

# Statement of Facts

The SOPA Tabletop · One project, three payment fights

Thursday 24 September 2026, 12:00pm

David Glinatsis, Managing Director and Principal Lawyer.

## “Scheduled amount: NIL.”

Three payment claims, served in a single week, worth \$5.06 million. Every one of them is in trouble.

**Not one of them is in trouble because the work was not done.**

\$85m

CONTRACT SUM

~90%

COMPLETE AT START

\$5.06m

CLAIMED IN ONE WEEK

23

SC 27 WINDOWS, UNUSED

### PURPOSE

**This document is the preliminary reading for the Kreisson webinar on Thursday 24 September 2026.** It is issued in advance so the hour can be spent on the decisions rather than the story. It states the agreed facts, identifies the parties, sets out what happened and when, reproduces the clauses the room will be asked to read, and closes on the position as at the day the session opens. The session itself runs on two tracks - the Act and the contract - and stops four times for a decision point where the room votes. **Please read it beforehand and keep it beside you during the session. The slides will be displayed during the webinar.**

### WHAT IS IN IT

|       |               |                                               |
|-------|---------------|-----------------------------------------------|
| ONE   | The project   | An \$85m job, 90 per cent built               |
| TWO   | Who is who    | Seven parties, and where each one sits        |
| THREE | What happened | Nine dated beats, and the notices nobody sent |
| FOUR  | The clauses   | Seventeen provisions, in the words that bite  |
| FIVE  | The Tabletop  | Who is owed what, and the decisions to make   |

Riverton is fictitious. The facts are drawn from real NSW projects and have been sanitised; no client, project, adjudicator, expert or individual is identifiable. *The Act* means the Building and Construction Industry Security of Payment Act 1999 (NSW). Dates DD Mon YYYY; currency AUD.

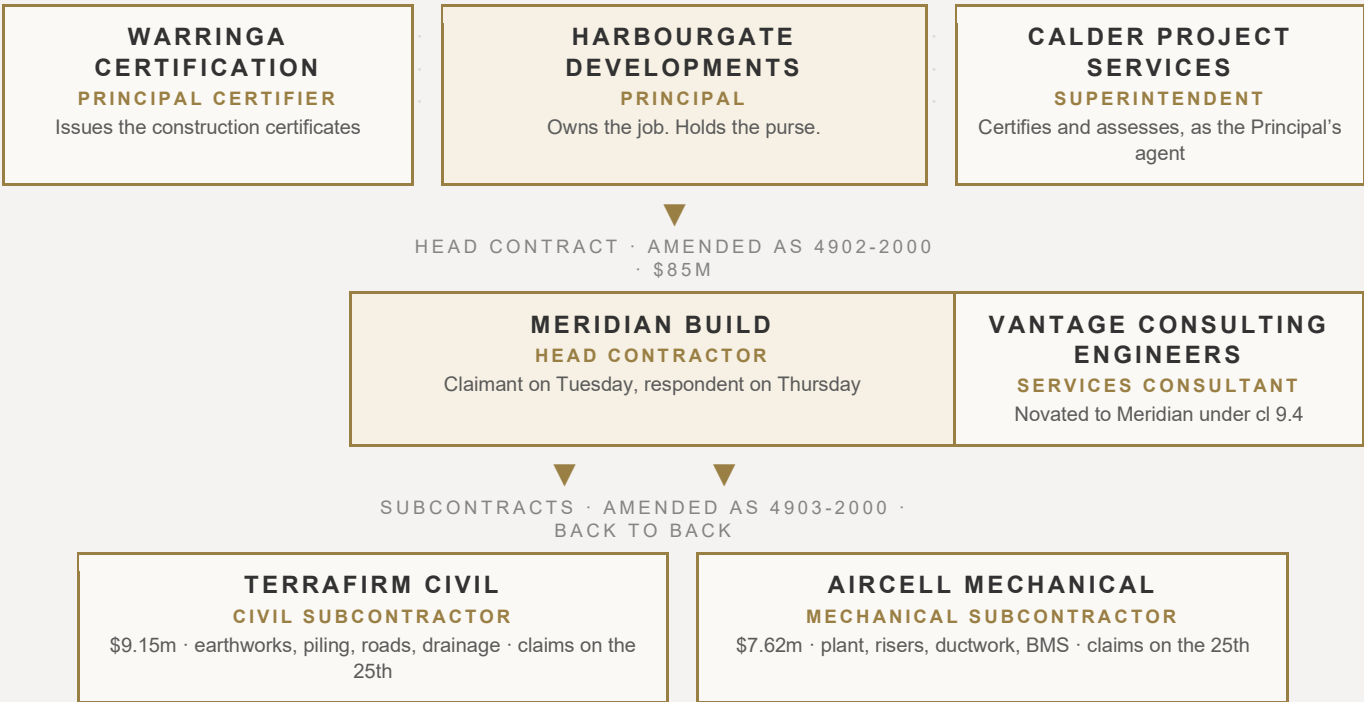
# An \$85m job, 90 per cent built

Riverton Commercial Precinct is an \$85 million mixed-use development in Western Sydney - two residential towers over a retail podium, with a basement car park and public domain. It runs for 27 months, from July 2024 to the end of October 2026.

The session picks the story up in **June 2026 - month 23 of 27**. Every package is about **90 per cent complete**, and that single fact drives everything that follows. At 90 per cent the retention held is at its largest, the subcontractor has the least left to bargain with, the final account is finally visible, and liquidated damages have stopped being a threat and started being a deduction.

Three payment claims land in the space of a week, totalling **\$5.06 million**, and every one of them is in trouble - not because the work was not done, but because of what was and was not written down eighteen months earlier.

# Money flows down the chain; claims flow up it



**Money flows down the chain. Claims flow up it.** Meridian sits in the middle of both: it claims up to Harbourgate on the last day of each month, and issues payment schedules down to both subcontractors. **Vantage is not a party to either subcontract** - but its drawing revisions reach Aircell through Meridian, which is the crack the redesign falls into.

## Two years of events, then three weeks of fighting

Business days are counted under **s 4** of the Act - weekends, public holidays and 27–31 December are excluded. Where a contractual notice was due and never sent, the beat says so.

### THU 5 DEC 2024

Month 5

#### Terrafirm hits rock

Bulk excavation and the Zone 2 services trench run into high-strength sandstone at 2.1 to 2.9 metres, where the tender geotechnical report predicted weathered sandstone at 4.2 to 5.8 metres. Rock excavation was excluded from Terrafirm's scope by a tender clarification that became a contract document. The excavation methodology is changed at the face by Meridian's site engineer, **verbally**. Terrafirm sends a confirming email the same day at 4:41pm, describing the instruction, and receives no reply.

- cl 25.2 notice due Thu 12 Dec 2024 (5 bd); cl 34.3 and cl 41.1 due Thu 19 Dec 2024 (10 bd).
- None was given; eighteen months before the claim is served.

### APRIL – MAY 2025

Month 9

#### The certificate does not arrive

Meridian and Terrafirm are ready to start the in-ground structure, but the construction certificate has not issued, and procuring it is Harboursgate's job. It is outstanding from 10 April to 23 May 2025, and the critical path stops for **43 calendar days - 28 business days**. Rather than leave the site idle, Meridian bulk excavates the whole site before structure can start, then seals four acres of exposed subgrade. Plant and labour on the in-ground structure are stood down, demobilised, then remobilised.

### MAY – JULY 2025

Months 10–12

#### Meridian rebuilds its own programme

With the whole site open and sealed, Meridian **abandons the staged sequence**: instead of Zone 1, then 2, then 3, all three go up at once - wider footprint, duplicated crews, more supervisors. It claims an EOT for the stoppage, in time, and is granted **24 business days** at \$17,400 a day: **\$417,600**, paid.

- But the EOT paid for the period the works were *stopped*. It paid nothing for the permanent change to the way the job was built.
- The change-of-sequence notice under cl 32.1 / SC 14 was due Tue 29 Apr 2025, and was not given. That gap becomes the \$620,000 claim. From May 2025 the claim is a standing item on the fortnightly WIP agenda for six months, and appears in four consecutive PCG reports as "claim to be prepared and submitted" and "for Superintendent review", circulated and never corrected.

### OCTOBER 2025

Month 15

#### Aircell is told to build the new drawing

On Thursday 9 October Vantage reissues the riser layout at **Rev C**, changing duct routing on levels 4 to 11; Aircell has already fabricated to Rev B. On Friday 10 October Meridian's **site manager** emails "*proceed per consultant markup*". He is not a Representative appointed under cl 21, so on the face of the subcontract he cannot direct a variation at all.

- cl 34.3 and cl 41.1 notices were due Fri 24 Oct 2025.
- Neither was given. Aircell's EOT claim finally goes in on 14 July 2026 - eight months late.

### EVERY MONTH

23 times

#### Nobody objects to the percentages

Each month a progress certificate issues, assessing the percentage complete of every item of work. Under **SC 27** that assessment becomes conclusive unless the subcontractor objects in writing within 10 business days.

- Neither subcontractor ever objected. Twenty-three separate windows, all closed.

THU 25 JUNE 2026

Month 23

### Both subcontractors claim

Terrafirm serves **\$892,000 at 2:04pm** by email. Its claim is the rock variation \$410,000, re-measured drainage \$214,000 under cl 36.4(c), delay costs \$102,000, the disputed assessment \$118,000, being 93 per cent claimed against 87 per cent assessed, and retention \$48,000. Aircell serves **\$744,000 at 7:12pm** through the agreed project platform. Hold that timestamp, because it decides the week. Aircell's claim is risers \$285,000, the disputed assessment \$134,000, being 91 per cent claimed against 84 per cent assessed, disruption \$185,000 asserted in a single paragraph, retention \$114,000 and a \$26,000 balance. The disruption is late access: the plant rooms on levels 6 and 9 were released three and five weeks late, and 1,480 hours are asserted without a build-up. Both claim on the 25th, which their subcontracts specify, so neither claim is premature.

TUE 30 JUNE 2026

Month 23

### Meridian passes it upstairs

Meridian claims **\$3,420,000** from Harbourgate on the last day of the month, with the signed supporting statement. Inside it are both subcontractors' variations at full value, plus Meridian's own change-of-sequence claim of **\$620,000** - the one it never gave notice of.

9 – 10 JULY 2026

Days 10 and 11

### Two schedules, one day apart

Terrafirm's schedule arrives **on time**, on day 10, valuing the claim at **NIL** on five reasons. Aircell's arrives the next day at **\$88,000**, with liquidated damages and a defects backcharge set off inside it. Meridian diarised from **SC 24**, treating the 7:12pm claim as given at 9:00am the next morning making 10 July day 10. From actual service it is **day 11**.

- For Aircell there is no valid payment schedule. Liability for the whole \$744,000 arises on the due date under s 14(4), and s 15 turns it into a debt with no cross-claim and no defence arising under the contract.

TUE 14 JULY 2026

Business day 10

### Meridian is on the receiving end

Harbourgate schedules **\$1,740,000**, in time, rejecting both passed-up variations and the change-of-sequence claim as **time barred under SC 19** and, alternatively, within scope. Liquidated damages are deducted. **Meridian is now squeezed from both directions at once, and this is where the session opens.**

## FOUR · THE CLAUSES

### What the contracts actually say

Riverton clause numbers; the contracts are heavily amended, so read the words not the numbers. Every amendment and special condition that decides a claim is set out here in full. Where a clause is substantially the printed standard form only the operative words appear, because AS 4902-2000 and AS 4903-2000 are Standards Australia copyright. Special condition numbers are not common to the two forms: SC 15 means one thing in the head contract and another in the subcontracts.

#### HEAD CONTRACT · AMENDED AS 4902-2000

##### cl 9.4

Novation

A novated consultant's act is **not, of itself, an act of the Principal**.

##### cl 32.1

Programming · SC 14

"The Superintendent may direct in what order and at what time the various stages of WUC shall be carried out... the difference shall be **added to or deducted from the contract sum**." **SC 14 adds: notice of any claim within 10 business days.**

##### cl 34.5

Power to extend time · SC 15

The deemed extension of time is deleted: this power is conferred **for the sole benefit of the Principal**.

##### SC 17

Time for payment

Due 30 days from the end of the month of the claim. **Void under s 34 so far as it permits payment later than the statutory due date.**

**cl 41.1 / SC 19***The global time bar · both contracts*

In the same terms in the head contract and in both subcontracts, SC 19 deletes cl 41.2 and **substitutes**: “If a party fails to give the prescribed notice within **10 business days** after the first day on which that party became aware, or ought reasonably to have become aware, of the matters giving rise to the claim... the claim shall be **absolutely barred**.”

**SUBCONTRACTS · AMENDED AS 4903-2000****cl 8.3***Design documents · SC 6*

Submitted **14 days** before the work starts; reviewed within **15 business days**. **SC 6 adds: no approval of a design document is a direction to vary.**

**cl 24.1***Access*

Possession of **sufficient of the site** only, and **delay in giving possession is not a breach** - so an access claim must run through cl 32.

**cl 25.1 / 25.2***Latent conditions · SC 11*

**Definition:** SC 11 excludes the nature, quantity or hardness of rock to be excavated, so **rock hardness is not a latent condition here**. **Notice:** in writing within **5 business days** of becoming aware, as a condition precedent: “**failing which the Subcontractor shall have no entitlement to any extension of time or to any additional cost**”.

**cl 34.3***Extension of time · SC 15*

SC 15 **reduces the claim period from 28 days to 10 business days**; compliance **is a condition precedent**, and the claim must **evidence causation and the extent of the delay**.

**cl 34.9***Delay damages · SC 15*

**Direct on-site time-related preliminaries only**. **Profit, off-site overhead and loss of opportunity excluded** - hence \$8,500 a day.

**cl 36.1***Variations · SC 16*

“The Subcontractor shall not vary WUS **except as directed in writing**.” SC 16 adds that only the Subcontract Superintendent, or a **cl 21 Representative**, may direct a variation, and “**no direction by any other person has any effect**”.

**cl 36.4(c)***Pricing · standard form*

“**rates or prices in a schedule of rates, even if not Contract documents, to the extent it is reasonable to use them**”.

**cl 37.1***Progress claims · standard form*

The printed, **unamended** clause includes: “**An early progress claim shall be deemed to have been made on the date for making that claim**.” Held not to produce service under the Act.

**SC 24***Notices*

A notice received **after 5:00pm** is deemed given at **9:00am the next business day**.

**SC 25***Set-off*

Set-off of any amount the Contractor **genuinely estimates** is or will become owing.

**cl 21***Representatives*

Must be **appointed and notified in writing**, with the delegated powers identified. **An appointment not notified in writing carries no power to direct**.

**SC 27 / SC 28***Assessment and commissioning*

**SC 27:** the assessment of **quantity and percentage complete** is **conclusive unless objected to in writing within 10 business days**. **SC 28:** **no percentage is certified for plant** until commissioning records are provided.

# The Tabletop

Everything above is history. This is the position on the day the session opens ; the money, the relationship, the pressure on each business, and the decisions the room is asked to make.

WHO IS OWED WHAT

|                        | CLAIMED     | SCHEDULED   |                                                                                                                                                                                                                                    |
|------------------------|-------------|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Terrafirm → Meridian   | \$892,000   | NIL         | Schedule in time, on five reasons. Two are real; the rest are a deferral, a circular answer and an unquantified set-off. Payment falls due <b>Thu 23 Jul 2026</b> , and Terrafirm has to decide what to do the moment it does.     |
| Aircell → Meridian     | \$744,000   | \$88,000    | <b>Schedule one business day late, so there is no valid schedule at all.</b> Liability for the whole \$744,000 arises on the due date under <b>s 14(4)</b> , and s 15 turns it into a debt Meridian cannot defend on the contract. |
| Meridian → Harbourgate | \$3,420,000 | \$1,740,000 | Both passed-up variations rejected. Meridian's own <b>\$620,000</b> change-of-sequence claim rejected as <b>time barred under SC 19</b> and, in the alternative, as within scope.                                                  |

Meridian is exposed to **\$1,636,000** of claims below: the whole of Aircell's \$744,000, because there is no valid schedule at all, and the \$892,000 it scheduled at nil on reasons of which only two hold, against **\$1,740,000** scheduled to come in from above, while wearing liquidated damages from Harbourgate. **The middle of the chain is where the cash gap opens.**

THE RELATIONSHIP

Two years ago this was a working relationship. What broke it was not a dispute about money. It was silence. Terrafirm's confirming email about the rock, sent at 4:41pm, was never answered. Twenty-three monthly certificates assessed percentages nobody objected to and nobody discussed. A site manager told Aircell to build the new drawing and no one checked whether he could. By June 2026 the parties are no longer talking about the works; they are talking about documents, through lawyers.

THE COMMERCIAL PRESSURE TO RECOVER

|                                                        |                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Terrafirm Civil</b><br>Owed \$892,000               | At ~90% complete its retention, about \$457,000, is at its maximum and its remaining work is the least valuable it will ever hold, so it has almost nothing left to trade. It has a costed build-up and a survey trail, and it needs the cash now - but its rock claim runs into cl 25.2 and SC 19.                                               |
| <b>Aircell Mechanical</b><br>Owed \$744,000            | It has the weaker evidence - no EOT notice, a direction from someone with no authority - and the best lever on the table, because there is no valid payment schedule. About \$381,000 of its money is held as retention. Its plant is installed but not commissioned, so SC 28 is still blocking certification of the percentages it has claimed. |
| <b>Meridian Build</b><br>Exposed on both sides at once | Claimant on Tuesday and respondent on Thursday. It is carrying liquidated damages from above, faces two claims below that it cannot fully answer, and its own \$620,000 claim has been rejected as time barred. Any shortfall comes out of working capital, with practical completion four months away.                                           |

BACKCHARGES AND SET-OFFS

Meridian has set liquidated damages and a defects backcharge off **inside** Aircell's payment schedule, and has flagged an SC 25 set-off against Terrafirm for the Zone 2 invert. Neither was quantified. **An unquantified set-off is an invitation to allow nothing for it** - and Aircell's schedule was late, so none of it can be run at all. Harbourgate is meanwhile deducting liquidated damages from Meridian while rejecting the claims Meridian passed up.

THE TIME BARS

**Every party is out of time on something, upstream and downstream.** Terrafirm gave no cl 25.2 notice (due 12 Dec 2024) and no cl 34.3 or cl 41.1 notice (due 19 Dec 2024). Aircell gave neither notice for the Rev C redesign (due 24 Oct 2025) and submitted its EOT claim eight months late. Meridian never gave the cl 32.1 / SC 14 notice for its change of sequence (due 29 Apr 2025). And neither subcontractor objected to a single SC 27 assessment. Whether any of that can be got around - by construction, by s 34 or by estoppel - is what the session works through.

WHAT HAPPENS NEXT

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| TUE 21 JUL 2026      | Due date for payment of Meridian's claim on Harbourgate, on the scheduled \$1,740,000, being 15 business days after the claim under s 11(1A). SC 17's 30 days is void so far as it is later.                                                                                                                                                                                                                                                                                                         |
| THU 23 JUL 2026      | Due date for payment of both subcontract claims. On Aircell's claim, liability for the whole \$744,000 arises that day under s 14(4), because the schedule was late.                                                                                                                                                                                                                                                                                                                                 |
| FROM THU 23 JUL 2026 | Either subcontractor can sue for the unpaid amount as a debt - s 15 where no valid schedule was given, s 16 where one was - with no cross-claim and no defence arising under the contract. A notice under s 15(2)(b) also lets the work stop three business days later under s 27. The alternative is adjudication: an application made after the due date runs on the timetable in ss 17 to 21, and a determination would land in August 2026, two months before the date for practical completion. |
| FRI 30 OCT 2026      | Date for practical completion - on a job whose payment disputes were decided by documents written in 2024 and 2025.                                                                                                                                                                                                                                                                                                                                                                                  |

THE DECISIONS THE ROOM IS ASKED TO MAKE

|     |                                                                                             |                                                                                                                                                                                                                                                                                                      |
|-----|---------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 01. | <b>Terraform</b><br>Push for payment now, or negotiate?                                     | Its claim is strong and the schedule against it is thin, two real reasons out of five. But the time bars are real. Does it press the nil schedule and force the due date, or trade the assessment dispute and the retention for certainty?                                                           |
| 02. | <b>Aircell</b><br>Use the leverage, or keep the customer?                                   | There is no valid schedule, so the whole \$744,000 falls due on 23 July, recoverable as a debt Meridian cannot defend on the contract and s 27 lets Aircell stop work three business days after a notice. It is the best lever anyone holds. Using it ends the relationship; not using it wastes it. |
| 03. | <b>Meridian</b><br>Fix the schedule discipline, and decide whether to run estoppel upstream | Downstream it is exposed on both claims for reasons that have nothing to do with the merits. Upstream, its own \$620,000 claim is time barred on the face of SC 19, which puts the estoppel question six months of uncorrected minutes squarely in play.                                             |
| 04. | <b>Everyone</b><br>Fix the system now, or learn it the hard way?                            | The failures here are diary and authority failures, not legal ones: who diarises a claim the day it lands, who may direct a variation, and who reads a certificate within ten business days.                                                                                                         |

*The strategy set out above is the ground the session covers, not advice.*  
**No party's position is settled, and nothing here should be read as a view on the merits of any real claim.**