached to it, any rejection or dispute of the payment claim that has given rise to the dispute; and*
 - (c) state or have attached to it all the information, documents and submissions on which the party making it relies in the adjudication.*
- (3) However, in the response, the party responding to the application for adjudication is not required to provide information or documents that have already been provided by the applicant in the application.”*
- 64) **I am satisfied, therefore, that the Respondent served its Response within the timeframes prescribed in the Act.**

Applicant: [Redacted]
Respondent: [Redacted]

JURISDICTION

- 65) On or about 12 September 2025, the parties entered into a contract for civil work to the Respondent's [Redacted] Site project (the **Contract**).
- 66) The work under the Contract required the Applicant to carry out various civil works (together the **Works**).
- 67) The Works were "*construction work*" as defined in sections 6(1)(a) and 6(1)(c) of the Act.
- 68) The Contract was entered into after the commencement of section 9 of the Act.
- 69) Accordingly, the Contract is a construction contract as defined in section 5(1) of the Act and the Act applies to disputes arising under the Contract.
- 70) Pursuant to section 27 of the Act, the Applicant is a party to the Contract under which the payment dispute has arisen and is, therefore, entitled to apply to have the dispute adjudicated.
- 71) The Applicant has prepared and served the Adjudication Application on the Respondent Pursuant to section 28 of the Act.
- 72) I am not aware of any unresolved application for adjudication or order, judgment or finding by an arbitrator or court dealing with a matter arising under the Contract as referred to in sections 27(a) or 27(b) of the Act.
- 73) I am, therefore, satisfied that I have jurisdiction to determine the application for adjudication under the Act.

Applicant:
Respondent:

[Redacted]
[Redacted]

REASONS FOR THE DETERMINATION

- 74) Pursuant to section 34 of the Act, I have considered the following matters in making this determination:
- a) the Adjudication Application and its attachments;
 - b) the Response and its attachments; and
 - c) the further written submissions validly made by the parties.

DETERMINATION OF THE PAYMENT DISPUTE

- 75) There are 4 claims for a part of the original civil works and 8 claims for variations, which are in dispute.
- 76) I have considered below each of the Applicant's 4 original works claims and 8 claims for variations and the Respondent's assessments separately below.

REQUESTS FOR FURTHER SUBMISSIONS

- 77) During the course of the determination I requested the parties to provide me further submissions as follows.
- 78) On 28 May 2026, I caused to be sent to the parties the following request for further submissions # 1;

"Dear Applicant and Respondent,

In the application, the Applicant claims payment for mobilisation related delay costs (arising from an act or omission of the Respondent) incurred in September 2025 or in the alternative for a variation instructed by the Respondent to participate in additional training/testing not required under the Contract as a condition precedent to commencing work on site.

Applicant:
Respondent:

[Redacted]
[Redacted]

In paragraphs 14.12 ff of the response the Respondent maintains there is no dispute about the events that give rise to the claims, but it asserts the Applicant failed to follow the conditions precedent in the Contract by providing timely notices and claims etc... and, therefore, has accrued no right to payment.

In its letter dated 3 October 2025, the Respondent replied to the Applicant's claim for payment of the above on the following terms;

"...Entitlement is conditional upon and limited to [Redacted] the Respondent's recovery from [Redacted] the Principal."

and;

"...

d) Delays in Inductions, Training and VoC Approvals:

We acknowledge that delays attributable to the Principal's [Redacted] site access and administrative processes may constitute an 'Excusable Delay' under Clause 9.2. However, as noted above, there is no direct entitlement to compensation from [Redacted] the Respondent for such delays under the Agreement.

[Redacted] The Respondent will, in good faith, seek to recover these delay costs from [Redacted] the Principal. Your entitlement to any payment for these delays is strictly contingent upon [Redacted] the Respondent's successful recovery from [Redacted] the Principal. Any payment to [Redacted] the Applicant will be limited to the amount, if any, that [Redacted] the Respondent actually receives from [Redacted] the Principal for the specific delays you have incurred. [Redacted] The Respondent makes no representation as to the likelihood of a successful recovery".

Applicant:
Respondent:

[Redacted]
[Redacted]

The Respondent has provided other evidence where it appears there was no dispute about the delay or that the Applicant was entitled to payment albeit conditional upon prior recovery from the Principal of those delay costs. Furthermore, the Respondent makes it clear that it accepted, in principle, the Applicant's right to payment for the delay costs it suffered, and it promised to prosecute those claims with its client.

Please consider the evidence adduced and the operation of section 12 of the Construction Contract (Security of Payment) Act and provide your submissions regarding entitlement in these circumstances.

Deadlines

The Respondent is to provide its submissions by 4:00 pm AEST Monday 2 June 2026 and provide a copy to the Applicant.

The Applicant is to provide its submissions by 4:00 pm AEST Tuesday 3 June 2026 and provide a copy to the Respondent."

Applicant:
Respondent:

[Redacted]
[Redacted]

- 79) On 1 June 2026, I caused to be sent to the parties the following request for further submissions # 2;

"Dear Applicant and Respondent,

Both parties have relied on the Respondent's letter to the Applicant dated 30 September 2025. There is an ambiguity that I request the parties explain by way of further submission. On 13 September 2025, there was an incident involving the Applicant's Cat 980 Wheel Loader involving unsafe working practice. On 20 September 2025, there was an incident involving the Respondent's Excavator that overturned while carrying pipe onsite. It is also clear from the Principal's letter dated 9 October 2025 and the daily reports provided by the Applicant that the works resumed on or about 20 October 2025. In its letter to the Applicant dated 30 September 2025, the Respondent confirmed its earlier oral direction(?) given 20 September 2025 to suspend the works. That letter provides; "... 2) In light of several safety incidents on 13 and 20 September 2025, [Redacted] the Respondent hereby suspends [Redacted] the Applicant's obligations under Contract No. 2511-[Redacted]-2025-COM-[Redacted], effective 20TH September 2025 and until further notice.

This suspension is issued pursuant to Clause 7 (Safety), which empowers [Redacted] the Respondent to take all necessary measures to ensure a safe work environment for all personnel on site. Accordingly, this suspension is precautionary, intended to ensure the safe resumption of works and compliance with all site safety requirements. ..." Clause 7 does not appear to provide the Respondent any right to suspend the works. Clause 7 sets out various health and safety obligations with which the Applicant must comply. I cannot find in the Contract any provision relating to suspension of the works. Please advise me if I have

Applicant:
Respondent:

[Redacted]
[Redacted]

misinterpreted the daily records and the party responsible for the incident on 13 September 2025 and the party responsible for the incident on 20 September 2026. Similarly, if the Contract provides the Respondent an express provision to suspend the works, please point that out to me. If it does not, please explain to me under which provision the Contract was suspended. The Respondent is to provide its submissions by 4:00 pm AEST Wednesday 3 June 2026 and provide a copy to the Applicant. The Applicant is to provide its submissions by 4:00 pm AEST Thursday 5 June 2026 and provide a copy to the Respondent.

Thank you.

- 80) On 4 June 2026, I caused to be sent to the parties the following request for further submissions # 3;

Dear Applicant and Respondent,

1. RE CLAIM 4 At paragraph 9.6.2 pf the Response, the Respondent asserts;

Claim 4 Shutdown	\$190,672	Rejected / Disputed	Weather/shutdown not compensable
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At paragraph 15.5 of the Response, the Respondent further states;

9	Shutdown Delays	-	\$190,672.00	Nil	Paid in Item 2 above as agreed – double claim	Nil	Nil
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This appears to be inconsistent as paragraph 9.6.2 rejects claim 4 for Shutdown Delays whereas paragraph 15.5 indicates the claim 4 for Shutdown Delays was “Paid in item 2 above as agreed – double claim”. Clearly there is an inconsistency.

2. RE AMOUNT PREVIOUSLY PAID Additionally, the Applicant indicates that the total previously paid by the Respondent was \$1,408,153.23. The Respondent indicates the total previously paid was \$1,499,063.28. Clearly there is an inconsistency. In order to

Applicant:
Respondent:

[Redacted]
[Redacted]

ensure there is no mis-understanding about the disputed amounts, please tell me which is the Respondent's position for each of the above. The Respondent is to provide its submissions by 4:00 pm AEST Thursday 4 June 2026 and provide a copy to the Applicant. The Applicant is to provide its submissions by 4:00 pm AEST Friday 5 June 2026 and provide a copy to the Respondent. Thank you.

- 81) On 5 June 2026, I caused to be sent to the parties the following request for further submissions # 4;

Dear Applicant and Respondent,

*I note at page 45 of 1007 of the Adjudication Application that claim 4 of the payment claim is a claim for costs incurred during inclement weather that occurred on **16 – 17 November 2025**.*

*I also note at page 45 of 1007 of the Adjudication Application that claim 6 of the payment claim is a claim for costs incurred during inclement weather that occurred on 29 October 2025, 6, 13-17 & 30 November 2025, 1-2, 4, 9, **13 -17 November** & 19-20 December 2025.*

Please confirm whether this is inadvertent claiming of the same costs twice, or if it is different please explain why they are different.

The Applicant is to provide its submissions by 2:00 pm AEST Monday 8 June 2026 and provide a copy to the Respondent.

The Respondent is to provide its submissions by 4:00 pm AEST Monday 8 June 2026 and provide a copy to the Applicant.

Thank you.

Applicant: [Redacted]
Respondent: [Redacted]

EXTENSION OF TIME TO MAKE THE DETERMINATION

- 83) On 1 June 2026, I requested the Construction Contract Registrar to grant me an extension of time for making the determination of Application AIQS NT 35-26-01 under section 33(1) the Act.
- 84) On 3 June 2026, the Construction Contract Registrar granted the extension of time until Monday, 15 June, 2026.

Applicant: [Redacted]
 Respondent: [Redacted]

PAYMENT DISPUTES

85) The following is a summary of the Payment Claim:

PAYMENT CLAIM # 7

Work Item	Payment Claim - Total value claimed to date
Original Contract – claimed to date;	
Lump sum items	\$540,641.95
Re-measurable items	\$381,389.37
Dayworks	\$315,091.60
	<u>\$1,237,122.92</u>
Schedule of Rates – claimed to date;	\$15,470.00
Claim 1 - Onboarding Delays;	\$248,710.00
Claim 2 – Loader incident;	\$63,518.00
Claim 3 – Excavator incident;	\$804,304.00
Claim 4 – Shutdown delays;	\$190,672.00
Claim 5 – Post 11 Dec dayworks;	\$641,580.00
Claim 6 – Weather Impacts;	\$233,098.65
Claim 7 – Descope adjustment;	\$196,363.04
Claim 8 – Lubricants;	\$18,491.23
	<u>\$3,649,329.84</u>
Less previously certified	\$1,408,153.23
This Payment Claim	<u>\$2,241,176.61</u>

Applicant: [Redacted]
Respondent: [Redacted]

- 86) The following table sets out the Respondent's assessment (provided in the Response) of the Payment Claim and the amounts in dispute:

PAYMENT CLAIM # 7 / RESPONDENT'S ASSESSMENT / AMOUNT IN DISPUTE

Work Item	Payment Claim - Total value claimed to date	Payment Schedule - Total certified to date	Amount in dispute
Original Contract – claimed to date;			
Lump sum items	\$540,641.95	\$537,623.64	\$3,018.31
Re-measurable items	\$381,389.37	\$297,814.87	\$83,574.50
Dayworks	\$315,091.60	\$182,920.00	\$132,171.60
	\$1,237,122.92	\$1,068,468.88	\$218,764.41
Schedule of Rates – claimed to date;	\$15,470.00	\$480.00	\$14,990.00
Claim 1 - Onboarding Delays;	\$248,710.00	\$0.00	\$248,710.00
Claim 2 – Loader incident;	\$63,518.00	\$0.00	\$63,518.00
Claim 3 – Excavator incident;	\$804,304.00	\$0.00	\$804,304.00
Claim 4 – Shutdown delays;	\$190,672.00	\$190,672.00	\$126,922.00
Claim 5 – Post 11 Dec dayworks;	\$641,580.00	\$356,113.54	\$285,466.46
Claim 6 – Weather Impacts;	\$233,098.65	\$41,870.00	\$191,228.65
Claim 7 – Descope adjustment;	\$196,363.04	\$0.00	\$196,363.04
Claim 8 – Lubricants;	\$18,491.23	\$18,491.23	\$0.00
	<u>\$3,649,329.84</u>	<u>\$1,499,063.28</u>	<u>\$2,241,176.61</u>
Less previously certified	\$1,408,153.23	\$1,499,063.28	
<u>This Payment Claim</u>	<u>\$2,241,176.61</u>	<u>\$0.00</u>	

Applicant:

[Redacted]

Respondent:

[Redacted]

- 87) The details of the Payment Claim are taken from the Payment Claim.
- 88) The details of the Respondent's Assessment of the Payment Claim are taken from the Response by the Respondent.
- 89) The Applicant and the Respondent have not been able to agree on the amount previously paid.
- 90) The Respondent has provided details of amounts it asserts to have previously paid for completed work under the Contract.
- 91) For the purposes of this determination, I have taken the amount claimed as having been previously paid for work completed under the Contract as also meaning the amount previously certified.
- 92) To the extent that the amount previously paid is less than the amount previously certified, then such shortfall is a debt owing to the Applicant. If that be the case, it is a matter for the Applicant to commence debt recovery proceeding to recover the debt and is not a matter for adjudication.

Applicant:

[Redacted]

Respondent:

[Redacted]

LUMP SUM & RE-MEASURABLE ITEMS

Payment Claim & Adjudication Application

- 93) In the Payment Claim, the Applicant identified and claimed the total value of completed lump sum items as; \$540,641.95. It claimed items referenced 8202, 8110, 8301, 8203 and 4024 as being 100% completed.
- 94) In the Payment Claim, the Applicant particularised and claimed the total value of completed re-measurable items as; \$381,389.37.
The claimed certain amounts for 16 re-measurable items.
- 95) The amount claimed for lump sum items and re-measurable items was \$922,031.32.

Response to the Payment Claim

- 96) At Item 1 of the Table in paragraph 15.5 of the Response, the Respondent admits that the previous certified (paid) amount for lump sum items and re-measurable items was \$835,438.51.

Determination

- 97) The Respondent has provided no objections to the entitlement for the claimed lump sum and re-measurable items or about the amount claimed for lump sum and re-measurable items.
- 98) Given the Respondent has made no adverse submission about quantum, for the reasons set out below at paragraphs 150) to 160), I accept the Applicant's claim in relation to costs.
- 99) Similarly, I accept the Applicant's entitlement to each of those claims.
- 100) Accordingly, I have determined that the Applicant is entitled to payment of the amounts claimed for lump sum and re-measurable items as set out in the Payment Claim.

Applicant: [Redacted]
Respondent: [Redacted]

Applicant:

[Redacted]

Respondent:

[Redacted]

DAYWORKS

Payment Claim & Adjudication Application

- 101) In the Payment Claim, the Applicant claims payment of \$315,091.60 for various items referenced 8400 and described as semi water tank dry hire, Moxy dry hire, Moxy operator, Cat 980 Loader dry hire, Body Water truck, 15t Roller Padfoot/smooth drum, Operator in Darwin & Operator in Surveyor. The Applicant records that the Respondent previously certified \$182,920.00 for this item.
- 102) In the Payment Claim, the Applicant claims payment of \$15,470.00 for various items referenced "*Dayworks prior to 11 Dec - excludes delay periods, Xmas, and Dayworks items on PO above*" and has been particularised. The Applicant records that the Respondent previously certified \$480.00 for this item.

Response to the Payment Claim

- 103) At Item 1 of the Table in paragraph 15.5 of the Response, the Respondent admits that the previous certified (paid) amount for lump Dayworks items was \$539,513.54.

Determination

- 104) The Respondent has not provided a breakdown of the Dayworks it certified (paid) but admits the total previously certified was \$539,513.54.
- 105) Accordingly, I used the recorded amounts paid provided by the Applicant as follows;
- a) Dayworks \$182,920.00
 - b) "*Dayworks prior to 11 Dec - excludes delay periods, Xmas, and Dayworks items on PO above*" \$480.00

Applicant:

[Redacted]

Respondent:

[Redacted]

c) Claim 5 Post 11 December dayworks \$356,113.54

d) Total of sub-paragraphs (a), (b) & (c) \$539,513.54.

- 106) The Respondent has provided no objections to the record provided by the Applicant for the Dayworks items for operator and dry hire of equipment amounting to \$182,920.00 and for *"Dayworks prior to 11 Dec - excludes delay periods, Xmas, and Dayworks items on PO above"* amounting to \$480.00.
- 107) Given the Respondent has made no adverse submission about quantum, for the reasons set out below at paragraphs 150) to 160), I accept the Applicant's claim in relation to costs.
- 108) Similarly, I accept the Applicant's entitlement to each of those claims.
- 109) Accordingly, I have determined that the Applicant is entitled to payment of the amounts claimed for Dayworks operator and equipment dry hire and *"Dayworks prior to 11 Dec - excludes delay periods, Xmas, and Dayworks items on PO above"* items as set out in the Payment Claim.

Applicant: [Redacted]
Respondent: [Redacted]

CLAIM 1 - ONBOARDING

Payment Claim & Adjudication Application

- 110) This claim relates to additional cost claimed to have been incurred by the Applicant due to unanticipated Onboarding procedures instructed by the Principal [Redacted] through the Respondent, for which the Applicant asserts the Respondent is liable.
- 111) The Applicant states;
- a) Under Schedule 6 of the Contract, the Applicant was required to mobilise to site between 1 and 10 August 2026, carry out the re-measurable works under the Contract from 11 August 2026 to 3 October 2026 and demobilise from 4 October 2026 to 10 October 2026.
 - b) On 4 September 2025, [Name Redacted] of the Respondent instructed the Applicant by issuing a new program for the performance of the works under the Contract. The new program indicated the Applicant was to commence mobilising on 3 September 2026, attend “Training, D&Q hours, VOC’s” from 3 September 2025 to 10 September 2025 and carry out the work under the Contract from 10 September 2026 and complete the works by 28 November 2025. Demobilisation followed;
 - c) The Applicant mobilised as directed, attended the directed new Onboarding processes and commenced work on 13 September 2025. That day the Applicant was involved in the “loader incident”, and the works were stopped up to and including 14 September 2025.
 - d) On 18 September 2025, [Name Redacted] of the Respondent instructed the Applicant by issuing a further amended new

Applicant:

[Redacted]

Respondent:

[Redacted]

program for the performance of the works under the Contract. The new program indicated the Applicant was to commence mobilising on 3 September 2026, attend “*Training, D&Q hours, VOC’s*” from 3 September 2025 to 10 September 2025 and carry out the work under the Contract from 10 September 2026 and complete the works by 3 December 2025. Demobilisation followed;

- e) The additional inductions, carry out further verification of competency assessments (VOC), undertake site access training and isolation training, develop further traffic management plans (TMP) and Job Safety Analyses (JSA) and training relating to site entry processes (the **Onboarding**), none of which were required under the Contract continued up to 20 September 2025.
- 112) The Applicant claimed it incurred delay and standby costs amounting to \$248,710.00 over a period of 10 days due to the Respondent directed additional Onboarding processes. The Applicant has provided an account of additional hours and has applied the hourly rates provided by Schedule 4 of the Contract to calculate the amount claimed.
- 113) The Applicant argues this was an Excusable Delay and a Standdown Event and to pursuant to clauses; 2.2, 7.2, 8.1, 9.1, 9.2 and Schedule 4 of the Contract it was entitled to claim payment for its claim referred to as “*Claim 1 - Onboarding*”.

Response to the Payment Claim

- 114) The Respondent admits the events causing the delays but argues the Applicant is not entitled to payment of “*Claim 1 – Onboarding*” because it is not entitled to payment under the Contract.
- 115) The Respondent explains the Applicant has not satisfied the conditions precedent to accruing entitlement to payment as follows;

Applicant:

[Redacted]

Respondent:

[Redacted]

- a) The Applicant refers to Clause 8.1 as providing its right to Claim payment. Clause 8.1(b) required any variation to be directed in writing and expressly identified as a variation. There was no instruction to perform a variation relating to “*Claim 1 - Onboarding*” given by the Respondent;
- b) Even if a variation was given, which the Respondent denies, clause 8.3(a) required the Applicant to provide a detailed quotation within 3 business days of receiving a variation direction, failing which the Applicant was barred from making claim pursuant to clause 8.3(b);
- c) Clause 8.4 required the Applicant to notify the Respondent within 3 business days if the Applicant considered an instruction was a variation, failing which, the Applicant was not entitled to make the claim pursuant to clause 8.4(c);
- d) Clause 8.5 required compliant daywork records to be issued daily and signed. The Applicant did not provide any such timesheets;
- e) Clause 4.4(c) all invoices for payment must contain signed timesheets and supporting records for daywork or rates-based claims. The Applicant did not provide any such timesheets;
- f) Clause 9.2 required strict delay and EOT notices including:
 - (i) *cause*;
 - (ii) *commencement*;
 - (iii) *programme impact*;
 - (iv) *mitigation*;
 - (v) *continuing notices*; and

Applicant:

[Redacted]

Respondent:

[Redacted]

(vi) supporting evidence.

Further, the Contract Particulars identify:

“Compensable Cause — N/A”

Accordingly, the Agreement did not contain a broad compensable delay or standby entitlement regime.

Applicant:
Respondent:

[Redacted]

[Redacted]

Determination

- 116) The 10-day period of delay due to the unanticipated mobilisation processes, training and testing for which the Applicant claims costs is not in dispute.
- 117) In the Payment Claim, the Applicant claims payment for “*Claim 1 - Onboarding*” costs over a period of 10 days arising from an act or omission of the Respondent, being an instruction given under clause 2.2, incurred in September 2025. The Applicant claims that the Respondent’s instruction under clause 2.2 caused the delay for which it claims “*Claim 1 - Onboarding*” costs or otherwise was a variation because it required a change to preliminary costs being to participate in additional training and additional VOC/training/testing that was not required under the Contract.
- 118) At paragraph 14.1.2 of the Response, the Respondent states;

“14.1.2. [Redacted] The Respondent’s response in principle

[Redacted] The Respondent does not dispute that:

- (a) **onboarding and VoC processes occurred;**
- (b) **site access delays occurred;**
- (c) **labour and plant were mobilised; or**
- (d) **productivity was affected during portions of the onboarding process.**

However, those matters do not themselves establish contractual entitlement.

The issue is not whether operational disruption occurred.

Applicant:
Respondent:

[Redacted]
[Redacted]

The issue is whether [Redacted] the Applicant established entitlement under the Agreement to recover:

- (e) *standby;*
- (f) *idle labour;*
- (g) *retained plant;*
- (h) *delay costs; or*
- (i) *additional mobilisation costs.*

[Redacted] The Respondent says [Redacted] the Applicant has not done so.

..."

119) The Respondent, asserts the Applicant has no entitlement to payment because it failed to follow the notification and claims processes outlined in the Contract and, therefore, it is now barred from prosecuting those claims for payment.

120) Clause 2.2 of the Contract provides;

"The Contractor certifies and warrants that it will carry out and complete the Works:

- (a). in accordance with the requirements of the Contract;*
- (b). in accordance with all Legislative Requirements, Policies, Plans and Procedures, and directions given by [Redacted] the Respondent."*

121) Clause 7.2 of the Contract requires the Applicant to comply with directions that;

"...

The Contractor will ensure that the working environment is safe.

Applicant:
Respondent:

[Redacted]
[Redacted]

To this end the Contractor will ensure that it has a clear understanding of the site and job requirements, undergoes all safety inductions required by [Redacted] the Respondent or directed by [Redacted] the Respondent, observes at all times safe working practices, wears and uses appropriate safety clothing and equipment, and is familiar with and complies with [Redacted] the Respondent's safety policies and procedures.
..."

122) Clause 8.1 of the Contract provides;

"...

(a). [Redacted] The Respondent may direct the Contractor at any time to amend, increase, decrease, omit or change the quality, character or extent of the Works or to execute additional work (Variation). No Variation directed by [Redacted] the Respondent will invalidate this Contract.

..."

123) Clause 1.1 defines Works as follows;

"...

Works means the whole of the work to be carried out and completed by the Contractor in accordance with the Contract, which by the Contract is to be handed over to [Redacted] the Respondent and includes remedial work, construction plant and temporary works.

..."

124) In that context, I am accept the Applicant's argument that the Respondent instructed the Applicant in writing, by way of the amended work schedule (on 4 September 2026 and 18 September 2026) and orally, to attend additional VOCs/ training / testing pursuant to clauses 2.2, 7.2 and 8.1, which was a variation for the purposes of the Contract.

Applicant:
Respondent:

[Redacted]

[Redacted]

125) In relation to delay costs, clause 9.1 of the Contract provides;

"9.1 Delay

If the Contractor becomes aware or ought reasonably to have become aware of anything which will probably cause delay to the Works, the Contractor must within 3 Business Days give [Redacted] The Respondent written notice of:

(a) the cause of the delay;

(b) the date the delay might commence (or, if the delay has already commenced, the date the delay commenced);

(c) the estimated period of the delay; and

(d) whether the Contractor intends to make a claim for an extension of time in relation to that delay."

126) In relation to extension of time, clause 9.2 of the Contract provides;

"9.2 Extension of time

(a) Subject to clause 9.2(c) the Contractor will only be entitled to claim an extension of time to the Date for Practical Completion where:

(i) the Works are delayed by any Excusable Delay which will prevent the Contractor from achieving Practical Completion by the Date for Practical Completion;

(ii) the Works are not concurrently delayed by a cause that is not an Excusable Delay;

(iii) within 7 Business Days of the commencement of the Excusable Delay, the Contractor gives

Applicant:
Respondent:

[Redacted]
[Redacted]

written notice to [Redacted] the Respondent setting out the details of the Excusable Delay, the extension of time sought and evidence of its effect by reference to the Program and the steps taken by the Contractor to mitigate effect of the delay;

(iv) if the delay continues beyond the extension of time claimed by the Contractor under clause 9.2(a)(iii), the Contractor gives an updated notice every 10 Business Days that satisfies the requirements of clause 9.2(a)(iii) until the delay ends;

(v) it has given all the notices strictly in accordance with the requirements of clauses 9.1 and 9.3.

(b) Subject to the Contractor strictly complying with clause 9.2(a), [Redacted] The Respondent will, acting reasonably, determine what, if any, extension of time will be granted to the Contractor and will notify the Contractor in writing of the revised Date for Practical Completion.

(c) [Redacted] The Respondent may (without being obliged to do so) at any time and for any reason it thinks fit, extend the Date for Practical Completion. This right is solely for the benefit of [Redacted] the Respondent and may be exercised in its absolute discretion, even if the Contractor is not entitled to an extension of time or has not claimed an extension of time.

(d) If the Contractor does not make any Claim for an extension of time within the time or in the form specified in clause 9.2(a), the Contractor is not entitled to an extension of time, or to later claim an extension of time, for that delay.

(e) Any delay caused by [Redacted] the Respondent or its Personnel or any delay or failure by [Redacted] the Respondent to

Applicant:
Respondent:

[Redacted]
[Redacted]

extend the Date for Practical Completion will not cause the Date for Practical Completion to be set at large.

127) In relation to delay costs, clause 9.3 of the Contract provides;

“9.3 Delay costs

*(a) Subject to clause 9.2 and 9.3(b), for every day the subject of an extension of time for a Compensable Cause, the Contractor may give **[Redacted]** the Respondent a Claim for delay costs to be assessed by **[Redacted]** the Respondent.*

(b) Delay costs shall be calculated:

(i) at the rates specified in the Contract Particulars or Schedule 3 or 4; or

(ii) if there are no rates specified in the Contract Particulars or Schedule 3 or 4, as assessed by

***[Redacted]** The Respondent’s Representative.*

(c) The Contractor will not be entitled to Claim any delay costs which:

*(i) could reasonably have been avoided by the Contractor;
or*

(ii) exceed the daily rates specified in the Contract Particulars.

128) It is clear from the correspondence between the parties that the Applicant had discussed (which constitutes a notice) the Respondent of the delays suffered by the Applicant. Specifically;

- a) On 16 September 2026, the Applicant’s operations manager sent an email to the Respondent, among other things, stating;

Applicant:
Respondent:

[Redacted]
[Redacted]

" ...

According to the schedule provided on 4/9, inductions and VOCs were expected to be completed by 9/9, with mark-out and setup commencing on 10/9, and earthworks on the hardstand pad starting on 14/9. We are currently facing a 6-day delay due to onboarding issues that were not anticipated. We understand the frustration.

The crew that flew out this morning has completed a full two-week roster but still requires additional hours to finalise their Dams and Quarries training before they can operate independently upon returning to site next Wednesday. Similarly, the incoming crew arriving tonight has only partially completed their inductions and will also need further hours to obtain their Dams and Quarry Permits.

As you mentioned, the soil tester is scheduled to complete the DCP next Wednesday, which will likely contribute to further delays.

..."

- b) On 18 September 2026, the Respondent's project manager, acknowledged the notification of delays by way of email to the Applicant stating;

" ...

We appreciate the difficulties associated with mobilising to site. I think we were all a little blindsided by the delays associated with inductions, VOC's etc, especially when we consider [Redacted] the Respondent's previous experience on site was very different.

Applicant:
Respondent:

[Redacted]
[Redacted]

Understanding we had taken on a working together approach for the project, we appreciate the impact this would have had on your business.

We can't promise anything at this stage other than we will be working with the client to try and claw back some of these costs.

...

We can work with the client regarding changes in scope and any associated delays, but delays associated with meeting [Redacted] the Principal's onboarding will be a little difficult to justify. As noted, we have already discussed with [Redacted] the Principal and they have largely pushed back. We will work through this and advise.

..."

- 129) In its letter dated 3 October 2025, the Respondent replied to the Applicant's claim for payment of the above on the following terms;

"....Entitlement is conditional upon and limited to

[Redacted] the Respondent's recovery from [Redacted] the Principal" and;

"...

d) Delays in Inductions, Training and VoC Approvals:

We acknowledge that delays attributable to the Principal's [Redacted] site access and administrative processes may constitute an 'Excusable Delay' under Clause 9.2. However, as noted above, there is no direct entitlement to compensation from [Redacted] the Respondent for such delays under the Agreement.

Applicant:

[Redacted]

Respondent:

[Redacted]

[Redacted] The Respondent will, in good faith, seek to recover these delay costs from [Redacted] the Principal. Your entitlement to any payment for these delays is strictly contingent upon [Redacted] the Respondent's successful recovery from [Redacted] the Principal. Any payment to [Redacted] the Applicant will be limited to the amount, if any, that [Redacted] the Respondent actually receives from [Redacted] the Principal for the specific delays you have incurred. [Redacted] The Respondent makes no representation as to the likelihood of a successful recovery".

- 130) On 19 December 2025, the Respondent submitted to the Principal [Redacted] a claim for an extension of time of 14 business days and a claim for the above-mentioned delay costs and other delay costs as follows;

"...

2. Description of Delay event:

[Redacted] The Respondent is, seeking an extension of time (EOT) for delays experienced during mobilisation for the Offshore Water Discharge - HDPE Pipe Installation at [Redacted] the Site.

The delays were caused by the Company's failure to complete the Company Supplied Mobilisation Components within the timeframes contemplated by the Contract and approved Construction Programme.

Additionally, the Company imposed an internal Verification of Competency (VOC) framework not referenced in the Contract, and failed to make personnel available to deliver required inductions in a timely manner.

As a result, the Contractor was unable to commence the

Applicant:

[Redacted]

Respondent:

[Redacted]

Work Under the Contract (WUC) as planned. A Time Impact Analysis (TIA) confirms these events delayed critical path activities and affected the Date for Practical Completion. The Contractor has complied with all notice and claim requirements and seeks an EOT accordingly.

In summary the Company did not complete the required mobilisation components, particularly inductions and training, within reasonable timeframes and introduced a new internal VOC process requiring plant-specific assessments by Company controlled assessors. The Contractor issued timely delay notices and repeatedly raised the issues in meetings and site communications, during which the Company had full contemporaneous knowledge of the causes of delay. The Time Impact Analysis confirms that the delayed inductions and VOC processes directly affected critical-path activities. The Contractor also undertook reasonable mitigation measures, including reallocating inducted personnel and seeking approval for an internal assessor to expedite VOC activities.

On this basis, the Contractor has satisfied the requirements of Clause 18.4 and is entitled to an Extension of Time of 14 Business Days.

Critical Delay Period:

From 5th August 25 to 13th November 25

[Redacted] The Respondent has claimed an Extension of Time to the Date for Practical Completion of 14 Business Days in respect of this delay.

The Revised Date for Practical Completion is extended by 14 Business Days.

Delay Costs Incurred

Applicant:

[Redacted]

Respondent:

[Redacted]

As a direct result of the Excusable Delay, the Contractor has incurred the following actual, direct and unavoidable costs:

Total Delay Costs Claimed: \$ 1,385,000 excluding GST.

..."

- 131) The Respondent's 19 December 2025 claim provide particulars of the personnel and equipment for which it claimed delay costs. Those included the Applicant's personnel and equipment.
- 132) It is clear from the above that the Applicant provided notice of the delay and of the delay costs it intended to claim. It is also clear that the Respondent has claimed extensions of time based on the delays notified by the Applicant and claimed delay costs (including standby costs) from the Principal, which included the Applicant's subcontractor's personnel and equipment.
- 133) The Respondent's evidence confirms there was no dispute about the delays notified by the Applicant.
- 134) The Respondent performed its work under a contract that entitled it to claim, among other things) for the cost of variations and delays arising from an act or omission of the Principal **[Redacted]**.
- 135) Accordingly, I have presumed the Respondent's claim of 19 December 2025 was based on costs the Respondent believed it had incurred and or for liabilities (including costs for the Applicant) it had accrued relating to the additional Onboarding costs. If this was not the case, then, the Respondent would have claimed for costs that it never incurred and there is no evidence to suggest that was the case.

Applicant:

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Respondent:

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- 136) In order for it to have held that position, the Respondent must have believed the Applicant was entitled to those additional costs.
- 137) If the Respondent did not believe it was contractually entitled to those costs, which would mean the Applicant was entitled to a part of those costs, it may have requested an ex-gratia payment from the Principal, but the Respondent's claims were claims made pursuant to its contract with the Principal.
- 138) I am persuaded by the Respondent's statements that regardless of its contractual position, it intended to pay the Applicant its Onboarding Costs provided it received payment from the Principal of its Onboarding Costs.
- 139) For the above reason, I am also persuaded that the Respondent would have granted the Applicant an extension of time if the Principal granted the Respondent's claimed extension of time.
- 140) In its correspondence and in the Response, the Respondent asserts the Applicant is not entitled to claim delay costs under the Contract.
- 141) The Applicant does not accept the Respondent's assertion about the interpretation of the Contract and has claimed a variation either under clauses 2.2, 7.2, 8.1 or 8.5 or otherwise or as a delay cost under clause 9.3.
- 142) I prefer the Applicant's interpretation of the Contract that it carried out a variation as explained above.
- 143) I am also persuaded, by the evidence adduced by the Respondent including its EOT & delay costs claim to the Principal, that the Respondent accepted that the Applicant had been delayed, that the Applicant was entitled to an extension of

Applicant:

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Respondent:

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time and it was entitled to payment of the Onboarding Costs albeit provided the Respondent was first paid Onboarding costs by the Principal.

- 144) In these circumstances, the Respondent can only have claimed the Onboarding Costs under its contract if it first accepted the Applicant's claim for Onboarding Costs regardless that the Applicant did not submit that claim in strict compliance with the time requirements of the Contract. The Respondent is, therefore, now estopped from insisting on strict compliance with the Contract to defeat the Applicant's claim for Onboarding costs.
- 145) **Accordingly, I am persuaded the Respondent is liable for the Applicant's "Claim 1 - Onboarding Costs" claimed.**
- 146) The Respondent has not made submissions about the Applicant's quantum claimed.
- 147) The extent of the enquiry the adjudicator must make are set out in the Act and recent case law on the issue.
- 148) Sections 33(1)(b) and 34(1) of the Act require an adjudicator to determine the dispute as follows;
- "33 Adjudicator's functions*
- ...
- (b) *otherwise – **determine on the balance of probabilities whether any party to the payment dispute is liable to make a payment or to return any security** and, if so, determine:*
- (i) *the amount to be paid, or security to be returned, and any interest payable on it under section 35; and*
- (ii) *the date on or before which the amount must be paid or the security must be returned.*

Applicant:
Respondent:

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- (1A) *Despite subsection (1)(a), the appointed adjudicator may proceed to determine an application that contains technical deficiencies if those deficiencies do not affect the merits of the application, and the Act has been substantially complied with.*

...

34 Adjudication Procedure

- (1) *For making a determination, an appointed adjudicator:*
- (a) *must act informally and if possible make the determination on the basis of:*
 - (i) *the application and its attachments;*
and
 - (ii) *if a response has been prepared and served in accordance with section 29,*
the response and its attachments; and
 - (b) *is not bound by the rules of evidence and may inform himself or herself in any way the adjudicator considers appropriate.*
- (2) *In order to obtain sufficient information to make a determination, an appointed adjudicator may:*
- (a) *request a party to make a, or a further, written submission or to provide information or documents, and may set a deadline for doing so; or*

...

- 149) In other words, the Act implies into the Contract a term that provides that if the Respondent does not assess the claim as

Applicant:

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Respondent:

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required by the processes set out in the Contract, then that is not a valid reason for rejecting a claim and it follows there is no payment dispute in so far as that claim is concerned. In that case, both the Act and the Contract require the Respondent to pay the undisputed amount.

- 150) There is nothing in the Act that requires the adjudicator to assess the payment disputes on the basis of the Contract, the Act requires the adjudicator to determine the payment disputes on the submissions (and evidence) provided by the parties in accordance with the Act. In support of this interpretation, I refer to the New South Wales Court of Appeal decision of *Ceeroose Pty Ltd v A-Civil Aust Pty Ltd* [2023] NSWCA 215 (*Ceeroose*).
- 151) In *Ceeroose*, the Court of Appeal held that **an adjudicator does not need to go any further than rejecting the respondent's reasons for withholding payment set out in the payment schedule. If the adjudicator does so, the adjudicator can award the amount claimed.** There is no obligation on the adjudicator to determine the "merits" of the claims.
- 152) At [75], the Court (Payne JA, with whom Ward ACJ and Basten AJA agreed) stated:

"75. For the following reasons I am unable to agree with Hodgson JA's dicta in [52] of Hargreaves. The essence of [52] of Hargreaves is that the "adjudicator's duty is to come to a view as to what is properly payable, on what the adjudicator considers to be the true construction of the contract and the [Act](#) and the true merits of the claim" (emphasis added). There is a potential difficulty in this reasoning, at least in so far as it is being used as a test to identify jurisdictional error. The "true construction of the contract" and the "true merits" of the payment claim are, by reason of the structure of the [Security of Payment Act](#) I have set out above, matters where an error by an

Applicant:
Respondent:

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adjudicator will not be jurisdictional. As Basten JA explained at [66] of Hargreaves itself, in the light of the express restriction in s [20\(2B\)](#) of the [Act](#), there is merit in the conclusion that the adjudicator is not entitled to go beyond the terms of the adjudication response in rejecting part or all of the payment claim. Certainly, it is not a jurisdictional error for an adjudicator, having decided all the reasons advanced by the respondent were invalid, to then and without more, determine the amount of the progress payment in favour of the claimant based on the payment claim. "

- 153) The Court explained (at [76]-[77]) that this is because the payment claim and payment schedule set the scope of the dispute to be determined by the adjudicator. At [77], the Court said:

76. This is because, in addition to s 22(2), which provides a limit on what an adjudication is obliged to take into account, sub-section 14(3) requires that where a payment schedule indicates an amount of a payment which is less than the amount of the claim, the schedule must indicate why the amount is less and, if a respondent is withholding payment, the reason for that action. The recipient of the payment claim is obliged to explain the reason why the payment claim (or any part of it) is disputed. Where the payment schedule indicates an amount which is less than the amount claimed, the claimant may apply for adjudication of its payment claim: s [17\(1\)\(a\)](#). Where such an application is made, the respondent may lodge a response to the claimant's adjudication application. That response may contain relevant submissions (s 20(2)(c)), but, as I have said, s [20\(2B\)](#) provides:

The respondent cannot include in the adjudication response any reasons for withholding payment unless those reasons have already been included in the payment schedule provided to the claimant. (italics added)

Applicant:

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Respondent:

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It is the dispute between the maker of the payment claim and the recipient of that claim which is referred for adjudication. In the light of this express restriction on the contents of the adjudication response, an adjudicator is not required to go beyond the terms of the payment schedule, repeated in an adjudication response, in accepting all or part of the payment claim. The requirement in s [22\(1\)](#), that the adjudicator is to determine “the amount of the progress payment (if any) to be paid” by the respondent to the claimant, in context, is a requirement to determine the amount of the progress payment arising from the dispute submitted by the parties for adjudication. The notion that it is jurisdictional error for an adjudicator to fail to address what the adjudicator considers to be the “true construction of the contract” and the “true merits of the claim” outside the limited issues presented by the parties for determination is an invitation for the reviewing court to embark on an impermissible merits review.

154) The Court said further, at [84]:

81. In [Goodwin Street Developments Pty Ltd v DSD Builders Pty Ltd](#) (2018) 98 NSWLR 712; [2018] NSWCA 276, Basten JA (with whom Leeming and White JJA agreed) explained some of the principles involved in a claim that an adjudicator has failed to “grapple with” a mandatory consideration:

“23 It is significant that, in the next section of the reasons in [Laing O’Rourke](#), McDougall J addressed the language of s 22(2) and the obligation imposed on the adjudicator by the words ‘is to consider’ the identified matters. Where there is apparently credible and relevant material before the decision-maker, which appears to engage with a mandatory consideration, and there is no reference to that material in the reasons provided by the decision-maker, it may be inferred that no regard was had to it. That may allow for the inference

Applicant:

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Respondent:

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that no regard at all was had to the mandatory consideration. That must be distinguished from the situation where, while there is no reference to that material, it cannot be inferred that the decision-maker must have referred to it, if it had been properly considered. It is well established that judges are not required to refer to all the evidence before the court; so it is true that a decision-maker is not required to refer to all the material supplied by one party before rejecting the party's claim.

24 Furthermore, saying that the decision-maker must 'grapple with' particular material reflects statements that the decision-maker must give 'proper, genuine and realistic consideration' to such material. As the High Court noted in [Minister for Immigration and Citizenship v SZJSS](#) [at][25] this language can invite a slide into impermissible merit review. Finally, a refusal to give any weight to particular material does not demonstrate that the decision-maker failed to have regard to a mandatory consideration [citing [SZJSS](#) at [\[33\]-\[36\]](#)]."

82. Section 22(1) does not create a free-standing jurisdictional obligation to consider the merits of a payment claim, and in particular whether the construction work identified in the payment claim has been carried out, and what is its value. The only matters an adjudicator is required to consider in determining an adjudication application are set out in s 22(2).

As explained at [\[69\]](#) above, there are likely to be few cases in which an applicant for judicial review can establish a breach of the duty to consider the matters set out in s 22(2). Only sometimes is a failure to refer to relevant material evidence of a failure to refer to a mandatory relevant consideration. A fortiori, where there is no relevant material before the adjudicator, it cannot be a jurisdictional error to fail to refer to it. Paragraph [52] of Hargreaves, insofar as subsequent cases have

Applicant:
Respondent:

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understood that it suggests that s [22\(1\)](#) provides a free-standing jurisdictional obligation to consider the merits of a payment claim, and in particular whether the construction work identified in the payment claim has been carried out, and what is its value, is not correct and should not be followed.

83. At paragraph [34], the primary judge also relied upon the first instance decision of Brereton J in [Pacific General Securities Ltd v Soliman & Sons Pty Ltd](#) (2006) 196 FLR 388; [2006] NSWSC 13 where his Honour said this at [\[82\]](#):

“...the absence of [material put forward by the respondent] does not entitle the adjudicator simply to award the amount of the claim without addressing its merits, which as a minimum will involve determining whether the construction work identified in the payment claim has been carried out, and what is its value.”

84. *This conclusion is inconsistent with the text, subject matter and purpose of the [Security of Payment Act](#). It should not be followed.* It is not a jurisdictional error for an adjudicator to fail to consider a matter outside the scope of the dispute presented by the parties as required by the statute. The absence of material, including a reason put forward by the respondent for not paying the payment claim, entitles an adjudicator to award the amount of the claim without “addressing its merits”. The “dispute” which the [Act](#) has provided a mechanism for identifying and resolving is non-existent in such a case. A requirement that an adjudicator must determine “whether the construction work identified in the payment claim has been carried out”, in circumstances where a recipient of a payment claim has not made any suggestion that it has not, despite the statutory requirements of s 14, subverts the statutory scheme for the swift payment of progress claims and speedy determination of

Applicant:

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Respondent:

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disputes about those progress payments. The person best able to address the question of “whether the construction work identified in the payment claim has been carried out”, namely the recipient of the payment claim, has not, in the example posited by Brereton J, suggested the work was not carried out, as it was required to do by the [Act](#) if it wished not to pay the claim. The statutory task of an adjudicator is to determine the claimant’s entitlement within the framework of the dispute that was propounded by the parties. The conclusion in Pacific General Securities is incorrect and should not be followed.

- 155) In making its decision, the Court overruled previous decisions in which it had been said or decided that an adjudicator was bound to determine the “merits” of a claim even if it was not disputed, or the adjudicator had rejected the respondent’s reasons for disputing the claim: *Ceeroose* at [82], [84]-[86].
- 156) The Court went on to consider an argument by the respondent that the effect of an adjudicator’s jurisdictional error in respect of a claim for demolition work was that the full amount awarded for that claim should be removed from the determination, including the amount which the respondent accepted should be payable. The claimant claimed 85% of the item for demolition work. The respondent accepted, in the adjudication and in Court, that only 65% of the demolition work was payable. The adjudicator awarded the sum claimed by the claimant. The Court rejected the respondent’s argument that the entire sum should be removed from the adjudication. The Court decided (at [101]-[102]):

101. As I have explained, the adjudicator was not, in the absence of any reason advanced by the recipient of a claim why a payment should not be made, nonetheless obliged to investigate and give written reasons for a conclusion about

Applicant:
Respondent:

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the “true merits of the claim” (including parts of the claim already paid for), lest he or she fall into jurisdictional error.

102. *To be clear, the adjudicator here was not obliged to determine whether the 65% of the demolition work Ceerose had accepted in its payment schedule had been completed or what the value of that work was. The effect of the Security of Payment Act was that, having taken the position in its payment schedule that 65% of the demolition work had been completed and the value of that work was \$29,158.10 more than the amount already paid, [the respondent] was not permitted to complain in judicial review proceedings that the adjudicator, without error, could have awarded a lesser amount.*

- 157) The guidance provided by Ceerose is that the Adjudicator is not required to determine the “merits” of the Applicant’s claims. The Adjudicator is only required to determine the dispute between the parties in accordance with the Act.
- 158) The Respondent has also not made submissions about the quantum claimed by the Applicant.
- 159) I have also referred to guidance from the Supreme Court of Queensland in circumstances where the Respondent fails to provide a submission as to quantum asserted by the Applicant. I refer to *Insite Construction Services Pty Ltd v Daniels Civil Pty Ltd & Anor* [2023] QSC 33. In that case, the Court held as follows;

...

99. *In Bezzina, the Court of Appeal considered whether an adjudicator had erred by adopting the amount stated by the claimant in a payment claim as the value of the construction work in question.* In that case, there had been two separate

Applicant:

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Respondent:

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adjudication applications and decisions in respect of successive payment claims given by the claimant. The second payment claim included a claim in respect of some of the same work that had been included in the earlier payment claim. On each occasion, the respondent had given a payment schedule in which it stated a nil amount was payable for the subject work. Neither payment schedule expressly challenged the amount claimed for the value of the work. Rather, each listed a series of deductions which the respondent claimed reduced the payment claims to nil.

100. *Although the first adjudication application had been decided by the time the second adjudicator's decision was pending, the second adjudicator was not informed of the fact of the first adjudicator's decision. The second adjudicator's valuation of the subject work was higher than that of the first adjudicator. The respondent subsequently brought an application for judicial review in respect of each adjudication decision.*

101. *At first instance, the trial judge upheld the respondent's contention that the second adjudicator had contravened the BCIPA by failing to adopt the valuation in the first adjudication decision for that part of the claim covered by the first payment claim. However, the trial judge rejected the respondent's further argument that the second adjudicator had also erred by failing to make a bona fide attempt to value the work in the manner required by the BCIPA.*

102. *On appeal, the respondent sought to support the judgment in its favour on the ground that the trial judge had erred in rejecting its application for judicial review on this further basis.*

103. *Before setting out the Court of Appeal's conclusion on this issue, it is pertinent to first note the relevant conclusions of the trial judge:*

Applicant:

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Respondent:

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[27] Had the only argument available to Bezzina been that the second adjudicator did not approach his task properly by valuing the work before considering the defects alleged by Bezzina, I would not have been disposed to interfere with his decision. Bezzina, apart from drawing my attention to the obligation to value construction work in s. 14 of the Payments Act, also relied upon the reasons of Brereton J in *Pacific General Securities Ltd v Soliman & Sons Pty Ltd* [2006] NSWSC 13 where his Honour, at [82]-[86], found that the adjudicator's duty was to come to a view as to what was properly payable on what the adjudicator considered to be the true construction of the contract and the Act and the true merits of the claim. He treated the obligation to determine whether the construction work identified in the payment claim had been carried out and its value as part of the basic and essential requirements of validity. In reaching that conclusion he said that if an adjudicator allowed a claim in full just because a respondent's submissions were rejected, without determining whether the construction work had been performed and without valuing it, that would bespeak a misconception of what was required by an adjudicator, leading to jurisdictional error resulting in invalidity.

[28] In these circumstances, however, there was no issue raised by Bezzina about whether the work had been performed or about the value claimed by Deemah. Bezzina's submissions focussed more upon the alleged defects. Had that been the only problem associated with the second adjudication decision I would not have been inclined to exercise my discretion to review it. Nor would I have been inclined to grant the extension of time necessary to review

Applicant:

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Respondent:

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the decision under s. 26 of the JR Act in respect of the relief claimed for a statutory order of review under that Act.

[29] *It seems to me, however, to be a significant issue that the exercise apparently required by s. 27(2) of the Payments Act has not occurred, namely the second adjudicator did not give the same value to the work, goods or services as that previously assessed by the first adjudicator. The first adjudicator approached her task as one requiring her to value the work in arriving at her views as to the appropriate progress payments to order; see, e.g., paras 37, 46, 64, 87 and 119 of the first adjudication decision.*

[30] *It was argued that the second adjudication did not decide the value of the construction work but examined whether there should be a deduction from the price claimed for alleged defects and some other matters dealt with in detail by the adjudicator. The consequence argued was that his adjudication did not involve 'the working out of the value of that work' to use the language of s. 27(2). Reference was also made to the decision of Mullins J in ACN 060 559 971 Pty Ltd v O'Brien [2007] QSC 91 at [32]-[34] where her Honour considered two decisions of the New South Wales Supreme Court dealing with the interpretation of their statute's equivalent section; Rothnere Pty Ltd v Quasar Constructions NSW Pty Ltd [2004] NSWSC 1151 and John Goss Projects Pty Ltd v Leighton Contractors Pty Ltd [2006] NSWSC 798 ('Goss Projects'). McDougall J in Goss Projects drew a distinction at [40] 'between the calculation of the amount of a progress payment (which is, ultimately, what the adjudicator is required to do) and the valuation of construction work.' Her Honour applied that approach, correctly in my respectful view, to conclude that*

Applicant:

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Respondent:

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a deduction for liquidated damages, was 'distinct from the value of work carried out by the contractor in the performance of the contract'; see at [34].

[31] It seems to me, however, that the exercise engaged in by the second adjudicator here of examining the possible deduction of claimed defects from the price claimed for work done does involve the 'working out of the value of that work' to use the words of s. 27(2). Here the only evidence of value was the price claimed which was not itself put in issue and alleged defects in that work, if established, must be matters that are involved in working out its value.

104. The Court of Appeal endorsed the trial judge's conclusion and rejected the respondent's further argument. In doing so, Fraser JA (with whom McMurdo P and Keane JA agreed) relevantly stated:[25]

[26] Bezzina's argument is that the second adjudicator contravened the obligation in s 26(1)(a) 'to decide, the amount of the progress payment,' by simply accepting the sum claimed by Deemah rather than embarking upon a valuation of the work. The primary judge rejected the same argument, correctly in my respectful opinion, for the reason that the valuation of the relevant work was not in issue. [32] It is apparent that the adjudicator construed Bezzina's payment schedule as implicitly admitting Deemah's valuation of the work, subject only to the particular 'reasons why the revised schedule amount = nil' which are then set out in the schedule.

[34] Whilst a particular adjudication might involve a valuation, the express obligation imposed by s. 26 is 'to decide', not 'to inquire'. Paragraphs (c) and (d) of

Applicant:

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Respondent:

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subsection 26(2) required the second adjudicator, in deciding the adjudication application, to consider the payment claim and submissions as well as any payment schedule and any submissions in support of it. The valuation ascribed by Deemah in its payment claim being implicitly admitted by Bezzina in its payment schedule, the adjudicator was entitled to adopt Deemah's valuation.

[35] Bezzina's counsel referred to Coordinated Construction Co Pty Ltd v J M Hargreaves (NSW) Pty Ltd. In that case, Hodgson JA expressed the 'tentative view' that an adjudicator was not entitled automatically to determine a progress claim at the amount claimed by the claimant if a respondent to a payment claim did not raise any relevant ground for denying or reducing it. His Honour was not there concerned with a case such as this, where a respondent does raise relevant grounds for denying a claim and confines the dispute to those particular grounds. Other decisions relied upon by Bezzina are similarly distinguishable.

[36] I would reject Bezzina's contention that the adjudicator erred in law in failing to value the work in the manner required by the Act.

105. In my view, the reasoning and rationale for the Court of Appeal's decision in Bezzina on this issue is apposite in the present case. Accordingly, if it was open to the Adjudicator to conclude that there was no dispute that the work had been performed by Daniels and that the valuation ascribed to that work by Daniels was not challenged, then there can be no substance to Insite's various complaints under Grounds 2, 3 and 4. In such circumstances, the Adjudicator could permissibly 'decide' the adjudicated amount by adopting the unchallenged (and implicitly accepted) valuation.

Applicant:

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Respondent:

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There would be no obligation upon the Adjudicator to 'inquire' and undertake his own valuation exercise.

106. In my view, it was open to the Adjudicator to take such an approach in this case. Insite's Payment Schedule did not challenge Daniels' valuation of the claimed work it had performed. Rather, Insite sought (in reasons that it was precluded from advancing and which were ultimately not considered) to argue that the Payment Claim should be reduced to nil because the costs it had incurred, or would incur, under the contract and other set-off amounts Daniels was liable to pay because of its apparent breach of contract, would exceed the amount of the Payment Claim. In the absence of any reasons advanced to challenge the valuation contained in the Payment Claim, the Adjudicator was permitted to accept Daniels' valuation.

107. It is, of course, a point of factual distinction that the respondent in Bezzina had given a payment schedule which set out reasons for its nil valuation of the subject work, whereas Insite gave an invalid payment schedule. Nevertheless, given the statutory obligation imposed on the respondent by s 69(c) of the Payment Act, I consider it is open to an adjudicator in the performance of his or her function under s 88 of the Payment Act to conclude from the failure by a respondent to give a payment schedule setting out reasons that challenge either the fact that the work was done, or a claimant's valuation of the work, that those matters are not disputed and are impliedly admitted.

108. That, of course, was the situation in the present case. The Adjudicator concluded that the purported Payment Schedule given by Insite was invalid because it failed to provide any reasons at all for assessing the payment due to Daniels as nil. Indeed, the Adjudicator found that no payment schedule at all had been given in accordance with s 69. In the absence of a payment schedule

Applicant:

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Respondent:

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containing reasons for not paying the amount claimed, the Adjudicator was not permitted to consider any new reasons for withholding payment of the Payment Claim contained in Insite's adjudication response.[26]

109. *It was for that reason the Adjudicator concluded no valid reasons had been given by Insite to not pay the full amount of the Payment Claim. That being so, it was open to the Adjudicator to accept the uncontested valuation put forward by Daniels. I see no error in the Adjudicator approaching his task and performing his function in that way, nor in citing Epoca in support of that approach. The Adjudicator did not misdirect himself.*

110. *Before leaving this issue, it is pertinent to note that during the course of oral submissions in this matter, counsel for Insite cross-referenced various entries in the 'Schedule of Additional Works' attachment to Daniels' Payment Claim with entries in the 'Continuation Sheet' attached to Insite's Payment Schedule, to submit that the differences between these entries demonstrated that this was not a case where the claimant's valuation was unchallenged. I do not accept that argument or the validity of that exercise. Quite apart from the fact that the figures in Insite's Continuation Sheet do not contain any accompanying reasons or explanations for its supposed 'valuations', the simple fact is that the Adjudicator found that no Payment Schedule had been given. Pursuant to s 88(2), the purported Payment Schedule and its attachments was therefore not a matter that the Adjudicator was permitted to consider in deciding the adjudicated amount. Similarly, it is not a matter that I may now have regard to in deciding whether jurisdictional error is established.*

111. *Having regard to the issues in dispute and nature of Insite's arguments opposing the Adjudication Application, it was not*

Applicant:

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Respondent:

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necessary in the circumstances for the Adjudicator to provide extensive reasons on the issue of the adjudicated amount. Insite did not challenge the valuation of the work contained in Daniels' Payment Claim. Rather, it challenged the Adjudicator's jurisdiction to decide the Adjudication Application. Once those issues had been decided adversely to Insite, it was not necessary for the Adjudicator to give extensive reasons for deciding the adjudicated amount. The reasons given, which referred to the Payment Claim and supporting documentation, were adequate and sufficient. They do not evidence a failure by the Adjudicator to perform his statutory function to decide the Adjudication Application under the Payment Act, nor any misconception or misapprehension of jurisdiction.

112. *I should add that I do not accept Insite's argument on this point that the Adjudicator's reasons were inadequate as they failed to comply with the requirements of s 27B of the Acts Interpretation Act 1954 (Qld). Section 27B provides:*

27B Content of statement of reasons for decision

If an Act requires a tribunal, authority, body or person making a decision to give written reasons for the decision (whether the expression 'reasons', 'grounds' or another expression is used), the instrument giving the reasons must also-

(a) set out the findings on material questions of fact; and

(b) refer to the evidence or other material on which those findings were based.

113. *In my opinion, the Adjudicator complied with s 27B. The material questions of fact in issue before the Adjudicator concerned the first two key issues decided by the Adjudicator. On the first*

Applicant:

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Respondent:

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issue, Insite chose to challenge the validity of the Payment Claim by advancing the Reference Date Argument and thereby put in issue the Adjudicator's jurisdiction to decide the Adjudication Application. The Adjudicator rejected Insite's argument. In doing so, the Adjudicator sufficiently set out, in some detail, his finding on this issue and the evidence and other material on which his finding was made. The same may be said about the Adjudicator's finding and reasons with respect to the second issue concerning the validity of the purported Payment Schedule.

114. *Although it was raised by the parties in the joint list of issues for determination, I do not consider it necessary nor desirable in determining this application to decide whether the statements of Hodgson JA in Coordinated Construction apply to the Payment Act. In that case, his Honour relevantly stated:[27]*

[52] The task of the adjudicator is to determine the amount of the progress payment to be paid by the respondent to the claimant; and in my opinion that requires determination, on the material available to the adjudicator and to the best of the adjudicator's ability, of the amount that is properly payable. Section 22(2) says that the adjudicator is to consider only the provisions of the Act and the contract, the payment claim and the claimant's submissions duly made, the payment schedule and the respondent's submissions duly made, and the results of any inspection; but that does not mean that the consideration of the provisions of the Act and the contract and of the merits of the payment claim is limited to issues actually raised by submissions duly made. The adjudicator's duty is to come to a view as to what is properly payable, on what the adjudicator considers to be the true construction of the contract and the Act and the true merits of the claim. The

Applicant:

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Respondent:

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adjudicator may very readily find in favour of the claimant on the merits of the claim if no relevant material is put by the respondent; but the absence of such material does not mean that the adjudicator can simply award the amount of the claim without any addressing of its merits.

[53] *Indeed, my tentative view is that, if an adjudicator determined the progress payment at the amount claimed simply because he or she rejected the relevance of the respondent's material, this could be such a failure to address the task set by the Act as to render the determination void.*

115. *These remarks were made in respect of the Building and Construction Industry Security of Payment Act 1999 (NSW) ('NSW Act'). His Honour's statements were purely obiter dicta and were 'tentative views' that were not endorsed by the other members of the Court.[28] For those reasons alone, I would be reluctant to apply them as an analogous authoritative interpretation of s 88 of the Payment Act.*

116. *Further, whilst it may be accepted that s 22 of the NSW Act, which deals with an adjudicator's determination, is materially similar in certain respects to s 88 of the Payment Act, there is an obvious, and perhaps significant, difference in the respective statements of the adjudicator's statutory task. Section 22(1)(a) of the NSW Act requires an adjudicator to 'determine' the amount of the progress payment, if any, to be paid, whereas s 88(1)(a) of the Payment Act requires an adjudicator to 'decide' the amount of the progress payment, if any, to be paid. To my mind, the difference is perhaps similar to the distinction drawn by the Court of Appeal in Bezzina between 'to decide' and 'to inquire'. Irrespective, it seems to me to be a potentially important distinction, and that is a further reason why I would be reluctant to apply Hodgson JA's statements to the proper interpretation of s 88 of the Payment Act.*

Applicant:
Respondent:

[Redacted]
[Redacted]

117. *In any event, I consider I am bound to apply the law in accordance with the Court of Appeal's decision in Bezzina.*

- 160) In the *Insite* case, the respondent took no issue in the payment schedule with the valuation provided by the claimant in the payment claim and the Court held the adjudicator was entitled to accept the quantum claimed without further enquiry.
- 161) In this case, there was no dispute about the events giving rise to the delay or that the delay costs claimed were incurred.
- 162) The dispute was a technical one relating to satisfying the contractual processes regarding, notifications and claims before accruing an entitlement to payment.
- 163) The evidence indicates, on the balance of probabilities, that the Respondent did not reject the Applicant's entitlement as of 3 October 2025 and 19 December 2025 because it relied on the Applicant's claim to construct its own claim for extension of time and delay costs.
- 164) The Respondent misconstrued the Contract and asserted its liability was only enlivened if its claimant first paid it its amount claimed.
- 165) I do not accept the Respondent's interpretation of the Contract and, therefore given its implied acceptance of the Applicant's entitlement to be paid the claimed delay costs, the Respondent is estopped from now insisting the Applicant was not entitled to payment because it failed to notify and claim time and delay costs in accordance with the Contract.
- 166) **Accordingly, the Applicant is entitled to receive payment of the amount claimed, which is \$248,710.00 excl. GST.**

Applicant:
Respondent:

[Redacted]
[Redacted]

CLAIM 2 – LOADER INCIDENT

Payment Claim & Adjudication Application

- 167) This claim entitled “*Claim 2 Loader Incident*” in the amount of \$63,518.00 and is for additional costs claimed to have been incurred by the Applicant due to delays arising from a workplace health and safety incident for which it asserts the Respondent is liable.
- 168) On 13 September 2025, The Applicant’s operator [Redacted] and the Respondent’s fitter were observed operating a Cat 980 Wheel Loader in an unsafe manner. It appears the fitter placed himself between the bucket and the wheel of that front end loader while the operator remained in the Cat 980 Loader. It also appears that the Principal witnessed or became aware of this incident and instructed all personnel to cease work and return to office/crib area pending further notice to permit the Principal time to carry out suitable investigations and implement corrective actions to ensure the ongoing safety of the site.
- 169) On 14 September 2025, the Respondent confirmed to the Applicant that [Redacted] the Applicant’s operator had been involved in a breach of the Principal’s [Redacted] Lifesaving Rules and of [Redacted] the Respondent’s Non-Compromising Rules (a serious breach), and;
- a) instructed that [Redacted] the Applicant’s operator was be removed from the Site and further instructed he was prohibited from entering all [Redacted] of the Respondent-controlled job sites; and
 - b) stated that; “*the entire project has been on standdown since Saturday morning*” and that operations would hopefully recommence that afternoon.

Applicant:
Respondent:

[Redacted]
[Redacted]

- 170) The Applicant asserts that the; *"disruption continued into 15 September 2025"* and argues its labour and plant remained mobilised and available during the stand-down period.
- 171) The Applicant also submits it is not liable for the standby and or delay costs affecting the whole project, but the Respondent was liable for the site wide shut down and is liable to pay the Applicant's costs.
- 172) The Applicant refers to the incident as being an Excusable Delay and argues it is entitled to payment for Stand-down Event pursuant to clauses; 7.1, 7.2, 9.1, 9.2, 4.1 and Schedule 4 of the Contract for *"Claim 2 Loader Incident"*.

Response to the Payment Claim

- 173) The Respondent does not dispute;
- a) a loader incident occurred;
 - b) the Principal [Redacted], instructed the stand-down;
 - c) the Applicant's operations were disrupted; and
 - d) the Applicant's labour and plant remained idle onsite for periods.
- 174) The Respondent argues the Applicant has failed to demonstrate why it was entitled to payment for the claimed costs. The Respondent further points out that the Applicant has not made any argument for entitlement to a variation or for delay costs or for dayworks or any other basis of entitlement.
- 175) On 30 September 2025, the Respondent instructed a suspension pursuant to clause 7 of the Contract that purported to take effect retrospectively commencing on 20 September 2025 and

Applicant:
Respondent:

[Redacted]
[Redacted]

continuing until instructed it was safe for the Applicant to resume work under the Contract.

176) Clause 7 of the Contract provides;

“ ...

*(e) Without limiting this or any other provision in this Agreement, in carrying out the Works, **the Contractor must comply with any requirements relating to work health and safety set out in this Agreement** and with all relevant workplace health and safety laws and must ensure that all workers and other persons to whom it owes a health and safety obligation:*

- (i) undertake orientation and induction training;*
- (ii) are provided with a work environment without risks to health and safety;*
- (iii) are provided with safe plant and structures and safe systems of work;*
- (iv) are provided with adequate facilities for the maintenance of wellbeing and welfare, including ensuring adequate access to those facilities;*
- (v) are provided with any information, training, instruction or supervision that is necessary to safely carry out the Works;*
- (vi) are monitored for the purpose of preventing illness or injury arising from the Works;*
- (vii) are suitably identified when working on [Redacted] the Respondent's sites; and*

Applicant:
Respondent:

[Redacted]
[Redacted]

(viii) comply with any direction given by [Redacted] the Respondent on site in connection with workplace health and safety.

..."

177) The Respondent explains the Applicant has not satisfied the conditions precedent to accruing entitlement because it failed to strictly follow the processes set out in the Contract as follows;

"(l). Clause 8.1 required any variation to be directed in writing and expressly identified as a variation;

(m). Clause 8.3 required [Redacted] the Applicant to provide a detailed quotation within three business days of receiving a variation direction, failing which [Redacted] the Applicant was not entitled to make the claim;

(n). Clause 8.4 required [Redacted] the Applicant to notify [Redacted] the Respondent within three business days if [Redacted] the Applicant considered an instruction to constitute a variation, failing which [Redacted] the Applicant was not entitled to make the claim;

(o). Clause 8.5 required compliant daywork records to be issued daily and signed;

(p). Clause 4.4(c) required signed timesheets and supporting records for daywork or rates-based claims;

(q) Clause 9.2 required strict delay and EOT notices including:

(i) cause;

(ii) commencement;

Applicant:
Respondent:

[Redacted]
[Redacted]

(iii) programme impact;

(iv) mitigation;

(v) continuing notices; and

(vi) supporting evidence.

Further, the Contract Particulars identify:

“Compensable Cause — N/A”

Accordingly, the Agreement did not contain a broad compensable delay or standby entitlement regime.

Determination

178) The delays arising from the suspension are not in dispute.

179) The Applicant admits;

“...

the evidence establishes that the [Applicant's] loader incident caused an immediate standdown of the entire project, affecting [Redacted] the Applicant's personnel, plant and ability to proceed with productive works.

...”

180) It is also not in dispute that the Applicant was liable (vicariously) for the incident that occurred on 13 September 2025 involving its Cat 980 Wheel Loader, its [Redacted] operator and the Respondent's fitter.

Applicant:

[Redacted]

Respondent:

[Redacted]

- 181) The Applicant was in breach of its obligations under clause 7 and under the *Work Health and Safety (National Uniform Legislation) Act 2011* and other relevant NT Health and Safety legislation because, among other things, the Applicant failed to monitor the activities of its employee for the purpose of preventing illness or injury arising from the Works and failed to provide a work environment without risks to health and safety of its employees.
- 182) The Applicant's liability for the consequences of the breach of its obligations under clause 7 does not alter the fact that the Respondent was also in breach of *Work Health and Safety (National Uniform Legislation) Act 2011* and other relevant NT Health and Safety legislation because its fitter was involved in that incident as well as the Applicant's employee and the Respondent failed to monitor the activities of its employee for the purpose of preventing illness or injury arising from the Works and failed to provide a work environment without risks to health and safety of its employees.
- 183) In the application, the Applicant claims payment of its standdown costs for its labour plant pursuant to the Respondent's instructions.
- 184) The Applicant does not explain why it is entitled to payment in the context that its operator caused the Loader Incident.
- 185) The Applicant's argument is limited to an assertion that there was an instruction given by the Respondent to standdown, that the Respondent is liable for project wide shutdowns and the Applicant claims payment for the personnel and equipment costs incurred during the standdown.

Applicant:

[Redacted]

Respondent:

[Redacted]

- 186) The Principal and the Respondent suspended the work following the Loader Incident.
- 187) The Respondent's evidence indicates that the site was shut down following the Loader Incident and that the Applicant's and Respondent's safety plans and systems were reviewed and/or amended to ensure the future safety of the parties' employees and contractors.
- 188) I consider that was an appropriate response and reject the Applicant's implied claim that the Principal's and Respondent's response (shutting down the site for 2 days) was excessive.
- 189) The Contract Particulars makes it clear that the delay was not an Excusable Delay because it related to the Applicant's breach of clause 7 of the Contract.
- 190) Accordingly, the Applicant has no basis for claiming a delay caused by the Respondent nor for a variation instructed by the Respondent.
- 191) I am persuaded that the Respondent was entitled to suspend the Applicant's work under the Contract under clause 7.
- 192) I am also persuaded that the extent or duration of the standdown, being 2 days, instructed by the Respondent was necessary to ensure a proper investigation of the incident occurred, sufficient time for the issues to be analysed and for a remedial Health and Safety Plan to be devised and implemented.

Applicant: [Redacted]
Respondent: [Redacted]

- 193) Accordingly, I am not persuaded the Applicant is entitled to the claimed amount in relation to "Claim 2 Loader Incident".

Applicant:

[Redacted]

Respondent:

[Redacted]

CLAIM 3 – EXCAVATOR INCIDENT

Payment Claim & Adjudication Application

- 194) This claim entitled “*Claim 3 Excavator Incident*” in the amount of \$804,304.00 relates to additional costs claimed to have been incurred by the Applicant due to delays arising from the Respondent’s Excavator Incident (a safety incident) for which it asserts the Respondent is liable.
- 195) On 20 September 2025, The Respondent’s excavator over-turned whilst moving HDPE Pipe around the Site.
- 196) The Principal instructed all of the Respondent’s personnel (including the Applicant’s personnel) to cease work.
- 197) On 6 October 2025, the Respondent requested the Principal’s approval to return to site.
- 198) On 9 October 2025, the Principal directed the Respondent as follows;

“...

The Company acknowledges that the Contractor has provided actions addressing the risks and compliance obligations arising from the Incident to a standard satisfactory to the Company.

Accordingly, the Company approves the Contractor’s return to site, subject to the following staged return-to-site plan:

- 1. Effective immediately, the Contractor may commence travel arrangements for key personnel to return to site.*

Applicant:

[Redacted]

Respondent:

[Redacted]

2. *The Contractor's site leadership and key personnel may return to site from 10 October 2025 to recommence preparatory and non-critical activities only.*

3. *The Contractor is to provide the following by 4:00 pm, 12 October 2025:*

a. Work plans for supervision, including work locations and field presence to ensure successful implementation of corrective measures; and

b. Work packs for the next two weeks of Works under Scope and a schedule to receive all remaining work packs for Works under the Scope.

4. *The Company will review and issue a written response by 4:00 pm, 13 October 2025.*

Subject to Company written approval of items 3(a) and (b), remaining Contractor personnel may mobilise to site from 14 October 2025.

- 199) The Respondent instructed the Applicant to resume work on 20 October 2025.
- 200) The Applicant submits it is not liable for the standby and or delay costs affecting the whole project, but the Respondent was liable for the site wide shut-down and is liable to pay the Applicant's costs.
- 201) The Applicant argues the delay due to the Shutdown from 20 September 2025 to 20 October 2025 was an Excusable Delay and pursuant to clauses; 2.2, 4.1, 9.1, 9.2 and Schedule 4 of the Contract it was entitled to payment for "Claim 3 Excavator Incident".

Applicant:
Respondent:

[Redacted]

[Redacted]

Response to the Payment Claim

- 202) The Respondent does not dispute;
- a) On 20 September 2025, the Respondent's excavator was involved in a safety incident that resulted in the shutdown of the Site;
 - b) On 20 September 2025, the Principal [Redacted] became aware of the excavator incident and instructed the Respondent to stand-down its personnel and equipment (a suspension of the works) pending investigation and review of the Respondent's safety plan and systems;
 - c) On 20 September 2025, the Respondent orally instructed the stand-down of the Applicant's personnel and equipment.
 - d) The Respondent confirmed the suspension in writing on 30 September 2025 and informed the Applicant the instruction was given under clause 7(e)(viii) of the Contract and further advised the Applicant was not entitled to payment of costs;
 - e) The Respondent instructed the demobilisation / remobilisation of the Applicant's personnel following its instruction to suspend the work under the Contract; and
 - f) The Applicant's labour and plant remained idle onsite for about 30 days.
- 203) The Respondent argues the Applicant is not entitled to payment of "*Claim 3 Excavator Incident*" because of the direction to suspend the works it issued under clause 7 of the Contract and further points out that the Applicant has not demonstrated its entitlement to payment for the claimed costs.

Applicant:

[Redacted]

Respondent:

[Redacted]

- 204) In particular, the Respondent points out that the Applicant has not made any valid claim for entitlement to a variation or a valid claim for delay costs or a valid claim for dayworks.
- 205) On 30 September 2025, the Respondent instructed a suspension pursuant to clause 7 of the Contract that purported to take effect retrospectively commencing on 20 September 2025 and continuing until instructed by the Respondent that it was safe for the Applicant to resume work under the Contract.
- 206) Clause 7 of the Contract provides;

“ ...

7.1 [Redacted] Respondent's Obligations

While on [Redacted] the Respondent controlled work sites, [Redacted] the Respondent will ensure, as far as practicable, the health and safety of the Contractor including providing and maintaining the workplace, plant and systems of work so the Contractor is not exposed to hazards and is provided with such information, instruction, training and supervision as is reasonably necessary to enable the Contractor to perform the Works safely.

...”

- 207) The Respondent did not discharge its obligation under clause 7 because its excavator rolled over while carrying HDPE pipe on site, which was evidence of its breach of clause 7.1 of the Contract.
- 208) I also note that clause 7(e)(viii) entitles the Respondent to direct the Applicant “*in connection with work, health and safety*”. However, the instruction to suspend the Applicant's activities was not “*in connection with work, health and safety*”.

Applicant:

[Redacted]

Respondent:

[Redacted]

- 209) The instruction given by the Respondent was to cease all work so that the Principal could review all safety plans and systems, which arose due to the excavator incident of 20 September 2025, for which the Respondent is liable.
- 210) That was a change to the Applicant's work methodology in so far as it relates to the Applicant directed by the Respondent under clause 8.1 for which the Applicant could have pursued a claim for a variation.
- 211) There is no doubt that the Respondent delayed the Applicant's works by issuing its direction to suspend the works. There is no doubt that the Respondent's direction to suspend it gave on 20 September 2025 was an Excusable Delay and the Applicant could have claimed an extension of time.
- 212) Unfortunately, the parties agreed this Contract would contain no compensable causes and, therefore, even if it had notified the delay in accordance with clause 9.1 within the requisite time prescribed in that clause and claimed an extension of time under clause 9.3 within the requisite time prescribed in that clause, it could not have claimed delay costs because the Contract makes no provision for such a claim.
- 213) I accept that the Respondent issued a direction to the Applicant to suspend work and the Respondent's right to do so in circumstances where the Applicant has not committed any breach of Contract is limited to a direction under clause 8.1
- 214) At paragraph 14.3.2 of the Response, the Respondent explains the Applicant has not satisfied the conditions precedent to accruing entitlement because it failed to strictly follow the processes set out in the Contract as follows;

Applicant:
Respondent:

[Redacted]
[Redacted]

“ ...

[Redacted] *The Applicant has not demonstrated:*

- (a) a written variation direction;*
- (b) compliant variation notice;*
- (c) compliant quotation;*
- (d) approved standby dayworks;*
- (e) compliant clause 9.2 notices;*
- (f) continuing notices; or*
- (g) any compensable cause.*

Operational disruption does not itself establish entitlement.

Determination

- 215) The delays arising from the suspension are not in dispute.
- 216) It is also not in dispute that the Respondent was liable (vicariously) for the incident that occurred on 13 September 2025 involving its excavator. Specifically, the Respondent's excavator was carrying HDPE pipe about the Site and it over-turned.
- 217) The Respondent was in breach of its obligations under clause 7 and under the *Work Health and Safety (National Uniform Legislation) Act 2011* and other relevant NT Health and Safety legislation because, among other things, the Respondent failed to monitor the activities of its employee for the purpose of preventing illness or injury arising from the Works and failed to provide a work environment without risks to health and safety of its employees.

Applicant:
Respondent:

[Redacted]
[Redacted]

- 218) The Principal and the Respondent suspended the work following the Loader Incident.
- 219) On 30 September 2025, the Respondent issued an instruction to the Applicant as follows;
- “...
 2) *In light of several safety incidents on 13 and 20 September 2025, [Redacted] the Respondent hereby suspends [Redacted] the Applicant's obligations under Contract No. 2511- [Redacted] – 2025 – COM – [Redacted], effective 20TH September 2025 and until further notice.*
- 3) *This suspension is issued pursuant to Clause 7 (Safety), which empowers [Redacted] the Respondent to take all necessary measures to sure a safe work environment for all personnel on site. Accordingly, this suspension is precautionary, intended to ensure the safe resumption of works and compliance with all site safety requirements.*
- 4) *During the Suspension, [Redacted] the Applicant is entitled only to payment of substantiated work actually performed up the date of this suspension.* Standby, idle, or ongoing costs incurred during the suspension are not payable unless otherwise expressly directed in writing by [Redacted] the Respondent.
- 5) *[Redacted] The Respondent will provide notice when the site is available and it is safe for [Redacted] the Applicant to resume its obligations, ensuring both compliance with safety requirements and the orderly continuation of the Works.*
- ...”
- 220) In the Application, the Applicant claims payment of its standdown costs for its labour and plant pursuant to the

Applicant:

[Redacted]

Respondent:

[Redacted]

Respondent's instructions delivered orally on 20 September 2025 and confirmed in writing on 30 September 2025.

221) The Applicant argues the delay due to the Shutdown from 20 September 2025 to 20 October 2025 was an Excusable Delay and pursuant to clauses; 2.2, 4.1, 9.1, 9.2 and Schedule 4 of the Contract it was entitled to payment for "Claim 3 Excavator Incident".

222) At paragraph 260 of the Application the Applicant states;

"260. The Applicant therefore submits that Claim 3 is properly recoverable as a delay, disruption, standby, remobilisation and loss of productive resource use claim arising from the excavator rollover and the resulting project shutdown, standdown, notice to remedy process, staged return-to-site process and delayed recommencement of productive civil works."

223) The Applicant's argument is limited to an assertion that there was an instruction given by the Respondent to standdown, that the Respondent is liable for project wide shutdowns and the Applicant claims payment for the personnel and equipment costs incurred during the standdown.

224) The Respondent's evidence indicates that the site was shut down following the Excavator Incident from 20 September 2025 to 20 October 2025 and that the Respondent's safety plans and systems were reviewed and/or amended by the Principal to ensure the future safety of the parties' employees and contractors.

225) The Contract Particulars makes it clear that the delay was not an Excusable Delay because it related to the [Applicant's Respondent's](#) breach of clause 7 of the Contract.

Applicant:
Respondent:

[Redacted]
[Redacted]

- 226) Accordingly, the Applicant has no basis for claiming delay costs caused by an act or omission of the Respondent.
- 227) I am persuaded that the Respondent direction of 20 September 2025 was a direction under clause 8.1.
- 228) **Accordingly, I am not persuaded the Applicant is entitled to the claimed amount in relation to "Claim 3 Excavator Incident".**

CLAIM 4 –SHUTDOWN

Payment Claim & Adjudication Application

- 229) The claim entitled "*Claim 4 Variation Shutdown*" in the amount of \$190,672.00 relates to additional costs claimed to have been incurred by the Applicant due to the consequence of inclement weather (that occurred on 16 and 17 November 2025) during the period 18 to 25 November 2025, which it would not have experienced but for the onboarding, loader incident, excavator incident and shutdown delays for which the Respondent was liable.
- 230) The Applicant claims it was entitled to payment pursuant to clauses 2.2, 4.1, 9.1 & 9.2 and valued under Schedule 4.
- 231) The Applicant confirms that it was paid \$63,750.00 for "*Claim 4 Shutdown*" as a variation but confirms it still pursues the balance of that claim under this Application.
- 232) The Applicant asserts the Respondent is liable to pay those additional costs.

Response to the Payment Claim

- 233) The Respondent does not dispute;

Applicant:

[Redacted]

Respondent:

[Redacted]

- a) The Applicant suffered delays as a consequence of the inclement weather event of 16 & 17 November 2025; and
- b) The Applicant incurred delay and standby costs due to the consequence of the inclement weather event of 16 & 17 November 2025;
- c) The Respondent confirms it paid \$63,750.00 for "*Claim 4 Shutdown*" but maintains the position set out in its Response that a commercial ex-gratia payment was made but it never accepted the Applicant's entitlement to be paid for "*Claim 4 Shutdown*".

Applicant:
Respondent:

[Redacted]
[Redacted]

- 234) The Respondent argues the Applicant;
- a) Is not entitled to claim costs incurred due to inclement weather because the Contract Particulars confirm that Inclement Weather is not a “*compensable cause*”;
 - b) Is not entitled to claim delay and or standby costs because it failed to submit notification of those delays pursuant to clause 9.2;
 - c) Is not entitled to claim an extension of time because it failed to submit a claim for an extension of time pursuant to clause 9.3;
 - d) Is not entitled to standby costs because the Respondent never issued a variation direction under clause 8.1 about the Inclement Weather;
 - e) Is not entitled to approved dayworks never provided any directions pursuant to clause 8.5; and
 - f) Is not entitled to payment because the Applicant failed to provide adequate substantiation of the costs claimed.

- 235) At Item 3 of the Table in paragraph 15.5 of the Response, the Respondent states that it paid \$63,750.00 for “*Agreed Variation Nov 25 Shut Down*”.

Determination

- 236) The claimed delays (referred to as “Shutdown” from 18 to 25 November 2025) due to the inclement weather inclement weather event of 16 & 17 November 2026 have not been disputed by the Respondent.

Applicant:

[Redacted]

Respondent:

[Redacted]

- 237) Similarly, the Respondent does not dispute the Applicant suffered delay and standby costs during the inclement weather period.
- 238) The Applicant argues that but for the onboarding, loader incident, excavator incident, shutdown delays for which the Respondent was liable, the Applicant would have completed its works as required under Schedule 6 and demobilised from site.
- 239) The Applicant argues that the acts or omissions of the Respondent prevented the Applicant from commencing work on site (after completing mobilisation) on 11 August 2025 and it could not commence productive work until 20 October 2025. Accordingly, the Applicant was entitled to an extension of time of 70 days and its revised date for completion (based on the construction work plan set out in Schedule 6 of the Contract) was 19 December 2025.
- 240) In the reply to the Request for Further Submissions # 3, the Applicant asserts;
- “...
The Applicant does not accept that this resolves Claim 4 as advanced in payment claim no. 7. The material replied upon by the Respondent, does not prove that [Redacted] the Applicant compromised, abandoned, or finally resolved the balance of Claim 4.
...”
- 241) In the reply to the Request for Further Submissions # 3, the Respondent asserts;
- “...
2.1 However, following the November concentrator shutdown, the Respondent agreed as a commercial matter to reimburse certain actual shutdown costs incurred by the Applicant.

Applicant:

[Redacted]

Respondent:

[Redacted]

...The payment was not an acceptance that standdown costs were contractually compensable, rather, it represented a commercial payment of agreed actual costs following review and revision of the applicants claims.

..."

- 242) There is no evidence that the Applicant abandoned or compromised its claim for Shutdown cost. Further, the Response indicates at Item 3 of the Table in paragraph 15.5 that the Respondent paid \$63,750.00 for *"Agreed Variation Nov 25 Shut Down"*.
- 243) In these circumstances, I am persuaded that a payment of \$63,750.00 was made for a variation relating to 25 November 2025 Shutdown without any final settlement concerning that *"Claim 4 Shutdown"* having been made.
- 244) The Applicant argues that the acts or omissions of the Respondent relating to Onboarding and the Excavator incident prevented the Applicant from commencing work on site (after completing mobilisation) on 11 August 2025 as it was supposed to under Schedule 6 of the Contract.
- 245) The Applicant was liable for the delay due to the Loader incident for 2 days from 13 to 15 September 2025 as explained above in *"Claim 2 Loader Incident"*.
- 246) I determined above that the Respondent was liable for delays it caused when its excavator overturned on 20 September 2025 and those delays persisted from 20 September 2025 to 20 October 2025 as explained above at *"Claim 3 Excavator Incident"*.
- 247) It follows therefore, that the Respondent delayed the Applicant from commencing work from 11 August 2025 to 13 September

Applicant:

[Redacted]

Respondent:

[Redacted]

2025 and from 20 September 2025 to 20 October 2025, which was 63 days. Accordingly, the revised date for completion should have been 10 October 2025 plus 63 days, which was 12 December 2025.

- 248) But for the delays which the Respondent caused, the Applicant would have finished its work on 10 October 2025, and it would not been subjected to the 18 November 2025 to 25 November 2025 Shutdown. The parties have provided no evidence about discussions concerning extension of time and even though probative for my purposes, it was not a determinative fact for finding entitlement.
- 249) I am persuaded, however, that the Respondent most likely agreed that the Applicant would not have suffered the "*Claim 4 Shutdown*" costs but for the delays the Respondent caused and thus agreed the Applicant was entitled to payment for the "*Claim 4 Shutdown*" as a variation. But for that conclusion, there was no logical reason for the Respondent to accept any claim for "*Claim 4 Shutdown*" costs.
- 250) Given the Respondent has made no adverse submission about quantum, for the reasons set out above at paragraphs 150) to 160), I accept the Applicant's claim in relation to costs.
- 251) **Accordingly, I am persuaded the Applicant is entitled to the claimed amount in relation to "*Claim 4 Shutdown delays*", which is \$190,672.00.**

Applicant: [Redacted]
Respondent: [Redacted]

CLAIM 5 – POST 11 DECEMBER DAYWORKS

Payment Claim & Adjudication Application

- 252) This claim entitled “*Claim 5 Post 11 December dayworks*” in the amount of \$641,580.00, is for costs incurred by the Applicant in carrying out dayworks, labour hire, plant hire, standby, wet-weather standby and additional works directed by the Respondent from 12 December 2025 onward.
- 253) On 12 December 2025, [Name Redacted] of the Applicant notified the Respondent as follows;

“...I have spoken with [Name Redacted] yesterday afternoon and he has informed me that they will have the pad and access road by Saturday [Contract Schedule of Rates Works].

From Saturday onwards they will be under your supervision.

As discussed I have been informed this morning that the only equipment required to stay on site now is the following,

- 30-Ton Excavator
- 1 x 740 Moxxy
- 1 x Water truck
- 1 x 980 Loader
- 1 x Semi Water Tank
- 1 x Pad Foot Roller

As mentioned, please demob the following equipment,

- 2 x 745 Moxxy

Applicant:
Respondent:

[Redacted]
[Redacted]

- 1 x D8 dozer
- 1 x Flat Drum Roller
- 1 x Mini Bus

As you know we are finishing of other works on the [Redacted] the Site for the Council and will be completed in the 3rd week of January. Would like to keep the grader and light vehicle to help complete the works. With keeping the grader there this will be available for [Redacted] the Respondent as needed as well to complete works on [Redacted] the Site.

As mentioned I would like to have the remaining crew on site to be flying out on the 19th please. Please confirm return date in the new year.

..."

254) On 12 December 2025, **[Name Redacted]** of the Respondent instructed that certain personnel and equipment were to remain onsite and be "amalgamated into the **[Redacted]** the Respondent's crews". Specifically, the Respondent confirmed;

"...

[Name Redacted],

To confirm, the below Personnel & Equipment to remain onsite and amalgamated into the [Redacted] the Respondent's crews:

30-Ton Excavator

- 1 x 740 Moxxy
- 1 x Water truck
- 1 x 980 Loader
- 1 x Semi Water Tank

Applicant:
Respondent:

[Redacted]
[Redacted]

- 1 x Pad Foot Roller
- [Name Redacted]
- [Name Redacted]
- [Name Redacted]

- 255) The Applicant claims it was entitled to payment pursuant to clauses 4.4(c), 8.1, 8.4 & 8.5 and valued under Schedule 4.
- 256) The Applicant asserts the Respondent is liable for those additional costs.

Response to the Payment Claim

- 257) The Respondent accepts the following;
- a) some personnel and plant remained onsite after 11 December 2025; and
 - b) some directed productive works may have occurred.
- 258) The Respondent does not provide any rejection of any specific dayworks claim but suggests the following;

“Claim 5 should therefore be reduced to only those items, if any, that [Redacted] the Applicant proves were:

- (a) properly directed;*
- (b) productive;*
- (c) substantiated;*
- (d) signed;*
- (e) contractually compliant; and*
- (f) not otherwise paid.*

Applicant:

[Redacted]

Respondent:

[Redacted]

- 259) At Item 2 of the Table in paragraph 15.5 of the Response, the Respondent states that it paid \$539,513.54 for "*Dayworks Claim*" and states; "*March Day Sheets are payable to 10 March 2026*".
- 260) At Item 1 of the Table in paragraph 15.5, I note that the Respondent particularised the amounts it previously certified for the Original Lump Sum Items and the re-measurable items amounting to \$835,438.51.
- 261) The Applicant recorded in the Payment Claim that the Respondent previously certified \$182,920.00 of \$315,091.60 Dayworks items claimed.
- 262) By subtracting from Item 2 of the Table in paragraph 15.5 of the Response (the amount paid for Dayworks to date) and the Applicant's Dayworks acknowledged previously certified amounts for Dayworks (at lines 65-90 of the Payment Claim) the balance (being \$356,113.54) of Dayworks paid by the Respondent must relate to Claim 5 "*Post 11 December dayworks*".

Determination

- 263) I am persuaded by the dialogue between **[Name Redacted]** of the Applicant and **[Name Redacted]** of the Respondent that the Respondent directed the Applicant to provide certain equipment and labour on a schedule of rates to be directed by the Respondent to perform whatever work it determined was required. The reference to rates for ascertaining the value of future claims was a reference to time based rates.
- 264) Clause 8.5 of the Contract provides;

Applicant:
Respondent:

[Redacted]

[Redacted]

"8.5 Daywork

(a) [Redacted]The Respondent may direct that a Variation issued under clause 8.1(a) be carried out as daywork. The Contractor must each day thereafter:

- (i) record particulars of all resources used by the Contractor for the execution of all daywork; and
- (ii) furnish to [Redacted] the Respondent the particulars and copies of timesheets, wage sheets, invoices, receipts and other documents evidencing the cost of the daywork, (Day Sheets).

(b) [Redacted] The Respondent may direct the manner in which matters in clause 8.5(a) are to be recorded (including the format and content of Day Sheets).

(c) The Day Sheets are to be maintained by the Contractor in duplicate. Both copies of the Day Sheets must, on a daily basis, be signed by the Contractor's Representative and issued to [Redacted] the Respondent's Representative pursuant to clause 8.5(a)(ii).

(d) If [Redacted] the Respondent's Representative agrees with the Day Sheets, the [Redacted] the Respondent's Representative will sign and return one copy of the Day Sheets to the Contractor. [Redacted] The Respondent will retain the other copy of the Day Sheets.

(e) The amount payable for daywork will be calculated in accordance with the rates and prices of this Contract.

265) In the context that the Respondent accepts that dayworks may have been carried out and does not reject any particular claim, I am persuaded by the Applicant's argument that it provided certain equipment and labour to be used by the Respondent to perform dayworks under its direction.

Applicant:

[Redacted]

Respondent:

[Redacted]

- 266) The Respondent has not identified any part of the dayworks claim for which it asserts the Applicant is not entitled to payment.
- 267) The Respondent has also provided no objection to the quantum amount claimed.
- 268) In the context that the Respondent agreed the Applicant was entitled to payment for the "*Claim 5 Post 11 December dayworks*" and given the Respondent has made no adverse submission about quantum, for the reasons set out above at paragraphs 150) to 160), I accept the Applicant's claim in relation to costs.
- 269) **I have considered the Applicant's daily dayworks reports that identified the personnel, plant, hours, work activities and notes for each day and the valuation provided at paragraph 322 of the Adjudication Application and I am satisfied the Applicant is entitled to payment of the amount claimed for "*Claim 5 Post 11 December dayworks*"**

Applicant:

[Redacted]

Respondent:

[Redacted]

CLAIM 6 – WEATHER IMPACTS

Payment Claim & Adjudication Application

- 270) This claim entitled; “*Claim 6 Weather Impacts*” in the amount of \$233,098.65 relates to additional costs claimed to have been incurred by the Applicant due to inclement weather on 29 October 2025, 6, 13-17 & 30 November 2025, 1-2, 4, 9, 13,15-17 & 19-20 December 2025, which it would not have experienced but for the onboarding, loader incident, excavator incident, shutdown delays for which the Respondent was liable.
- 271) The Applicant claims it was entitled to payment pursuant to clauses 4.1, 9.1 & 9.2 and valued under Schedule 4.
- 272) The Applicant asserts the Respondent is liable for those additional costs.

Response to the Payment Claim

- 273) The Respondent does not dispute;
- a) Inclement weather was experienced on the dates identified by the Applicant; and
 - b) The Applicant suffered delays including standdown due to the inclement weather.
- 274) The Respondent asserts the Applicant is not entitled to payment of its “*Claim 6 Weather Impacts*” under the Contract and further points out that the Applicant has failed to demonstrate why it was entitled to payment for the claimed costs under the Contract.
- 275) In particular, the Respondent points out that the Applicant has not;

Applicant:

[Redacted]

Respondent:

[Redacted]

- a) Identified an appropriate compensable cause in the Contract Particulars or generally under the Contract (inclement weather risk was allocated to the Applicant under the Contract);
- b) Identified any agreement to pay for "*Claim 6 Weather Impacts*" or any direction under clause 8.1 relating to standby or any approved variation relating to the inclement weather;
- c) Complied with the notification requirements of clauses 8.4(a) or 9.1; or
- d) Claimed any extension of time under clause 9.2.

276) At Item 5 of paragraph 15.5 of the Response, the Respondent states that it paid \$41,870.00 against a "*Wet Weather Claim*".

Determination

- 277) The delays arising from the inclement weather inclement weather on 29 October 2025, 6, 13-17 & 30 November 2025, 1-2, 4, 9, 13, 15-17 & 19-20 December 2025 are not in dispute.
- 278) Similarly, the Respondent does not dispute the Applicant suffered delay and standby costs during the inclement weather period.
- 279) The Applicant argues that but for the onboarding, loader incident, excavator incident, shutdown delays for which the Respondent was liable, the Applicant would have completed its works as required under Schedule 6 and demobilised from site.
- 280) The Applicant argues that the acts or omissions of the Respondent relating to Onboarding and the Excavator incident prevented the Applicant from commencing work on site (after

Applicant:

[Redacted]

Respondent:

[Redacted]

completing mobilisation) on 11 August 2025 as it was supposed to under Schedule 6 of the Contract.

- 281) The Applicant was liable for the delay due to the Loader incident for 2 days from 13 to 15 September 2025 as explained above in *"Claim 2 Loader Incident"*.
- 282) I determined above that the Respondent was liable for delays it caused when its excavator overturned on 20 September 2025 and those delays persisted from 20 September 2025 to 20 October 2025 as explained above at *"Claim 3 Excavator Incident"*.
- 283) It follows therefore, that the Respondent delayed the Applicant from commencing work from 11 August 2025 to 13 September 2025 and from 20 September 2025 to 20 October 2025, which was 63 days. Accordingly, the revised date for completion should have been 10 October 2025 plus 63 days, which was 12 December 2025.
- 284) But for the delays which the Respondent caused, the Applicant would have finished its work on 10 October 2025, and it would not have been subjected to the 16 and 17 November 2025 inclement weather event. The parties have provided no evidence about discussions concerning extension of time and even though probative for my purposes, it was not a determinative fact for finding entitlement.
- 285) I am persuaded that the Respondent most likely agreed that the Applicant would not have suffered the *"Claim 6 Weather Impacts"* costs but for the delays the Respondent caused and thus agreed the Applicant was entitled to payment for the *"Claim 6 Weather Impacts"* as a variation. But for that conclusion, there was no logical reason for the Respondent to accept any claim for *"Claim 6 Weather Impacts"* costs.

Applicant:

[Redacted]

Respondent:

[Redacted]

- 286) Given the Respondent has made no adverse submission about quantum, for the reasons set out above at paragraphs 150) to 160), I accept the Applicant's claim in relation to costs.
- 287) **Accordingly, I am persuaded the Applicant is entitled to the claimed amount in relation to "Claim 6 Weather Impacts", which is \$196,363.04.**

Applicant:

[Redacted]

Respondent:

[Redacted]

CLAIM 7– DESCOPE ADJUSTMENT

Payment Claim & Adjudication Application

- 288) This claim entitled Claim 7 Descope Adjustment in the amount of \$196,363.04 relates to equipment underutilisation due to delays and re-sequencing arising from the actions or inactions of the Respondent. This claim does not include amounts claimed for standby, delay etc... in the onboarding, loader incident, excavator incident, shutdown, weather or dayworks claims.
- 289) The Applicant asserts the Respondent is liable for the underutilisation costs.

Response to the Payment Claim

- 290) The Respondent does not dispute;
- a) work re-sequencing;
 - b) quantities changed over time;
 - c) equipment requirements changed;
 - d) portions of plant were released; or
 - e) utilisation fluctuated during the project.
- 291) The Respondent argues the Applicant has failed to demonstrate why it was entitled to payment for the claimed costs by reference to any direction, act or omission of the Respondent and in compliance with the requirements for making valid claims under the Contract.

Applicant:

[Redacted]

Respondent:

[Redacted]

Determination

- 292) The Applicant's claim is in the form of a global claim, which asserts there were delays followed by the Respondent's instructions to re-sequence the works that in turn required the Applicant to change its construction methodology. That methodology included personnel and material redundancy from time to time and the Applicant asserts the Respondent is liable for the costs relating to those redundancies.
- 293) The Applicant has not particularised each activity where it experienced such redundancy (standby) nor provided an annotated as-built program with corresponding histogram and manning levels from which the redundancy at any time could be ascertained.
- 294) The Contract provides a mechanism whereby the Applicant was obliged to identify any direction, or act or omission causing a delay, and to provide notice of intention to claim for the cost of the consequences arising from such a direction or a delay for which the Respondent is liable. The Applicant was then entitled to claim costs for a variation or for an extension of time and delay costs. The Applicant has made no such claim(s) under the Contract.
- 295) **I am not persuaded that the Applicant has satisfied the minimum requirements for a valid claim for a variation or and extension of time and delay costs for Claim 7 Descope Adjustment and it is not entitled to payment of the claimed amount.**

Applicant:
Respondent:

[Redacted]
[Redacted]

CLAIM 8 – LUBRICANTS

Payment Claim & Adjudication Application

- 296) This claim entitled Claim 8 Lubricants in the amount of \$18,491.23 relates to additional costs claimed to have been incurred by the Applicant for the;

“...supply of lubricants required for the maintenance and operation of [Redacted] the Applicant’s plant and equipment on the project. The lubricants were supplied and consumed as a necessary incident of the plant-intensive civil works performed throughout the extended duration of the subcontract”.

- 297) The Applicant asserts the Respondent is liable to pay the claimed amount.

Response to the Payment Claim

- 298) At paragraph 14.8 of the Response, the Respondent rejects the Applicant’s claim to the extent it is a duplicate of an amount previously claimed under the Applicant’s invoice referenced 0914.
- 299) At Item 4 of the Table in paragraph 15.5 of the Response, the Respondent asserts that the claim for the supply of lubricants in the amount of \$18,491.00 was an agreed variation that the Respondent has paid.

Determination

- 300) On review of the Payment Claim, I observe there is only 1 claim entitled “Claim 8” Lubricants in the amount of \$18,491.23.

Applicant: [Redacted]
Respondent: [Redacted]

- 301) Accordingly, the Applicant is entitled to payment of the claimed amount for the claim entitled "Claim 8 Lubricants in the amount of \$18,491.23".

Applicant: [Redacted]
Respondent: [Redacted]

SUMMARY OF DETERMINATIONS OF THE PAYMENT DISPUTES

302) Pursuant to s 34(1)(a) of the Act, I have made this determination on the basis of the application and its attachments and the response and its attachments and the parties' submissions.

303) A summary of the determinations of each of the claims that together form the Payment Claim appear in the table below.

PAYMENT CLAIM # 7 / PAYMENT SCHEDULE / DETERMINATION

Work Item	Payment Claim - Total value claimed to date	Payment Schedule - Total certified to date	Amount determined
Original Contract – claimed to date;			
Lump sum items	\$540,641.95	\$537,623.64	\$540,641.95
Re-measurable items	\$381,389.37	\$297,814.87	\$381,389.37
Dayworks	\$315,091.60	\$182,920.00	\$315,091.60
	\$1,237,122.92	\$1,018,358.51	\$1,237,122.92
Schedule of Rates – claimed to date;	\$15,470.00	\$480.00	\$15,470.00
Claim 1 - Onboarding;	\$248,710.00	\$0.00	\$248,710.00
Claim 2 – Loader incident;	\$63,518.00	\$0.00	\$0.00
Claim 3 – Excavator incident;	\$804,304.00	\$0.00	\$0.00
Claim 4 – Shutdown;	\$190,672.00	\$63,750.00	\$63,750.00
Claim 5 – Post 11 Dec dayworks;	\$641,580.00	\$356,113.54	\$641,580.00
Claim 6 – Weather Impacts;	\$233,098.65	\$41,870.00	\$233,098.65
Claim 7 – Descope adjustment;	\$196,363.04	\$0.00	\$0.00
Claim 8 – Lubricants;	\$18,491.23	\$18,491.23	\$18,491.23

Applicant: [Redacted]
Respondent: [Redacted]

	<u>\$3,649,329.84</u>	<u>\$1,499,063.28</u>	<u>\$2,458,222.80</u>
Less previously certified	\$1,408,153.23		\$1,499,063.28
This Payment Claim (excl. GST)	\$2,241,176.61		\$959,159.52
This Payment Claim (Incl. GST)	\$2,465,294.27		\$1,055,075.47

Applicant:
Respondent:

[Redacted]
[Redacted]

DUE DATE FOR PAYMENT

304) Clause 4.4(a) of the Contract and the Contract Particulars requires the Respondent to pay the assessed amount of the **Payment Claim** as follows;

- “• 30 days from invoice*
- Email invoice to [Redacted]”*

305) The Payment Claim (# 7) was dated 31 March 2026 and served on the Respondent on 31 March 2026.

306) The Contract does not require the Payment Claim to be served on any particular date. Accordingly, the due date for payment was 30 days from the date the Payment Claim was served on the Respondent. The Due Date for Payment of the Payment Claim was, therefore, 30 April 2026.

307) The Due Date provision comply with the requirement of the Act, which regulates payment under a construction contract. Section 13 of the Act provides;

“13 Provisions requiring payment to be made after 30 working days.

A provision in a construction contract that purports to require a payment to be made more than 30 working days after the payment is claimed, must be read as being amended to require the payment to be made within 30 working days after it is claimed.

308) **Accordingly, the due date for payment is 30 April 2026.**

Applicant:

[Redacted]

Respondent:

[Redacted]

INTEREST ON UNPAID AMOUNTS

- 309) The Contract does not provide for interest on unpaid amounts.
- 310) The Applicant is, therefore, entitled to interest as provided under section 21 of the Act.
- 311) Pursuant to section 21 and Schedule 1, Division 6 of the Act, interest is payable on any part of an amount that is unpaid after the due date for payment, at the rate set out in the *Construction Contracts (Security of Payments) Regulations 2005* (NT) (the **Regulations**).
- 312) Pursuant to section 9 of the Regulations, the interest rate is the rate fixed from time to time for section 85 of the *Supreme Court Act 1979* (NT).
- 313) The rate of interest provided by section 85 of the *Supreme Court Act 1979* (NT) is:
- a) at such rate as is fixed by the *Supreme Court Rules 1987* (NT); and
 - b) until a rate is so fixed, at 8% per annum.
- 314) Pursuant to rule 59.02(3) of the *Supreme Court Rules 1987* (NT), a judgement debt carries interest from the date of judgement at the rate per annum fixed by section 52(2)(a) of the *Federal Court of Australia Act 1976* (Cth), from time to time.
- 315) Section 52(2)(a) of the *Federal Court of Australia Act 1976* (Cth), in turn, provides that interest is payable the rates fixed by the *Federal Court Rules 2011* (Cth).
- 316) Pursuant to rule 39.06 of the *Federal Court Rules 2011* (Cth), interest is payable:

Applicant:

[Redacted]

Respondent:

[Redacted]

- a) for the period from 1 January to 30 June in any year - the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before the period commenced; and
- b) for the period 1 July to 31 December in any year - the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before the period commenced.

- 317) The applicable rate of interest from the period from 28 August 2025 to 31 December 2025 was 9.60% per annum.
- 318) The Contract makes no provision for interest on overdue payments.
- 319) The Respondent makes no submission about interest.
- 320) The Act provides that interest is payable on overdue money to the extent the Contract is silent on that point.
- 321) If the parties had intended no interest was payable, it was open for them to include a term to that effect to avoid the implication of the term providing the Applicant a right to payment of interest. Simply remaining silent enlivens the operation of the Act.
- 322) The Reserve Bank of Australia Cash Rate increased on 3 February 2026 to 3.85%. Accordingly, the applicable rate of interest from the period from 1 January 2026 to 30 June 2026 is 9.60%.
- 323) Interest is payable on the adjudicated amount at a rate of 9.60% per annum commencing on the day after 28 August 2025 and up until 10 February 2026 (being the date of this determination) under section 35 of the Act. Furthermore, pursuant to section 33(1)(b)(i) of the Act, the interest payable is the amount of

Applicant:
Respondent:

[Redacted]
[Redacted]

\$395,740.69.

- 324) The interest payable is calculated on the adjudicated amount net of GST for the period from the due date (as agreed by the parties) to the date of decision:
- 325) Interest payable = $\$959,159.52 \times 9.60\% \times (30 \text{ April } 2026 \text{ to } 12 \text{ June } 2026 (42 \text{ days}) / 365 \text{ days} = \$11,012.48.$
- 326) GST is not payable on interest as it is a “financial supply” and exempt from GST under the legislation.
- 327) **Accordingly, the Applicant is entitled to be paid interest on the adjudicated amount from the agreed due date, which is 30 April 2026 up to the date of the determination, being 12 June 2026 at the rate of 9.60% per annum and amounts to; \$11,012.48.**

ADJUDICATION COSTS

- 328) Neither party properly followed the administrative procedures required under the Contract during the course of the works. Accordingly, I determine that;
- a) pursuant to section 36(1) of the Act, each party shall bear their costs in relation to this adjudication.
 - a) pursuant to section 46(5) of the Act, the costs of the adjudication shall be shared equally by both parties.

CONFIDENTIAL INFORMATION

- 329) The parties have not indicated which parts of the information provided to me with their submissions are to be treated as confidential.

Applicant:
Respondent:

[Redacted]
[Redacted]

330) If either party considers any part of their submissions confidential or any part of this determination as confidential, I request that they notify me accordingly within 2 working days of receipt of this determination.

Signed:

A handwritten signature in black ink, appearing to be 'John Tuhtan', with a long horizontal stroke extending to the right.

John Tuhtan

NT Adjudicator #35

Date of Determination 12 June 2026