



## **Provident Capital Limited (Receivers Appointed) (In Liquidation)**

**Update to Debentureholders  
As at 3 October 2017**

23 October 2017

## Update to Debentureholders

Dear Debentureholders

**Provident Capital Limited**  
**ACN 082 735 573**  
**(Receivers Appointed) (In Liquidation)**  
**(Provident or the Company)**

We refer to our previous communications in relation to this matter and now provide an update on the progress of the Receivership.

We recommend that this Report be read in conjunction with our previous communications with Debentureholders, which are available on our website at [www.ppbadvisory.com](http://www.ppbadvisory.com) under 'Provident Capital Limited' in the Creditors Information section. Alternatively, copies of issued documents can be requested from the Debentureholder registry service maintained by Link Market Services (**Link**). Link's contact details appear opposite.

Further information regarding the Receivership is available on our website at [www.ppbadvisory.com](http://www.ppbadvisory.com) under 'Provident Capital Limited' in the Creditors Information section.

If you have any queries (including requests to obtain copies of previous communications) please contact the Debentureholder registry service maintained by Link.

Link's contact details are as follows:

Address: Provident Capital Limited  
(Receivers Appointed) (In Liquidation)  
c/- Link Market Services  
Locked Bag A14  
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Yours faithfully



**Christopher Hill and Ken Whittingham**  
Receivers  
Provident Capital Limited

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# 1 Executive Summary

## 1.1 Forecast total return

Debentureholders	Paid to date (cents in the \$)	Paid in conjunction with this report (cents in the \$)	Forecast future distributions (cents in the \$)	Forecast total return (cents in the \$)
Interest to 3 July 2012	3.8*	-	-	<b>3.8</b>
Principal	8.0	6.5	2.9	<b>17.4</b>
<b>Total</b>	<b>11.8</b>	<b>6.5</b>	<b>2.9</b>	<b>21.2</b>

Other	Paid to date (cents in the \$)	Forecast future distributions (cents in the \$)	Forecast total return (cents in the \$)
BEN	100	-	<b>100</b>
MIF	100	-	<b>100</b>
HYF	100	-	<b>100</b>

\*3.8 cents equates to a 100% return of interest owing as at 3 July 2012

- A further distribution of 6.5 cents in the dollar of principal outstanding to Debentureholders will be paid on or around 3 November 2017.
- We anticipate paying a further dividend of 2.9 cents in the dollar, bringing the estimated return for Debentureholders to 21 cents in the dollar (inclusive of principal and interest), up from 16 cents as at the date of our most recent update.
- Unitholders in both MIF and HYF have received a capital return of 100 cents in the dollar, with MIF and HYF Unitholders also receiving a nominal income distribution. Both MIF and HYF have now been wound up.
- BEN facility has been repaid.

We continue to assess our ability to make future distributions to Debentureholders, however this is subject to the realisation of Provident's one active remaining loan.

## 1.2 Key activities since our last report

- We have reached a settlement of our proceedings against Provident's directors for breach of their duties of care and diligence in managing the affairs of Provident (**Director Proceedings**) for an amount of \$14 million.
- We will be making a distribution to Debentureholders in the amount of 6.5 cents in the dollar on or around 3 November 2017.
- Ongoing recovery of the outstanding loans. This has involved:
  - negotiations with borrowers for repayment of their loan facilities
  - litigation with borrowers
  - taking possession of security properties and preparing them for sale
  - liaising with property experts such as town planners, geotechnical and legal advisors to progress necessary building approvals
  - monitoring sale campaigns and exploring opportunities to realise illiquid assets.
- The loan portfolio is comprised of one remaining loan of which Provident is acting as mortgagee in possession (**MIP**).
- In line with the wind down of the loan portfolio we have continued to rationalise the Provident's business operations to generate cost savings.

## 2 Litigation

### 2.1 Status of Director Proceedings

We are pleased to advise that we reached a settlement of the Director Proceedings in the amount of \$14 million. The settlement resolves Provident's claims against its directors as detailed in Provident's Amended Statement of Claim filed on 1 December 2014.

As previously foreshadowed, we attended mediation with Provident's directors on 26 April 2017. Following on from the mediation, the terms of a settlement with Provident's directors and related parties was finalised on 5 September 2017, with the settlement amount received on 3 October 2017. The Director Proceedings were formally discontinued on 12 October 2017.

We consider the settlement offer as fair and reasonable in circumstances where:

1. Progression of litigation claims of this nature are inherently risky and uncertain, both in terms of timing, the ultimate result and ongoing costs. The settlement amount provides certainty to Debentureholders.
2. The number of stakeholders (four defendants plus their insurers and litigation funder) provided an extra layer of complexity.
3. There was a limited pool of funds ultimately recoverable in the Director Proceedings due to the financial position of the individual directors and the available pool of insurance. As a consequence, continuing to progress the litigation may have resulted in a lower return to Debentureholders due to the time and cost involved, for limited (to potentially no) incremental benefit.
4. The settlement amount allows for an immediate distribution of 6.5 cents in the dollar to Debentureholders. Should the matter have progressed to trial, it would not likely have been heard until late 2018, excluding any possible appeal(s), which would further delay distributions to Debentureholders.
5. The terms of settlement were supported by Claims Funding Australia and Maurice Blackburn, our litigation funder, and our legal advisors including senior counsel.

### 2.2 Actions by the Australian Securities and Investments Commission (ASIC)

ASIC has imposed the following penalties on Provident's directors for breaching their duties as directors and failing to comply with financial services laws:

- Michael O'Sullivan, Provident's Managing Director, has been banned from managing a corporation for five years and from providing financial services for seven years
- John Sweeney, one of Provident's non-executive directors, has been banned from providing financial services for two years
- Trevor John Seymour, one of Provident's non-executive directors, has been banned from managing corporations and providing financial services for three years
- Malcolm Bersten, one of Provident's executive directors and in-house legal counsel, has been banned from managing corporations and providing financial services for five years.

On 2 May 2017, the Administrative Appeals Tribunal (**AAT**), upheld ASIC's banning order against Mr O'Sullivan. Mr O'Sullivan has however since appealed the AAT's decision in the Federal Court of Australia.

We understand that ASIC's banning orders against the other directors are also presently under appeal. We note that we have no ongoing involvement in these appeal processes.

### 2.3 Class action proceedings

We understand that:

- Slater & Gordon have commenced a class action against Australian Executor Trustees (**AET**) in the Federal Court of Australia in December 2014;
- Meridian Lawyers have subsequently commenced a separate class action against AET in the Supreme Court of NSW in July 2015;
- the class action commenced by Slater & Gordon was transferred to the Supreme Court of NSW on 5 February 2015, with the Court making orders that the two class actions be heard together; and
- the two class actions are currently listed for trial commencing in July 2019. A mediation is expected to occur in March 2018.

We are not a party to either proceeding and have not been informed as to their respective status. We recommend Debentureholders contact the respective class action lawyers directly for further updates.

### 2.4 Other recovery actions

We do not consider there will be any further potential avenues of recovery available for Debentureholders aside from realisation of the one remaining security property in Provident's loan portfolio.

## 3 Forecast return

### 3.1 Forecast return to Debentureholders

	Paid to 3 November 2017 (cents in the \$)	Forecast future distributions (cents in the \$)	Forecast total return (cents in the \$)
Interest to 3 July 2012	3.8*	-	3.8
Principal	14.5	2.9	17.4
<b>Total</b>	<b>18.3</b>	<b>2.9</b>	<b>21.2</b>

\* 3.8 cents equates to 100% return of interest owing as at 3 July 2012

We have revised our estimate that Debentureholders will receive a total return of 21 cents in the dollar (inclusive of principal and interest). This estimate is predicated on the following assumptions, which, if they do materialise, could reduce the estimated return. These include, but are not limited to:

- no new significant provisions against the remaining loan
- no significant adverse changes to the estimated market value of the remaining security property
- forecast costs remaining in line with forecast
- actual projected cash outflows being consistent with the estimated outcome statement detailed in Appendix A.

Given the vast proportion of available assets to Debentureholders have been realised and all other avenues of recovery have been exhausted, the primary link to a reduction in the estimated return is the ultimate recovery of the outstanding loan.

#### 3.1.1 Distribution

An interim distribution of 6.5 cents in the dollar of principal outstanding to Debentureholders will be paid on or around 3 November 2017. This will bring the total interim distributions paid to Debentureholders to 18.3 cents in the dollar (inclusive of principal and interest) equating to approximately \$23 million.

Should Debentureholders wish to receive their distribution by electronic transfer instead of cheque, they should provide their bank account details to Link if they have not already done so.

Debentureholders should contact Link if they do not receive their distributions by the end of November 2017 or if they require an accounting of the distributions paid to date.

Link's contact details are as follows:

Address: Provident Capital Limited  
(Receivers Appointed) (In Liquidation)  
c/- Link Market Services  
Locked Bag A14  
Sydney South NSW 1235  
Australia

Telephone: +61 2 8767 1194

Facsimile: +61 2 9287 0303

Email: [provident@linkmarketservices.com.au](mailto:provident@linkmarketservices.com.au)

#### 3.1.2 Government benefits

We have notified the Department of Human Services that the projected remaining distribution to Debentureholders will be 2.9 cents in the dollar from 3 November 2017 onwards.

Debentureholders whom are affected by the above changes and/or consider that they are eligible for assistance should contact the Department of Human Services on 132 300 or visit your local Centrelink office.

We expect a revised information sheet will be issued by the Department of Human Services that provides further information shortly. A copy will be uploaded on to our website at [www.ppbadvisory.com](http://www.ppbadvisory.com) once available. Alternatively, you can contact Link and request them to send you a copy.

### 3.1.3 *Timing of future distributions*

We will continue to assess our ability to make future distributions to Debentureholders, however this is subject to the outcome of the realisation of the remaining security property.

## 3.2 **Estimated outcome statement**

We have prepared an estimated return for Debentureholders to completion of the receivership summarised by account category in Appendix A.

## 3.3 **Bendigo & Adelaide Bank Limited (BEN)**

On 10 April 2015, we repaid the BEN facility having realised sufficient loan assets that were subject to BEN security.

Following repayment of BEN, all future recoveries from the remaining loans originally funded by BEN were realised for the benefit of the Debentureholders. Those loan recoveries represent recovery of the cash collateral that Provident was required to provide under the BEN facility agreement.

The equity ultimately realised from this portfolio for Debentureholders totalled \$8.6 million.

## 3.4 **Provident Capital Monthly Income Fund (MIF) & Provident Capital High Yield Fund (HYF)**

MIF was wound up on 30 April 2016 and deregistered by ASIC on or around 6 September 2016. Unitholders of MIF received capital distributions to 100 cents in the dollar plus an income distribution of 0.2508 cents.

HYF was wound up on 31 March 2015 and deregistered by ASIC on 23 August 2015. Unitholders of HYF received capital distributions to 100 cents in the dollar.

Please refer to our website at [www.ppbadvisory.com](http://www.ppbadvisory.com) under Provident Capital Limited in the Creditors Information section for previous updates to Unitholders.



## 4 Realisation of loan portfolio

### 4.1 Summary of loan portfolio

There are four remaining loans in Provident's portfolio. There is only one remaining security property for which Provident is mortgagee in possession. All other loans are effectively reflecting residual debt exposures and we expect these to be written off in due course.

#### 4.1.1 Mortgagee in possession

Provident remains in possession of one last security property, namely a development site in Gold Coast, Queensland. While this loan was carried in Provident's books at the date of our appointment at \$22.4 million, we expect the actual net return to Provident to be substantially less.

As outlined in previous communications with Debentureholders, the nature of this security property is such that realisation has been costly and protracted, primarily due to planning approval issues. We are simultaneously progressing litigated proceedings and negotiations with the Gold Coast council to resolve these issues. To achieve this, we continue to:

- engage our property experts, including town planners, geotechnical and legal advisors in respect of work required to obtain necessary development consent;
- progress proceedings with the local Council in the Land and Environment Court; and
- concurrently liaise with the local Council authorities regarding development approval requirements in order to achieve a consensual outcome.

#### 4.1.2 Residual and related party loans

There are three residual loans remaining as at 3 October 2017.

We note two of the residual balance loans relate to a shortfall following the sale of the primary security properties. The third and largest residual balance relates to a related party loan.

We do not anticipate any further material recoveries in relation to these loans.

## 5 Next steps

Our focus will continue to be on the realisation of the remaining loan assets.

The key work streams within the Receivership that are currently being progressed include:

- attending to the ongoing day to day operations of Provident's business, albeit at a substantially reduced level
- the realisation of the remaining primary security asset given Provident is MIP
- investigating the ability to recover any value in relation to residual debt exposures and the related party loan
- responding to applications, subpoenas and other Court orders from the respective class action groups
- ongoing reporting to the Court and Debentureholders on the conduct of the Receivership
- ongoing liaison with key stakeholders such as AET, ASIC and the Liquidators
- paying distributions to Debentureholders as and when funds become available.

## 6 Professional fees

### 6.1 Receivers' remuneration to date

Our remuneration is based on time incurred, calculated in accordance with the rates set by PPB Advisory in accordance with the Australian Restructuring, Insolvency and Turnaround Association's Best Practice Guide. These rates have been approved by the Federal Court of Australia.

Since the date of our last report we have incurred further remuneration of \$571,580.50 for the period 1 October 2016 to 3 October 2017, bringing total remuneration for the receivership to \$12.6 million (excluding GST and disbursements).

<u>Period</u>	<u>\$ (excluding GST)</u>
3 July 2012 to 30 September 2016	12,010,560.59
1 October 2016 to 3 October 2017	571,580.50
<b>Total fees incurred to date</b>	<b>12,582,141.09</b>

We have not however drawn any remuneration since 1 April 2014 in an effort to fairly balance the cashflow to Debentureholders in the context of the broader matter and future recoveries.

We expect to file shortly an application to the Court seeking approval of our fees for the period from 1 April 2014 to 30 September 2016 in the amount of \$3,657,933 (excluding GST). We are required to provide a copy of our application to AET, ASIC and the Liquidators.

No fees will be paid until Court approval is obtained.

A summary of our time costs allocated between key receivership work streams for the period 3 July 2012 to 3 October 2017 is presented at Appendix B. The amount subsequent to 1 October 2016 is still subject to further review and the approval of the Court.

### 6.2 Future remuneration

We estimate our total future remuneration to completion of the matter to be approximately \$900,000 (excluding GST and disbursements).

Our estimate of future fees is dependent upon a number of variables, primarily the ongoing recovery actions relating to the outstanding loan and residual debts in line with our current expectations.

## Appendix A. Estimated outcome statement

	\$
<b>Receipts</b>	
BEN - loan realisation and equity	83,646,843
BEN - Special Servicer Fee	355,228
Fixed Term Investment (FTI) - loan realisation plus interest	44,542,477
Refund of pre-appointment income tax	2,838,178
Pre-appointment cash at bank	2,168,371
MIF and HYF income	2,174,505
Interest income	513,651
MMP - Commission income and realisation of income trail	352,590
Loan repayment from Cashflow Finance Solutions	617,000
Litigation funding	2,225,247
Recovery from Director Proceedings	14,000,000
Other income	71,745
<b>Total receipts</b>	<b>153,505,835</b>
<b>Payments</b>	
Receivership costs and disbursements - incurred to date	(13,381,797)
Receivership costs and disbursements - estimated to completion	(1,699,131)
MIP property expense	(2,890,273)
Corporate overheads	(9,954,495)
Legal fees and disbursements	(21,513,173)
Trustee legal and professional costs to 3 July 2012	(653,959)
Loan to Cashflow Finance Solutions	(587,253)
Voluntary Administrator costs - McGrathNicol	(122,271)
Liquidators costs - McGrathNicol	(157,914)
Special purpose receivers - PWC Claim - McGrathNicol	(101,565)
Special purpose receivers - AET Claim - McGrathNicol	(100,000)
Security trustee fees	(397,512)
<b>Total payments</b>	<b>(51,559,342)</b>
<b>Distributions</b>	
Distributions to BEN	(75,391,016)
Distributions to Debentureholders - Interest	(4,756,342)
Distributions to Debentureholders - Principal - paid to date	(10,037,439)
Distributions to Debentureholders - Principal - paid in conjunction with this report	(8,155,418)
Distributions to Debentureholders - Principal - forecast distribution	(3,606,277)
<b>Total distributions</b>	<b>(101,946,492)</b>
<b>Net receipts and payments</b>	<b>0</b>
<b>Balance owing to Debentureholders</b>	<b>125,467,975</b>
Paid to date - Interest (cents in the \$)	.038
Paid to date - Principal (cents in the \$)	.080
Paid in conjunction with this report - Principal (cents in the \$)	.065
Forecast distribution (cents in the \$)	.029
<b>Total distributions (cents in the \$)</b>	<b>.212</b>

## Appendix B. Summary of time costs

Our professional fees for the period 3 July 2012 to 3 October 2017 total approximately \$12.6 million (GST exclusive and disbursements). We have summarised our time costs for this period across ten key work streams, as shown in the table below:

Workstream	Value (\$) (GST exclusive)	Hours
Asset management	3,664,081.64	9,185.23
Loan portfolio management	1,527,560.40	4,570.05
Funds management	572,530.50	1,153.93
Other Assets	164,064.50	340.60
Litigation	1,308,213.80	2,623.23
Investigation	1,115,583.30	2,617.73
Creditors	979,015.50	2,203.55
Employees	163,077.00	447.00
Dividend	37,858.00	95.05
Trading	1,168,707.70	3,168.00
Administration	1,881,450.25	5,286.28
<b>Total</b>	<b>12,582,142.59</b>	<b>31,690.65</b>

As detailed in section 6.1 of this report, we have only drawn \$8.4 million against this amount, relating to the period 3 July 2012 to 31 March 2014.

We provide below a non-exhaustive summary of the tasks completed within each of the key work stream detailed in the table above:

### Asset and loan portfolio management

- Ongoing management of security properties in Provident's capacity as mortgagee in possession
- Review of loan positions and preparing strategy for realisation of remaining loans
- Reporting on loan portfolio positions
- Taking possession of security properties

- Dealings with tenants (including taking control of rent)
- Dealings with mortgagor/owner of the security property
- Engaging valuers, sales agents and solicitors
- Developing and executing realisation strategy
- Liaising with property experts (town planners, geotechnical advisers)
- Ongoing liaison with local planning authorities
- Engaging and making enquiries of statutory bodies (for land tax, council/water rates)
- Reporting to key stakeholders
- Reporting on enforcement action in relation to the loan portfolio
- Monitoring wind down of the loan portfolio.

### Funds management

- Preparing reporting to update Unitholders in the Funds
- Management of MIF and HYF
- Managing regulatory requirements of the Funds
- Monitoring wind down of MIF and HYF.

### Creditors and Dividend

- Ongoing reporting to AET and BEN in their capacity as secured creditors
- Preparing reports to Debentureholders
- Notifying and coordinating information sessions of Debentureholders
- Responding to queries from Debentureholders
- Preparing and processing distributions to Debentureholders
- Ongoing liaison with the Debentureholder registry service maintained by Link.

## Employees

- Managing staffing requirements
- Responding to staff queries
- Ongoing payroll, superannuation and workers compensation requirements
- Calculation of employee entitlements and other amounts owing to staff.

## Trading

- Ongoing liaison with borrowers
- Ongoing liaison with third party service provider for the loan operating system and reporting requirements
- Assessing and undertaking enforcement action against defaulting borrowers
- Participating in settlement discussions with borrowers.

## Investigation and Litigation

- Developing and undertaking investigations into Provident's historical affairs, including the conduct of its directors and officers
- Investigating potential claims against third parties such as auditors, valuers and other advisors
- Overseeing public examinations of Provident's directors
- Collecting and forensically reviewing Provident's hard copy and electronic books and records
- Briefing solicitors and devising settlement strategies for pre-existing litigation matters upon our appointment
- Liaising with litigation funders and adverse cost insurers which resulted in entering into a Deed to pursue the Director Proceedings whilst preserving existing receivership funds
- Commencing and progressing the Director Proceedings, including preparation of lay and expert evidence
- Attend mediation with Provident's directors and related parties and negotiate terms of settlement
- Responding to applications, subpoenas and other court orders from AET and the class action groups.

## Administration

- Preparing the overall engagement strategy
- Managing bank account administration
- Ongoing statutory reporting to ASIC and ATO
- Liaising with statutory bodies
- Risk mitigation planning
- Discussions with legal advisors regarding receivership legal strategy
- Dealing with insurance requirements
- Strategic planning of the receivership
- Management of MIP engagements
- Preparing and making remuneration applications to Court
- General file administration and document management
- Attending to ad hoc tasks.

## Proportionality of fees charged to asset realisations

Task area	Fees incurred (\$)	Assets realisations (\$)	Proportion of fees to assets (%)
Asset and loan portfolio management	8,736,716.21	125,982,458.29	6.9%
Funds management	633,719.82	2,174,504.72	29.1%
Other assets	331,340.31	5,944,534.93	5.6%
Investigation and litigation	2,880,366.25	16,225,247.02	17.8%
<b>Total</b>	<b>12,582,142.59</b>	<b>150,326,744.96</b>	<b>8.4%</b>

The table above has been prepared to provide Debentureholders with detail regarding the professional fees incurred proportion to asset realisations which have been achieved to date. Debentureholders will note that costs of \$12.6 million have been incurred to recover \$150.3 million, which represents 8.4% of asset recoveries.

We additionally note that in preparing the table above:

- total overhead costs of \$4,230,108.45 have been apportioned on a pro-rata basis to each task area as a proportion of asset realisations. This includes the work streams described above as Creditors, Employees, Dividend, Trading and Administration
- the value of realisations from “Asset and loan portfolio management” does not reflect the gross realisation of all loans in the Debentureholder funded FTI loan portfolio, the effect of which would be to reduce the proportionality of the costs incurred respective to total realisations
- the value of realisations from “Funds management” does not reflect the realisation of the underlying portfolios within MIF and HYF which had over \$30 million of funds under management upon our appointment, the effect of which would be to significantly reduce the proportionality of the costs incurred respective to total realisations
- the majority of the fees incurred has been in respect to the recovery of the loan portfolios, which is expected, given that that this is the largest category of assets held by Provident