



## SECOND REPORT TO CREDITORS

MORABUILT PTY LTD  
(ADMINISTRATORS APPOINTED)  
ACN: 630 816 830 ("COMPANY")

22 January 2024

JONATHON KEENAN  
PETER KREJCI  
Joint and Several Administrators



Phone 02 8263 2333  
Email [info@brifnsw.com.au](mailto:info@brifnsw.com.au)  
Website [www.briferrier.com.au](http://www.briferrier.com.au)  
Postal GPO Box 7079, Sydney NSW 2001  
Address Level 26, 25 Bligh Street  
Sydney NSW 2000

## TABLE OF CONTENTS

|  |    |
|--|----|
| 1. Basis of Report   | 9  |
| 2. Disclaimer  | 9  |
| 3. Declaration of Independence, Relevant Relationships and Indemnities | 9  |
| 4. Corporate Information   | 10 |
| 5. Company History and Events Leading up to Administration             | 11 |
| 6. Reasons for Failure   | 12 |
| 7. Conduct of the Administration                                       | 13 |
| 8. Historical Financial Information                                    | 14 |
| 9. Current Financial Position  | 15 |
| 10. Explanation of Deficiency  | 24 |
| 11. Preliminary Investigations   | 24 |
| 12. Voidable Transactions  | 35 |
| 13. Breach of Duty Claims  | 38 |
| 14. Summary of Potential Offences                                      | 39 |
| 15. Deed of Company Arrangement Proposal                               | 39 |
| 16. Estimated Return to Creditors                                      | 41 |
| 17. Recommendation of Administrators                                   | 42 |
| 18. Receipts and Payments  | 44 |
| 19. Remuneration of Administrators / Deed Administrators / Liquidators | 44 |
| 20. Second Meeting of Creditors  | 45 |
| 21. Queries  | 45 |

## TABLE OF ANNEXURES

1. Notice of Second Meeting of Creditors
2. Formal Proof of Debt or Claim Form
3. Appointment of Proxy Form
4. Comparative Balance Sheets
5. Comparative Profit and Loss statements
6. Deficiency Statement
7. Deed of Company Arrangement Proposal
8. Estimated Outcome Statement
9. Summary of Receipts & Payments
10. Remuneration Approval Report
11. Advice to Creditors About Remuneration
12. ASIC Information Sheet – Insolvency Information for Directors, Employees, Creditors and Shareholders
13. ARITA Information Sheet – Offences, Recoverable Transactions and Insolvent Trading

## GLOSSARY OF COMMON ACRONYMS & ABBREVIATIONS

|                   |   |
|-------------------|---|
| ABN               | Australian Business Number  |
| ACN               | Australian Company Number   |
| Act               | Corporations Act 2001 (Cth)                                       |
| Administrators    | Jonathon Keenan and Peter Krejci                                  |
| ARITA             | Australian Restructuring Insolvency and Turnaround Association    |
| ASIC              | Australian Securities and Investments Commission                  |
| ATO               | Australian Taxation Office  |
| Bendigo Bank      | Bendigo and Adelaide Bank Limited                                 |
| COI               | Committee of Inspection   |
| Company           | Morabuilt Pty Ltd (Administrators Appointed)                      |
| CVL               | Creditors Voluntary Liquidation                                   |
| DOCA              | Deed of Company Arrangement                                       |
| Directors         | Marc Morabito & Vicki Morabito                                    |
| DIRRI             | Declaration of Independence, Relevant Relationships & Indemnities |
| FEG               | Fair Entitlements Guarantee scheme                                |
| Firm              | BRI Ferrier NSW   |
| GST               | Goods and Services Tax  |
| IPR               | Insolvency Practice Rules (Corporations) 2016                     |
| IPS               | Insolvency Practice Schedule (Corporations)                       |
| LSL               | Long Service Leave  |
| Morabito Holdings | Morabito Holdings Pty Ltd   |
| NAB               | National Australia Bank   |
| O'Maras           | O'Maras Auctioneers   |
| PILN              | Payment in Lieu of Notice   |
| POD               | Proof of Debt   |
| PPE               | Plant and Equipment   |
| PPSR              | Personal Properties Securities Register                           |
| RBP               | Relation Back Period  |
| SGC               | Superannuation Guarantee Charge                                   |
| VA                | Voluntary Administration  |
| Westpac           | Westpac Banking Corporation                                       |
| WIP               | Work In Progress  |

## INTRODUCTION

We refer to our First Report to Creditors dated 15 December 2023 in which our appointment as Joint and Several Administrators of the Company was advised along with an explanation of the Voluntary Administration process.

The objective of Part 5.3A of the Act is to provide for the business, property and affairs of an insolvent (or likely to become insolvent) company to be administered in a way that maximises the chances of the company, or as much as possible of its business, continuing in existence, or, if this is not possible, results in a better return for the company's creditors than would result from an immediate winding up of the company.

Section 438A of the Act requires that, as soon as practicable, the Administrators must investigate the business, property, affairs and financial circumstances of the Company and form an opinion about each of the following matters:

- Whether it would be in the Creditors' interests for the Company to execute a DOCA;
- Whether it would be in the Creditors' interests for the Administration to end; and
- Whether it would be in the Creditors' interests for the Company to be wound up.

This report should be read in conjunction with the First Report. If you have any questions relating to the administration in general, or specific questions relating to your position, please do not hesitate to contact this office.

### COMPANY DETAILS

|                          |  |
|--------------------------|--|
| <b>Name</b>              | Morabuilt Pty Ltd<br>(Administrators Appointed)        |
| <b>Incorporated</b>      | 3 January 2019   |
| <b>ACN</b>               | 630 816 830  |
| <b>ABN</b>               | 90 630 816 830   |
| <b>Registered Office</b> | '300', 447 Victoria Street,<br>Wetherill Park NSW 2164 |
| <b>Trading Address</b>   | '16' 7 Salisbury Road,<br>Castle Hill NSW 2154         |

### ADMINISTRATORS

|                       |                                     |
|-----------------------|-------------------------------------|
| <b>Name</b>           | Jonathon Keenan and<br>Peter Krejci |
| <b>Date Appointed</b> | 14 December 2023                    |

### ADMINISTRATION CONTACT

|              |  |
|--------------|--|
| <b>Name</b>  | Frane Babic  |
| <b>Email</b> | <a href="mailto:FBabic@brifnsw.com.au">FBabic@brifnsw.com.au</a> |
| <b>Phone</b> | 02 8263 2333   |

| KEY QUESTIONS  | ANSWERS   |
|--|---|
| Nature of the business?  | Commercial builder operating in NSW.  |
| Is the business still trading?   | No, trading ceased in early December 2023.  |
| When is the Second Meeting of Creditors?   | <p>The Second Meeting of Creditors will be held on <b>Wednesday, 31 January 2024 at 11:00AM AEDT.</b></p> <p>Held in person, with virtual facilities also available</p> |
| What assets are available?   | The Company has some cash at bank and potential recoveries from retentions held by clients.   |
| What are the total liabilities?  | Approximately \$4M in total creditor claims, incl. \$150K employees, \$2.2M trade creditors, \$1.6M Director loans, plus potential client claims.                       |
| What was the date of insolvency?   | Preliminary investigations indicate the Company became insolvent on around 31 August 2023.  |
| Are there any claims against the Directors in a Liquidation scenario?                                  | Yes, there is a potential insolvent trading claim against the Directors. This will require litigation which the Directors have advised they will defend.                |
| Is a Deed of Company Arrangement proposed?   | Yes, the Directors have proposed a DOCA.  |
| How is the DOCA being funded?  | The Directors will contribute \$400,000 to the Deed Fund from personal sources, and they will also forgive all loans owed to them by the Company.                       |
| Will the creditors get paid?   | <p>Yes, the DOCA provides a partial return to creditors.</p> <p>Liquidation may provide a return, which is subject to outcome of litigation which is uncertain.</p>     |
| What is the Administrators' recommendation that creditors vote for at the Second Meeting of Creditors? | <b>We recommend that creditors should vote in favour of the proposed DOCA.</b>  |

## EXECUTIVE SUMMARY

As you are aware, we, Jonathon Keenan and Peter Krejci, were appointed Joint and Several Administrators of the Company on 14 December 2023 pursuant to Section 436A of the Act.

Pursuant to Section 439A of the Act, we have convened the Second Meeting of Creditors to be held on **Wednesday, 31 January 2024 at 11:00AM AEDT**. Please find attached as **Annexure "1"** the Notice of Second Meeting of Creditors for your information. The meeting will be held in our offices with virtual meeting technology also made available should creditors wish to attend the meeting virtually. Further details on the meeting are disclosed in Section 20 of this report.

We summarise below our observations of the Company's affairs, our preliminary investigations and the potential outcomes for creditors from this Administration process, including scenarios of a Liquidation or a DOCA as proposed.

The Company was incorporated on 19 July 2019, operating as a commercial builder with a focus on the education sector in NSW. The business of the Company was a continuation of a former entity controlled by the Directors, Morabito Holdings (trading as Marc Morabito Constructions), which had operated for close to 20 years.

The Company operated on fixed price contracts, where rising inflation led to increased material and labour costs, resulting in significant losses. The Company has been heavily reliant on the Directors contributing funding to support its working capital requirements, and up to mid-2023 it appears the Company was largely able to discharge current creditor claims. However, from August 2023, the ageing of creditors deteriorated sharply, despite the Directors advancing further loans to the Company. It appears that the cashflow challenges continued, however the Directors were unwilling to provide any further funding and took steps to cease work on the three (3) remaining projects. We were subsequently appointed Administrators of the Company on 14 December 2023.

The Company's primary assets are cash at bank and bonds totalling \$423K, plus retentions held by the clients on the remaining incomplete projects totalling \$696K. We have made enquiries as to the recovery of the retentions, however the outcome will not be known until the projects reach practical completion and then the defect liability period expires (twelve (12) months later). Further work will be required moving forward, in either DOCA or Liquidation scenarios. The Company also holds some minor PPE and motor vehicles, which we are in the process of selling via auction.

In terms of liabilities, the Company's creditors total circa \$4M, represented by employee (priority) creditors of potentially \$149K, the ATO for \$39K, trade and unsecured creditors of \$2.2M and the Directors loan account for \$1.6M. We have also included an estimate of damages claims from clients for \$300K and a contingency of \$100K for additional unknown claims.

We have conducted preliminary investigations into the Company's affairs and the conduct of its officers, which indicate the Company was likely insolvent on a cashflow basis from around 31 August 2023, when it was unable to pay creditors as and when they fell due. The Company continued to trade and incur debts thereafter, and accordingly, we have identified a potential insolvent trading claim against the Directors for approximately \$1.1M. Our enquiries indicate that the Directors may have financial capacity to discharge an insolvent trading claim if pursued in a Liquidation, subject to successfully running that litigation. We have also sought preliminary legal views on the claims.

In terms of pursuing an insolvent trading claim via litigation, we anticipate that significant costs would be incurred for which a Liquidator would require funding, including protection from adverse costs. We have sought to model those costs and potential recovery in this report for creditors' consideration. We note that we are also advised that should an insolvent trading claim be commenced, the Directors would vigorously defend same, and security would be sought for their costs of defending the claim. We estimate that an insolvent trading litigation could take at least two (2) years to complete. We have also identified some minor potential unfair preference claims, which have limited commercial value after considering the potential defences and costs involved.

The Directors have submitted a DOCA proposal, for creditors to consider as a commercial alternate to pursuing claims in a Liquidation. In summary, the Deed Proponents (Directors) will provide a cash contribution of \$400K shortly after execution of the DOCA and will also forgive all debts/claims they have against the Company, improving the return to other creditors. The Deed Fund will also include any recovery from debtors, including but not limited to the retentions held by the clients, which the Directors will endeavour to provide all reasonable assistance for the recovery. A dividend could be declared as soon as practical, and by no later than June 2025, to allow time clients to complete projects and for retentions to be recovered (if possible) or those contingent client claims to be submitted.

We have prepared estimates of the potential returns to creditors under the proposed DOCA as compared to a Liquidation scenario, summarised as follows:

| Summary of Return to Creditors | DOCA High Cents/\$ | DOCA Low Cents/\$ | Liquidation High Cents/\$ | Liquidation Low Cents/\$ |
|--------------------------------|--------------------|-------------------|---------------------------|--------------------------|
| Priority Creditors             | 100                | 100               | 100                       | 16                       |
| Unsecured Creditors            | 29                 | 14                | 13                        | Nil                      |

We note that the above returns are estimates only, and are subject to various estimates and assumptions. As such, the actual returns to creditors may vary from those above. In particular, we note that the recoverable value of the retentions, or creditor claims from clients, will impact the return to the unsecured creditors. In a Liquidation, any return to creditors is contingent on successfully pursuing an insolvent trading claim via litigation against the Directors, the outcome from which is unknown.

Having regard to the costs, risks and vagaries of litigation, the DOCA presents a reasonable commercial compromise. Furthermore, our estimates indicate that the proposed DOCA provides a more certain and improved return to priority and participating unsecured creditors, as compared to a Liquidation scenario where any return is uncertain and subject to litigation.

**As such, it is our recommendation that creditors should vote in favour of the proposed DOCA.**



## 1. BASIS OF REPORT

This report has been prepared primarily from information received from the Company's Directors and external advisors to the business/Directors.

In order to complete this report and in conducting our investigations, we have also utilised information from:

- ▲ ASIC;
- ▲ The books and records of the Company;
- ▲ Discussions with the Directors and advisors;
- ▲ The ROCAP and questionnaire forms completed by the Directors;
- ▲ Extracts from public information databases;
- ▲ Correspondence with creditors; and
- ▲ Documents obtained from the ATO in relation to the Company.

## 2. DISCLAIMER

This Report and the statements made herein are based upon available books and records, information provided by the Company's Directors, advisors, and from our own enquiries. Whilst we have no reason to doubt the accuracy of the information provided or contained herein, we reserve the right to alter our opinions or conclusions should the underlying data prove to be inaccurate or materially change after the date of this Report.

In considering the options available to Creditors and in formulating our recommendations, we have necessarily made forecasts and estimates of asset realisations and the ultimate quantum of Creditors' claims against the Company where appropriate. These forecasts and estimates may change as asset realisations progress and as Creditors' claims are made and adjudicated upon. Whilst the forecasts and estimates are the Administrators' best assessment in the circumstances, Creditors should note that the Company's ultimate deficiency, and therefore the outcome for Creditors could differ from the information provided in this Report.

Neither the Administrators nor any member or employee of BRI Ferrier accepts responsibility in any way whatsoever to any person in respect of any errors in this Report arising from incorrect information provided to us, or necessary forecasts, estimates and assessments made for the purposes of these Reports.

Should any Creditor have material information in relation to the Company's affairs which they consider may impact on our investigation or Reports, please forward the details to our office as soon as possible.

## 3. DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

A DIRRI pursuant to Section 436DA of the Act was enclosed in the First Report. The DIRRI records that we undertook a proper assessment of the risks to our independence prior to accepting the appointment. There is no update required to the DIRRI.

## 4. CORPORATE INFORMATION

The following information has been extracted from ASIC records as at the date of our appointment:

### 4.1 COMPANY DETAILS

|                             |   |
|-----------------------------|---|
| Company Name                | Morabuilt Pty Ltd                                 |
| ABN                         | 90 630 816 830                                    |
| ACN                         | 630 816 830                                       |
| Incorporation Date          | 3 January 2019                                    |
| Registered Address          | '300' 447 Victoria Street Wetherill Park NSW 2164 |
| Principal Place of Business | '16' 7 Salisbury Road Castle Hill NSW 2154        |

### 4.2 OFFICEHOLDERS

| Name           | Position(s) | Start Date | Cease Date |
|----------------|-------------|------------|------------|
| Marc Morabito  | Director    | 03/01/2019 | Current    |
| Vicki Morabito | Director    | 03/01/2019 | Current    |

### 4.3 SHARE STRUCTURE AND SHAREHOLDERS

| Shareholders   | Class    | No of Shares | Beneficially Owned | Share | Status  |
|----------------|----------|--------------|--------------------|-------|---------|
| Marc Morabito  | Ordinary | 100          | Yes                | 50%   | Current |
| Vicki Morabito | Ordinary | 100          | Yes                | 50%   | Current |

### 4.4 CURRENT REGISTERED SECURITY INTERESTS

A search of the PPSR indicates the following registered security interests:

| Registration Number | Secured Party                                 | Start Date | Collateral  |
|---------------------|---|------------|-------------|
| 201910160044350     | Ausco Modular                                 | 16/10/2019 | Other Goods |
| 201911140049122     | Mesh & Bar Pty Limited                        | 14/11/2019 | Other Goods |
| 202004210018960     | PGH Bricks & Pavers Pty Ltd                   | 21/04/2020 | Other Goods |
| 202010270003522     | 64 Parties                                    | 27/10/2020 | Other Goods |
| 202010290061637     | Gunlake Concrete NSW Pty Limited              | 29/10/2020 | Other Goods |
| 202102240049869     | Quarries NSW Pty Limited                      | 24/02/2021 | Other Goods |
| 202103310061366     | 4 Parties                                     | 23/06/2021 | Other Goods |
| 202106230051576     | Print Management Facilities Australia Pty Ltd | 23/06/2021 | Other Goods |
| 202107280055848     | Aluminium Specialties Group Pty Ltd           | 23/06/2021 | Other Goods |
|                     | 29 Parties                                    | 28/07/2021 | Other Goods |

| Registration Number | Secured Party                                    | Start Date | Collateral    |
|---------------------|--|------------|---------------|
| 202111010052025     | 4 Parties  | 1/11/2021  | Motor Vehicle |
| 202111010052039     | 4 Parties  | 1/11/2021  | Other Goods   |
| 202202210054703     | Grahame Cook Plumbing Supplies Sales Pty Limited | 21/02/2022 | All PAP       |
| 202203160003453     | Dinzel Construction System Pty Limited           | 16/03/2022 | Other Goods   |
| 202305120018493     | CSR Building Products Limited                    | 12/05/2023 | Other Goods   |
| 202307030066936     | Appliances Online Pty Limited                    | 03/07/2023 | Other Goods   |

Please refer to Section 9.2.2 of this report for further comments on the above.

#### 4.5 LEGAL PROCEEDINGS AGAINST THE COMPANY

Pursuant to Section 440D of the Act, upon our appointment as Administrators, all proceedings against the Company are automatically stayed. Creditors cannot commence or continue proceedings against the Company without our written consent or without leave of the Court.

We note that a creditor of the Company filed a Statement of Claim against the Company in the Local Court of NSW on the day prior to our appointment. Following notification of our appointment and further discussions, the creditor advised that they did not intend to seek leave of the Court to continue with the proceedings. That creditor claim will be dealt with through the adjudication process.

### 5. COMPANY HISTORY AND EVENTS LEADING UP TO ADMINISTRATION

The following information was obtained from the Company's books and records, enquiries with the Directors, advisors and Company records provided to us and our own enquiries:

- ▲ The Company was incorporated on 19 July 2019, and operated as a commercial builder with a focus on the education sector in NSW. The nature of the business was a continuation of the construction work performed under an entity controlled by the Directors, Morabito Holdings Pty Ltd (trading as Marc Morabito Constructions) which had traded in the NSW market for over 20 years.
- ▲ It appears that the Company began its construction activities in 2019. We are advised by the Directors that the Company acquired various assets, including motor vehicles, PPE and office equipment, from Morabito Holdings for \$300K, however it did not adopt existing trade or contractual liabilities. We are also advised that the Company assumed the employment and entitlements of the Morabito Holdings staff at the time.
- ▲ We understand that Morabito Holdings was subject to long-running litigation in the Supreme Court of NSW with a former client over disputed construction works. In this regard, we note that the Company advanced loans to Morabito Holdings totalling \$950K, which, we are advised, were used to partially fund the defence to those proceedings. Unfortunately, Morabito Holdings was unsuccessful in defending those proceedings and was ultimately placed into Liquidation in August 2021. As a consequence, the Company was unable to recover

its loan. We note that the Liquidator of Morabito Holdings appears to have reviewed the sale of assets, and did not take issue with the other dealings.

- ▶ The Company operated as the head contractor on mid-sized mixed commercial building projects, providing design and construct services for the construction of new buildings, additions to existing buildings and renovation works. It conducted the works via the engagement of consultants, professionals and subcontractors. One of the Directors, Marc Morabito, appears to have extensive experience in the construction industry, and oversaw the management of the majority of the contracts for the business. The other Director, Vicki Morabito, was responsible for the administrative and bookkeeping aspects of the business.
- ▶ It appears that the Company continued to experience longer-term financial impacts of the Covid-19 pandemic, including labour shortage and supply chain delays. This significantly impacted the Company's projects, causing cost overruns and time delays.
- ▶ It appears that the Company operated on fixed price contracts, where rising inflation led to significant losses due to increased material and labour costs. The Company's financial performance suffered during FY2023, incurring trading losses, and eroding the reserves. It is unclear to what extent the Directors sought to renegotiate the contractual pricing to accommodate the cost increases.
- ▶ Up to mid-2023, it appears that the Company was largely able to maintain creditor claims and discharge current balances. However, from August 2023, the ageing of creditors deteriorates, illustrative of the Company's inability to pay debts as and when they fell due for payment.
- ▶ The Company has been reliant on the Directors contributing funding via unsecured loans to support its working capital requirements. As at the date of our appointment, the outstanding Directors loan balance was approximately \$1.6M, of which \$640K was advanced between August and October 2023, indicative of the Company's cashflow problems.
- ▶ The Directors were unwilling to provide any further funding and in early December 2023, the Directors sought professional advice regarding the Company's options, including a Voluntary Administration. The Directors took steps to cease work on the three (3) remaining commercial projects, and had terminated the last two (2) staff by way of redundancy, leaving only the Directors operating the business. We were appointed Administrators of the Company shortly thereafter, on 14 December 2023.

## 6. REASONS FOR FAILURE

The Directors have advised, in their view, the reasons for the failure of the Company was trading losses, inadequate cashflows, poor economic conditions during the Covid-19 pandemic and fixed price contracts in an inflationary economic environment.

Whilst we agree with the above, we also note the following additional causes of failure based on our preliminary investigations to date:

- ▶ Surging construction costs in respect of materials and labour, which resulted in significant losses on the fixed price construction projects.

- The impairment of related party loans owed by Morabito Holdings, which resulted in a \$950K loss to the Company.
- Poor financial controls and management being implemented in the business.

## 7. CONDUCT OF THE ADMINISTRATION

In summary, during our appointment we have attended to the following major tasks:

- Liaised with clients of the three (3) projects in relation to notification of our appointment, status of projects, site handover and termination of contracts;
- Liaised with the Directors to assist the clients in relation to assembly of essential contract documentation, costs to complete assessments and potential alternate builders for completion of the projects;
- Investigated existing insurance covers for the business and considered the adequacy of existing policies, including contract works and Professional Indemnity insurance;
- Communicated with former employees, creditors and suppliers in relation to the Administration;
- Inspected and secured the Company's physical assets, and arranged for an independent valuation and later auction of that property;
- Secured funds held in the Company's pre-appointment bank account;
- Obtained copies of the Company's financial accounts and extracts from management accounts;
- Conducted preliminary investigations in the historical financial records, including cashflow requirements, WIP, debtors and retentions over time;
- Reported to creditors and held the first meeting;
- Engaged with the Directors and their lawyers to formulate a DOCA proposal, including various queries and requests for information;
- Conducted investigations of the affairs of the Company, in particular potential voidable transactions and other potential recoveries that may be available to a Liquidator;
- Liaised with the Directors regarding various queries on the Company's financial accounts, and requested further information as needed for our investigations;
- Prepared this report and convened the second meeting of creditors; and
- Attended to various administrative matters.

## 8. HISTORICAL FINANCIAL INFORMATION

We have reviewed the Company's externally prepared unaudited financial statements for FY2020 to FY2022 and available management accounts for the period from FY2023 to the part-period ended 14 December 2023. The management accounts are unaudited, based on reports extracted from the Company's Cheops accounting system, and have not been reviewed by the Company's external accountant. We have prepared our financial analysis on the available information, which is discussed below.

### 8.1 BALANCE SHEETS

Attached as **Annexure "4"** is a comparative analysis of the Balance Sheets for the abovementioned periods.

We make the following comments with respect to the Company's comparative Balance Sheets:

- ▶ The Company's assets are largely represented by retention withheld by clients and WIP. Retention amount increased from \$243K to \$814K from FY2020 to FY2023 and then dropped to \$696K for the part period ending 14 December 2023, reflecting the work performed on the remaining three (3) projects which were 90-95% completed. The WIP was reported as \$863K at June 2021, which decreased to \$484K by June 2022. The WIP amount reported in the management account of \$484K, has not been updated since June 2022, and is not an accurate reflection of the WIP. The external accountant has confirmed that the WIP figure would be updated when the year-end accounts were prepared, June 2022 being the last time that has occurred. Our enquiries indicate that the WIP balance now is minimal, where completed works have been billed to clients where possible.
- ▶ Outstanding loan balance owed by a related entity, Morabito Holdings (a company with common directors as the Company), was for the sum of \$770K as at 30 June 2020 and was written off. The Directors have advised that the Company loaned funds totalling \$950K to Morabito Holdings in respect of legal proceedings commenced against Morabito Holdings in the Supreme Court of NSW. Ultimately, Morabito Holdings was unsuccessful in defending the proceedings and judgement was awarded against Morabito Holdings. Morabito Holdings was subsequently placed into liquidation. As such, the loan balance owed by Morabito Holdings was written off.
- ▶ We note that the Company reported a "Payroll Clearing Account" asset of \$404K and a Tax Refund asset of \$175K as at 30 June 2023 in the management accounts. It appears that both items were accounting errors, and were not recoverable assets in FY2023. The external accountant has advised that these accounts would be adjusted during the process of preparing the year-end financial statements, which have not been prepared since June 2022. We estimate that this reporting issue in the management accounts, has effectively understated the accumulated losses as at 30 June 2023 by around \$540K.
- ▶ The Company has reported a deficiency in net assets since 30 June 2020, which increased over time. The Company did not have a finance facility with a bank per se, rather it relied on funding provided by the Directors to meet cashflow requirements from time-to-time. The outstanding

loan balance owed to the Directors was \$640K as at 30 June 2021, which continued to increase during the Company's trading until it peaked at \$1.6M at the date of our appointment.

## 8.2 PROFIT AND LOSS STATEMENTS

Attached as **Annexure "5"** is a comparative analysis of the Profit and Loss Statements for the abovementioned periods.

We make the following commentary with respect to the attached comparative Profit and Loss Statements:

- ▶ The Company's revenue has fluctuated dramatically following the Covid-19 pandemic, increasing from \$3.3M in FY2020 to \$9.1M in FY2021, contracting to \$6.1M during FY2022 and then increasing to \$11M during FY2023. However, the gross profit margin reduced dramatically from 13.83% in FY2021 and 11.04% in FY 2022 to 1.24% in FY2023. The decrease in gross profit margin was largely due to the increase in job cost/construction cost which increased from 90.07% in FY2021 and 82.79% in FY2022 to 98.76% of total revenue in FY2023. This appears to be reflective of the instability in the construction industry, where there was increased demand for construction work but supply chain delays and labour shortages impacted the costs of each project.
- ▶ With respect to other operating expenses, the major expenses were payroll expenses. Payroll expenses comprised 9.15% of the total revenue during FY2021 and 8.7% during FY2022. The payroll expenses during FY2023 are understated, reflective of the incorrect accounting treatment and reporting errors associated with the "Payroll Clearing Account". After taking into account this increase in the payroll expenses by \$404K during FY2023, payroll expenses comprised 4.28% of the total revenue during FY2023.
- ▶ We note there was consultant fees recorded for \$325K during the period ended 14 December 2023. This is a further accounting error which overstates expenses, and understates the cash assets, as those funds were held on trust for the Company.
- ▶ The Company has consistently reported trading losses since FY2020. Those losses increased over time, where the true trading losses were likely around \$800K in FY2023, and a further \$450K loss in the FY2024 part-year. As mentioned earlier, the Company has been reliant on funding from the Directors to continue trading, with \$1.6M advanced to the Company since FY2020.

## 9. CURRENT FINANCIAL POSITION

Contained in this section is our analysis of the current financial position of the Company, with regard to the Directors' ROCAP, available financial records and our enquiries to date.

We have included below the assets and liabilities of the Company as reported in the Management Accounts as at 14 December 2023, the Directors' ROCAP and our projections as to likely current position.

| Morabuilt Pty Ltd (Administrators Appointed)<br>A.C.N. 630 816 830 |                     |   |                                       |                                |
|--|---------------------|---|---------------------------------------|--------------------------------|
|  | Report<br>Reference | Book Value<br>as at<br>14/12/2023<br>(\$) | Directors' ERV<br>(per ROCAP)<br>(\$) | Administrators'<br>ERV<br>(\$) |
| <b>Assets</b>  |                     |   |                                       |                                |
| Cash and Cash Equivalents  | 9.1.1               | 126,592                                   | 424,003                               | 357,764                        |
| Trade Debtors  | 9.1.2               | 35,194                                    | 20,586                                | 66,000                         |
| Retention  | 9.1.3               | 696,432                                   | 696,232                               | -                              |
| Work in Progress   | 9.1.4               | 483,596                                   | -                                     | -                              |
| Prepaid Borrowing Expenses   | 9.1.5               | 50,000                                    | -                                     | -                              |
| Tax Refund   | 9.1.6               | 49,656                                    | -                                     | -                              |
| Plant and Equipment  |                     | 63,182                                    | 28,000                                | 18,500                         |
| Motor Vehicle  | 9.1.7               | 27,957                                    | 35,000                                | 19,000                         |
| Stock on Hand  |                     | 25,408                                    | 15,000                                | -                              |
| <b>Total Assets</b>  |                     | <b>1,558,016</b>                          | <b>1,168,820</b>                      | <b>461,264</b>                 |
| <b>Liabilities</b>   |                     |   |                                       |                                |
| Priority Creditors   | 9.2.1               | 738                                       | 119,663                               | 149,288                        |
| Secured Creditors  | 9.2.2               | -   | -                                     | -                              |
| Unsecured Creditors  | 9.2.3               |   |                                       |                                |
| Australian Taxation Office   |                     | -   | 38,628                                | 39,002                         |
| Trade Creditors  |                     | 1,461,761                                 | 1,484,892                             | 2,191,637                      |
| Retention  |                     | 445,333                                   | 410,902                               |                                |
| Client damages defect claims                                       |                     | -   | -                                     | 300,000                        |
| Related Party Creditors  |                     | 1,643,699                                 | 1,625,000                             | 1,625,000                      |
| Contingency  |                     | -   | -                                     | 100,000                        |
| <b>Total Liabilities</b>   |                     | <b>3,551,531</b>                          | <b>3,679,084</b>                      | <b>4,404,928</b>               |
| <b>Estimated Net Asset / (Deficiency)</b>                          |                     | <b>(1,993,515)</b>                        | <b>(2,510,264)</b>                    | <b>(3,943,664)</b>             |

## 9.1 ASSETS

### 9.1.1 Cash and Cash Equivalents

The Company held two bank accounts, one with Bendigo Bank with a credit balance of \$19K and the other with Westpac with a credit balance of \$13K as at the date of our appointment. Furthermore, a sum of \$325K was transferred from the Company's pre-appointment bank account to our trust account, immediately prior to our appointment. All these funds have now been transferred to the Administration bank account, with the total recovery of cash at bank being approximately \$357K.

We note that the management accounts do not accurately report the Company's cash at bank. We have interrogated the discrepancy, and it represents incorrect coding of entries, however the funds overall are accounted for.

Our enquiries have not located any other bank accounts held by the Company.

### 9.1.2 Trade Debtors



Our review of the Company's records and our enquiries with the Directors indicate the "Trade Debtors" ledger account was used to record progress claims submitted on the projects, and the recovery of same. It appears that all approved progress claims have been recovered prior to our appointment. The reported balance of \$35K does not appear to be recoverable.

We have recovered a sum of \$66K in relation to a bond held by Camden Council for a previously completed construction project. This was not recorded in the trade debtors balance.

As such, we do not expect any further recovery from Trade Debtors. The retentions and unbilled WIP on the remaining construction projects is discussed separately below.

### 9.1.3 Retentions

Pursuant to the contracts entered into by the Company with the clients, 5% of the contract price was retained by the client during the construction phase. In general, half of the retention was to be released to the Company upon practical completion of the project, with the remaining balance to be held by the clients until expiry of the defect liability period, being 12 months after practical completion.

We have reviewed the available records with the objective of seeking to recover the retentions from clients, where possible. The Company's management accounts and the ROCAP disclosed total retentions withheld by clients in relation to the three (3) projects was \$696K, comprised of \$275K for the Bomaderry contract, \$323K for the Campbelltown contract and \$98K for the Oran Park contract.

As discussed earlier, due to its financial position, the Company ceased performing construction work on the three (3) projects shortly prior to our appointment. The Directors have assessed the three (3) projects as being 90% to 95% complete, and provided an estimate of the costs to complete remaining construction works on each project. The Directors' assessments indicate that the costs of work to complete, are less than the unpaid balances of the respective contracts, and therefore there may be a recovery on the retentions in the fullness of time. We note that those assessments do not factor in costs of replacing the builders or claims in relation to delays, such as liquidated damages claims.

We note that two of the clients have asserted that they are net creditors of the Company, after deduction of retentions they hold. However, those clients have not provided us with sufficient supporting documentation to test the clients' assertions on the costs to be incurred. We intend to work with each client to share documentation relevant to their projects, as they attempt to complete the remaining works. The outcome for recovery of the retentions will not be known until the projects reach practical completion and then the defect liability period expires (twelve (12) months later).

For illustrative purposes only, we have included a potential recovery on the retentions at range of nil to \$300K. The actual position will not be known for some time.

### 9.1.4 WIP

The WIP amount reported in the management account of \$484K has not been updated since June 2022, and is not accurate. The external accountant has confirmed that the WIP figure would be updated when the year-end accounts were prepared, with June 2022 being the last time that has occurred.

Our enquiries indicate that the Directors managed WIP on separate schedules, relevant to each project. The work performed (WIP) would be reviewed each month, to allow progress claims to be

submitted to clients for assessment by the respective superintendent. The Directors indicated that the WIP balance on our appointment was in the order of \$150K. However, having regard to the Company's deteriorating cashflow position, it appears that the WIP on projects (including variations) had been submitted in recent progress claims and adjudicated.

Noting that the Company is in default and cannot complete the projects, we do not anticipate a material cash recovery on any residual WIP. However, those WIP claims will be dealt with in the process of preparing a final accounting with the clients, as we seek recovery of the retention amounts.

### **9.1.5 Prepaid Borrowing Expenses**

The Company's management accounts record prepaid borrowing expenses of \$50K, which the external accountant has indicated is an accounting entry only. This appears to relate to insurance costs which are not a realisable asset.

### **9.1.6 Tax Refund**

The management accounts indicate that the Company has a tax refund of \$49K owed to it. Our review of underlying ledgers indicates that the historical accounting for tax transactions has not been recorded accurately in the management accounts. The external accountant has confirmed that this would typically be adjusted at year-end.

Our enquiries indicate that the ATO is a net creditor for a small amount, which is discussed later.

Accordingly, the tax reporting in the management accounts is not accurate, and the reported refund is not recoverable.

### **9.1.7 PPE, Motor Vehicles and Stock on Hand**

The Company held a small amount of PPE, motor vehicles and stock at the Castle Hill premises on our appointment. We engaged O'Maras to attend the premises and prepare an independent valuation of the physical assets. That valuation indicated that there was some limited value in the assets, which should be realised for creditors' benefit.

Accordingly, we negotiated for the Company to continue to occupy the premises on a rent-free basis, whilst an auction could be run. The PPE auction closed in recent days with a minor recovery, after costs. The vehicles will also be sold via auction in the coming 2-3 weeks. The Company held little or no stock, where we understand that stock would be acquired as needed for projects and installed directly at sites.

The gross recovery from these physical assets may be in the order of \$40K, less realisation costs (such as handling, commissions and other auction costs).

## **9.2 LIABILITIES**

### **9.2.1 Priority Creditors**

The Directors have advised that all employees were terminated prior to our appointment. The ROCAP disclosed there were employee entitlements owed to two former employees. Below is summary of the potential priority claims:

| Entitlements              | Administrators' ERV \$ |
|---------------------------|------------------------|
| Annual Leave              | 83,750                 |
| Long Service Leave        | 20,000                 |
| Payment in Lieu of Notice | 2,154                  |
| Redundancy                | 43,384                 |
| <b>Total</b>              | <b>149,288</b>         |

We provide our commentary on the above as follows:

- The Directors have advised the Company employed two (2) staff members before the Company ceased trading in December 2023. The employees were provided verbal notice of termination of their employment by way of formal redundancy in November 2023, with a four (4) week notice period ending on 13 December 2023. We note that the employees continued to work during their notice period. We estimate that there may be an additional one (1) week of PILN owed for one of the employees, in accordance with the industry award.
- Both employees have submitted a POD in the Administration which include an amount of underpaid wages during the Covid-19 pandemic. Our investigations indicate there was a short period between 2020/21, where construction works were restricted. We are advised that the Company and employees agreed to a temporary reduction in wages to accommodate the Company's cashflow restrictions, which was allowable during the Covid-19 pandemic. We are further advised that there was no agreement to reimburse the employees for the reduced wages after this period. Accordingly, we have not included a claim for underpaid wages, however further investigations may be required in the context of a dividend process.
- The Company was a registered employer with the Long Service Corporation for the building and construction industry, which allows for workers to claim portable LSL entitlements after working for ten (10) years in the industry, even with different employers. As both employees were transferred from Morabito Holdings with their service period acknowledged and continued with the Company, we expect that the employees would be eligible to claim from the Long Service Corporation. Our enquiries indicate that the Long Service Corporation may not meet all LSL entitlements in full, and any shortfall would need to be claimed against the Company. As such, we have included a provision for a potential LSL shortfall claim from the employees of \$20K.
- Whilst there is generally a small business exemption in respect of redundancy where there is less than 15 employees, there is a building industry specific redundancy clause in the industry award. Accordingly, we have included calculations for redundancy entitlements for the employees.

#### Fair Entitlements Guarantee

In a Liquidation scenario, employees may be eligible to apply to the Federal Government, which has established a safety net scheme known as FEG, for payment of their outstanding entitlements (there

than superannuation). FEG is administered by the Department of Employment and Workplace Relations for eligible employees who have been terminated as a result of their employer's insolvency and are owed entitlements. The FEG scheme is not available in a DOCA scenario.

In order for an employee to be eligible to claim outstanding entitlements under FEG:

- ▶ The employee must be an Australian citizen or permanent resident (contact FEG for further details); and
- ▶ The end of their employment must be due to the insolvency of the employer; or have occurred less than six (6) months before the appointment of an insolvency practitioner; or occurred on or after the appointment of an insolvency practitioner.

Employees may submit claims in respect of the following entitlements, provided they are entitled to claim under their respective industrial instrument, contract of employment or by any other means:

- ▶ Up to thirteen (13) weeks unpaid wages for the period ending at the earlier of the date on which employment ended or the appointment of an insolvency practitioner;
- ▶ Unpaid annual leave and long service leave;
- ▶ Up to a maximum of five (5) weeks unpaid payment in lieu of notice;
- ▶ Up to a maximum of four (4) weeks redundancy entitlement for each completed year of service.

In calculating employee entitlements payable under the scheme, the maximum annual wage applies.

FEG will not cover:

- ▶ Outstanding superannuation entitlements;
- ▶ Entitlements such as rostered days off unless the relevant legislation, award, statutory agreement or written contract of employment provides they are payable upon termination of employment; and
- ▶ Employee entitlements of the Directors and related party Creditors.

Please note that FEG will only assess claims if the Company is placed into Liquidation.

Should you wish to obtain further information, FEG may be contacted reached on 1300 135 040. Alternatively, you may visit their website at: <https://www.dewr.gov.au/fair-entitlements-guarantee>.

### 9.2.2 Secured Creditors

As disclosed previously, fourteen (14) parties have registered security interests against the Company on the PPSR. The table below provides a summary of these registered security interests.

| PPSR Creditors  | Estimated<br>Unsecured Claims<br>\$ | Comment   |
|---|-------------------------------------|---|
| Ausco Modular Pty Limited   | -                                   | No response from the secured party. The Directors have advised that this party provided hire accommodation for various sites with all goods returned prior to the appointment of the Administrators.  |
| Mesh & Bar Pty. Limited   | -                                   | Security has been discharged following notification of our appointment.   |
| PGH Bricks & Pavers Pty Limited                                       | -                                   | No response from the secured party.<br><br>The Directors have advised that there was no outstanding debt owed to this party.  |
| Boral Limited and others  | -                                   | No response from the secured party.<br><br>The Directors have advised that there was no outstanding debt owed to these parties.   |
| Gunlake Concrete NSW Pty Limited And Gunlake Quarries NSW Pty Limited | 10,224.72                           | This creditor supplied concrete for various sites. We expect the concrete has already been used and/or installed. The creditor has submitted a POD in the Administration for the sum of \$10,224.72, which is considered to be an unsecured claim in the Administration in circumstances where the goods supplied cannot be returned.   |
| Druin Pty Ltd and others  | -                                   | No response from creditor.<br><br>The Directors have advised that these parties supplied kitchen appliances for one of the projects, which has been installed onsite. As such, it is unlikely that the security remains over those goods. However, given the control and security had been returned to the clients for the three (3) projects, parties should contact the client's site directly with respect to return of goods. |
| Print Management Facilities Australia Pty Ltd                         | -                                   | The creditor is the lessor of a print/photocopier machine used at the Company's office premises. We are continuing to use this asset and we have notified the creditor of same. We will arrange return of the asset once it is no longer required.  |
| Aluminium Specialties Group Pty. Ltd.                                 | -                                   | Security has been discharged following notification of our appointment.   |

| PPSR Creditors                                      | Estimated<br>Unsecured Claims<br>\$ | Comment   |
|---|-------------------------------------|---|
| Bristle Guardians Pty Ltd<br>and others             | -                                   | No response from the secured party.<br><br>The Directors have advised that there was no outstanding debt owed to these parties.   |
| Skyreach (Vic) Pty Limited<br>and others            | -                                   | No response from the secured party.<br><br>The Directors have advised that these parties provided access equipment hire for various sites with all goods returned prior to the appointment of the Administrators.   |
| Grahame Cook Plumbing<br>Supplies Sales Pty Limited | 30,136.82                           | The creditor supplied bathroom fixtures and materials for one of the projects, which we are advised have been delivered and installed onsite. As such, it is unlikely that the security remains over those goods. However, given the control and security had been returned to the clients for the three (3) projects, parties should contact the client's site directly should they wish to press their security claim. Otherwise, the creditor is likely an unsecured creditor the Company. |
| Dinzel Construction System<br>Pty Limited           | -                                   | No response from the secured party.<br><br>The Directors have advised that there was no outstanding debt owed to this party.  |
| CSR Building Products<br>Limited                    | -                                   | Security has been discharged following notification of our appointment.   |
| Appliances Online Pty<br>Limited                    | TBC                                 | No response from the secured creditor.<br><br>The Directors have advised that this party supplied appliances for one of the projects and the goods had been installed onsite.<br><br>We have not received a claim from this party. Should a claim be submitted by this party at a later stage, it is likely the claim will be considered as an unsecured claim in the Administration in circumstances where the goods supplied cannot be returned.  |
| <b>Total</b>  | <b>40,361.54</b>                    |   |

We note the above claims are included in the Trade Creditors portion of the Unsecured Creditors balance, discussed below.

### 9.2.3 Unsecured Creditors

Unsecured Creditors may be owed approximately \$210K, subject to further enquiries and adjudication of claims. Below is a breakdown:

| Unsecured Creditors           | Administrators' ERV<br>\$ |
|-------------------------------|---------------------------|
| ATO                           | 39,002                    |
| Trade Creditors               | 2,191,263                 |
| Client damages claim estimate | 300,000                   |
| Related Party Creditors       | 1,625,000                 |
| Contingency estimate          | 100,000                   |
| <b>Total</b>                  | <b>4,255,265</b>          |

We provide our commentary as follows:

- A review of the ATO account statement indicates there are outstanding tax debts for the sum of \$39K as at the date of our appointment. The tax debts may increase after lodgement of the outstanding pre-appointment tax lodgements. We have yet to receive a POD from the ATO to confirm the required lodgements.
- Incorporating the PODs received to date, the estimated claims from trade creditors in relation to goods supplied, services provided and retention amounts total approximately \$2.2M, from various subcontractors, suppliers, professionals and consultants incurred in the ordinary trade of the business. We note that there have been around \$330K in additional claims lodged by creditors, a significant portion of which may relate to work that has not been performed as yet, similar to damages. Further will be required to adjudicate the claims in due course.
- As previously discussed, the Company was unable to complete three (3) projects at the time of our appointment. The Directors have provided an estimate of the costs to complete the remaining work on each project, which indicates there may be a recovery from the retentions. However, those estimates do not include the costs that may be incurred replacing the builders, delays on the contract or potential defect costs. The net creditor claim from clients or recovery on the retentions, will not be known until the projects are completed and the defect liability period expires. Without admission, for the purpose of our estimates only, on a pessimistic basis we have included a provision of \$300K for potential client creditor claims, noting that on the optimistic scenario we have included no client creditor claims, rather a \$300K recovery from the retentions.
- The Directors have submitted a POD for the sum of \$1.625M for loans provided to the Company over a period of time since 2020. The Directors have provided bank statements to evidence the funds advanced to the Company. Our review of the Company's balance sheet and loan ledger extracted from the management accounts also evidenced the loans advanced by the Directors to the Company. We further noted that the Company's managements

accounts also recorded a small amount of interest applied to the loans, however, this had not been claimed by the Directors, nor included in the above estimate.

- Considering the nature of the construction industry and the incomplete state of the works performed by the Company, we have included a contingency of \$100K for additional unknown claims.

## 10. EXPLANATION OF DEFICIENCY

Attached as **Annexure “6”** is the deficiency statement based on pessimistic scenario estimates. We note that the deficiency for the Company’s creditors is circa \$3.9M, before the costs of the Administration. Summarised below is the key aspects of the deficiency:

| Summary of deficiency         | Amount<br>\$     |
|-------------------------------|------------------|
| Accumulated Losses            | 1,993,315        |
| Loss on Realisation of Assets | 1,096,752        |
| Understated Liabilities       | 853,397          |
|                               | <b>3,943,463</b> |

We note that the deficiency is predominantly represented by the accumulated trading losses incurred by the Company and potentially unrecoverable value of the reported WIP and retentions balances (in a pessimistic scenario). In respect of the understated liabilities, we note that \$400K relates to a provision for client creditor claims and a contingency.

## 11. PRELIMINARY INVESTIGATIONS

### 11.1 OVERVIEW

During the course of the Administration, we have conducted investigations into the affairs of the Company to ascertain whether there are any transactions that appear to be voidable, or other causes of action available whereby money, property or other benefits may be recoverable by a liquidator pursuant to Part 5.7B of the Act, in the event that creditors resolve to wind up the Company. Creditors should be aware that an Administrator does not have the power to recover voidable transactions or take action for insolvent trading.

### 11.2 INVESTIGATION CONSTRAINTS

The Act sets out a strict timeline for the reporting of an Administrator’s investigations of an insolvent company’s affairs prior to the second meeting of creditors.

As such, our investigations into the Company’s affairs are preliminary at this stage. The interim findings discussed below are based on the available records reviewed and under time constraints. A Liquidator would conduct more detailed investigations, provided that necessary funding is available.

### 11.3 BOOKS AND RECORDS

Section 286 of the Act provides that:



“A company, registered scheme or disclosing entity must keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited.”

The failure to maintain books and records in accordance with Section 286 of the Act may allow a Liquidator to presume the company was insolvent throughout the period the books were not maintained (Section 588E of the Act).

The books and records received to date comprise of the following:

- Extracts of the Company’s management accounts maintained via Cheops;
- Externally prepared financial statements;
- Correspondence issued by the ATO in relation to payment plan agreed with the Company;
- Client project documents; and
- Bank statements.

We have identified inaccuracies in the management accounts in respect of reported WIP, tax assets/liabilities, clearing accounts and net equity figures, which we understand would be rectified with the assistance of the external accountant in preparing the year-end financial statements. Otherwise, the management accounts appear to be reasonably complete and reliable in respect of the business transaction activity, including debtors and creditors.

Accordingly, our preliminary view is that the Company has maintained sufficient books and records to meet the requirements of Section 286 of the Act.

#### **11.4 RISK OF LITIGATION ACTION GENERALLY**

Part 5.7B of the Act gives liquidators (but not administrators) the right to commence certain legal proceedings to recover money, property or other benefits for the benefit of the Unsecured Creditors of a company.

Creditors should note that recovery actions:

- have the potential to increase the pool of funds available to Creditors;
- are usually expensive, lengthy and have unpredictable outcomes;
- should not be commenced unless defendants have the financial resources to satisfy any judgement; and
- must be funded out of the Company’s existing assets or, where such assets do not exist, by Creditors or by external litigation funders (who are likely to require a significant share of the proceeds of any judgement as a condition of funding the litigation).

## 11.5 INSOLVENCY & INSOLVENT TRADING (SECTION 588G)

The *Corporations Act 2001* prohibits Insolvent Trading and provides that Directors can be required to compensate Creditors for losses they suffer because of Insolvent Trading by making a payment to a Liquidator of the Company. We have considered the prospects of such a claim, as it is one that is only available if creditors decide that the Company should be placed into Liquidation, and so may be relevant to the decisions Creditors take at the forthcoming Second Meeting of Creditors.

### 11.5.1 What Is Insolvent Trading?

Insolvent Trading is the incurrance of a debt or liability at a time when the Company is insolvent and when the Director(s) have reasonable grounds to suspect, or a person in their position would have suspected, that the Company was insolvent.

If such a debt or liability is incurred, a Court may require the Director(s) to pay an amount of compensation to a Liquidator of the Company equal to the loss suffered by creditors. In determining that loss, it is necessary to have regard to any amount that may be recovered from the Company's assets or from the recovery of other claims such as Unfair Preferences.

Recovery for Insolvent Trading is only available in a Liquidation. A claim may be brought by a Liquidator, or, if, but only if, the Liquidator declines to pursue a claim, by one or more Creditors.

A Liquidator pursuing a claim against a company in liquidation must:

- demonstrate Insolvency
- show that the Director(s) suspected, or should have suspected, insolvency;
- show that a debt or liability was incurred at a time that the company was insolvent; and
- show the debt or liability has not been paid, so that the creditor has suffered loss.

A Director accused of Insolvent Trading can answer a claim by showing that:

- the Director had reasonable grounds to believe the debt would be paid; and/or
- the Director relied on information from a competent and reliable person to believe the debt would be paid; and/or
- the Director did everything he or she could to avoid the incurring of the debt; and/or
- the Director was not participating in the management of the Company for some good reason, such as illness; and/or
- the Director was acting honestly and reasonably and, notwithstanding that a debt or liability was incurred that will be unpaid, he or she should be excused from liability; and/or
- the Director may assert a defence that they have relief from insolvent trading by way of using the Safe Harbour regime contained in the Corporations Act; and/or
- the government provided legislative relief from insolvent trading from March to December 2020 in response to the COVID-19 pandemic.

Litigation in respect of Insolvent Trading is carried out in the ordinary civil courts. This means that the costs of pursuit of a claim are borne by the Liquidator, who uses the Company's assets and may enter into a form of borrowing called "litigation funding" to do so, or may ask creditors to make a voluntary contribution to the pursuit of a claim.

If a claim is successful, some of the costs, but not all of them, may also be ordered to be paid by the Director(s). If the Liquidator fails in some or all of the claim, he or she may be ordered to pay some, or all of the costs incurred by the Director(s) in defending the claim. Because of this, in practice Liquidators can only pursue claims where they have funds available to meet both their own and the Defendants' costs, or they have the benefit of "insurance" against costs provided either by creditors or a commercial litigation funder.

If the Company has no assets and neither a litigation funder nor creditors are willing to fund the litigation, no claim can be pursued. Litigation in respect of Insolvent Trading can be expensive, slow and risky. The Liquidator, funder and creditors are exposed to the risk that if the Director(s) are found liable, they may be unable to meet the judgment against them.

Where a Company is a subsidiary of another Company, a claim can also be brought against the holding Company.

### 11.5.2 Insolvency

One important element of liability for Insolvent Trading is if, and when, the Company became insolvent.

Section 95A of the *Corporations Act* defines solvency as follows:

*"95A(1) [when person is solvent] A person is solvent if, and only if, the person is able to pay all the person's debts, as and when they become due and payable.*

*95A(2) [insolvent person not solvent] A person who is not solvent is insolvent".*

Under Australian law, the test of insolvency is a "cashflow" test: it is focused on whether, in commercial reality, a company is able to meet its liabilities as and when they fall due for payment. The forensic assessment of insolvency, and preparation of a case on insolvency, involves a thorough, and costly, examination of the Company's business, its market, its relationships with its customers, lenders, suppliers, owners and with regulators. Where a Company has had expectations of support from related parties, that support is a factor that has to be considered in the context of insolvency.

In elaborating on the cashflow test of insolvency, the Courts have provided extensive commentary on the subject to determining insolvency. One of the leading authorities is the judgment of the Victorian Supreme Court in *ASIC -v- Plymin*, in which Justice Mandie, relying on Expert Evidence, identified the following 14 indicators of insolvency:

- Continuing Losses;
- Liquidity ratios below 1;
- Overdue Commonwealth and State taxes;
- Poor relationship with present Bank, including inability to borrow further funds;

- No access to alternative finance;
- Inability to raise further equity capital;
- Suppliers placing company on COD, or otherwise demanding special payments before resuming supply;
- Creditors unpaid outside trading terms;
- Issuing of post-dated cheques;
- Dishonoured cheques;
- Special arrangements with selected creditors;
- Solicitors' letters, summons(es), judgements or warrants issued against the company;
- Payments to creditors of rounded sums which are not reconcilable to specific invoices;
- Inability to produce timely and accurate financial information to display the company's trading performance and financial position and make reliable forecasts.

Comprehensive forensic insolvency assessment requires the review of each of these indicators, as well as the Company's business, to answer the question "was it able to pay its debts as and when they fell due".

As part of reporting to you about Insolvent Trading we are required to form a preliminary view about when the Company became insolvent. Our opinion is necessarily formed summarily: a forensic analysis of insolvency would be more thorough, more expensive and slower than the Voluntary Administration process ordinarily permits. We have set out our views below.

### 11.5.3 Director's Knowledge

As well as insolvency, a Liquidator must also show when the Director suspected, or ought to have suspected, that the Company was insolvent. If a claim is brought, this will normally involve the comprehensive review of company records to show when the Director(s) first learnt of circumstances that could indicate insolvency. That review is typically thorough and expensive. Again, for the purpose of reporting to you we are required to make a summary assessment of when suspicions were or should have been formed. We have set out our views in this respect below as well.

### 11.5.4 Loss

Only losses *incurred* at or after the time of insolvency can form the basis of a claim, although all unpaid unsecured creditors are entitled to share in any recovery after costs. A debt or liability is "incurred" when the last event that could have avoided the liability arising occurs. For example, taking delivery will normally be the time at which a debt for the supply of goods is incurred.

Liabilities that have fallen due, but which were not freshly incurred during the period of insolvency cannot form the basis for a claim. Such liabilities commonly include ongoing contracts of employment, long term leases and hire-purchase arrangements, guarantees, loans and long-term supply and construction contracts.

### 11.5.5 Litigation and Funding

As noted above, if a Company does not have significant assets, a Liquidator contemplating bringing a claim for Insolvent Trading will only be able to pursue a claim if either Creditors or a commercial Litigation Funder is willing to fund the Liquidator's Legal and Accounting Costs and meet any costs the Liquidator may be liable to pay if the claim is unsuccessful.

Funding of this sort can be arranged as follows:

- A creditor or creditors may contribute funds for additional investigations and litigation. Such creditors need to indemnify the Liquidator against any adverse cost orders should the litigation prove unsuccessful. However, should the litigation be ultimately successful, creditors who have funded the litigation may apply to the court to have their claim met in priority to other creditors not participating in the funding arrangement; and/or
- The Liquidator may request funding from an independent, specialist litigation funding firm. Generally, the litigation funder is compensated for its risk by receiving a share of up to 40% from any recoveries arising out of the litigation, where there is usually a minimal return (being a multiple of the risk) also required by the funder. Litigation funding is expensive in this regard, and therefore only feasible where the possible recoveries are significant. Many factors will impact the decision of funding from prospective litigation funders. Some litigation funders may require further information about recoveries from claims against directors and/or the strength of any defence by directors. Accordingly, litigation funders could provide funding conditional on a public examination first being conducted on persons of interest in the affairs of the Company. A public examination is a formal process conducted by a Liquidator in an open court in which the liquidator can make enquires about and obtain information about a company's affairs, history and management. If the Liquidator decides to conduct a public examination, the Liquidator will likely seek legal assistance which can also impact the total sum available to creditors if recoveries are made.

### 11.5.6 Legal controversy

There are two (2) controversial areas of insolvency law that bear on the Company. These are:

- Set-off. Traditionally courts have not allowed set-off of claims such as those for Insolvent Trading. However, in modern cases the Courts have been more generous to parties owing money to an insolvent Company. They have said they would allow the setting off of claims by parties liable to make payments to Liquidators of amounts owed to them by the insolvent Company. This matter remains an unresolved issue at law.
- Financial Support. Until 1993, the test of insolvency in Australia required that a Company be able to meet its liabilities *from its own monies*. This requirement was removed in 1993. Subsequently, the Courts have held that the provision of "financial support" by a related party can be a basis on which a Company is solvent when, without that support, it would clearly be insolvent. Where solvency is disputed, the Court's inquiry needs to

extend to the nature and extent of that support. This remains a controversial issue in insolvency law.

## 11.6 ASSESSMENT OF INSOLVENCY

Our assessment has been based on the information available to us from the Company's records, from information provided by the Directors and their advisors, and Creditors and on the basis of separate investigations of the Company's affairs. As noted above, this assessment has been undertaken on a preliminary basis. If the Company is placed into Liquidation and litigation were contemplated, we would need to undertake a more thorough and rigorous assessment. We would also need to obtain legal advice and gather substantial further evidence, including potentially holding public examinations of the relevant parties.

Based on our investigations conducted to date, it is our preliminary view that the Company became insolvent on a cashflow basis on or around 31 August 2023, when it was unable to pay creditors as and when they fell due.

Our assessment of the Company's solvency is detailed below.

### 11.6.1 Working Capital Analysis

A working capital analysis is generally based on a review of the Company's financial records and management accounts to determine whether there were sufficient current assets to meet current liabilities, including any adjustments to the reported current assets and current liabilities.

The current ratio compares current assets to current liabilities. A current ratio over 1 indicates that there are sufficient current assets to meet current liabilities.

The working capital analysis has been prepared based on the Company's available financial statements and management accounts. However, the Company's management accounts need to be adjusted to reflect certain matters, as follows:

- ▶ The WIP account has remained a stagnant figure in the management accounts after June 2022 for the sum of \$484K. The external accountant has confirmed that the WIP figure would be varied on preparation of the year-end accounts for 2023 (onwards) which has not occurred. The Director advised that WIP was managed separately on a month-end basis to allow progress claims to be submitted to clients, as works were completed on the respective projects. As such, the Director provided us with periodic WIP figures, which we interrogated to the submission and assessment of progress claims over time. Accordingly, we have adjusted the current asset figures to allow for this more accurate reflection of WIP movements on a monthly basis after June 2023.
- ▶ A minor adjustment has been made to Trade Debtors to remove a \$14K error in that rolling balance.
- ▶ The Company had retention arrangements with both clients and certain subcontractors, such that there was a Retentions balance as an asset (receivable from the client) and a Retentions liability (payable to certain subcontractors). We understand that the retentions with both clients and subcontractors were on similar terms, being that 50% was paid on practical

completion and the remaining 50% paid after the defect liability period, usually 12 months after practical completion. We have made an adjustment to deduct 50% of the rolling balances of both figures, to reflect the anticipated recovery of the asset and payment of the liability within 12 months, being a current asset and a current liability.

- The management accounts record a tax (GST) refund as an available recovery for the Company during the period after June 2023. Our enquiries indicate that this is an accounting error, as there were net liabilities owed to the ATO. We have made adjustments to reflect those liabilities in accordance with the ATO records.
- Between July and November 2023, the Directors advanced \$640K to the Company (recorded as non-current liabilities) to contribute to the working capital requirements of the business. Accordingly, the availability of these funds has been added to Current Assets as an available additional source of funding that was available to the Company, which was called on.
- The Directors have provided details of a minor error in the creditor balance at July 2023, where an invoice was raised entered in respect of materials that were delivered the following month. An adjustment was made accordingly.

The adjusted working capital analysis is summarised below:

| Source of Information                 | External Prepared Financial Statements |              |              | Management Accounts |              |              |              |              |              |                |
|---------------------------------------|--|--------------|--------------|---------------------|--------------|--------------|--------------|--------------|--------------|----------------|
| Adjusted Working Capital Analysis     | 30/06/2020                             | 30/06/2021   | 30/06/2022   | 30/06/2023          | 31/07/2023   | 31/08/2023   | 30/09/2023   | 31/10/2023   | 30/11/2023   | 31/12/2023     |
| Current Assets                        | 878,345.59                             | 1,475,675.39 | 1,091,107.34 | 1,599,244.79        | 2,770,250.73 | 2,768,031.50 | 3,038,673.34 | 1,903,505.26 | 1,672,037.91 | 1,391,469.18   |
| Adjustment for Trade Debtors          | -                                      | -            | -            | (14,608.00)         | (14,608.00)  | (14,608.00)  | (14,608.00)  | (14,608.00)  | (14,608.00)  | (14,608.00)    |
| Adjustment for WIP                    | -                                      | -            | -            | 1,196,451.28        | (153,876.62) | (116,580.85) | (277,429.16) | (382,286.07) | (129,152.84) | (333,595.97)   |
| Adjustment for Retention              | -                                      | -            | -            | (407,074.52)        | (440,419.91) | (440,419.91) | (392,550.73) | (348,215.89) | (348,215.89) | (348,215.89)   |
| Adjustment for Tax Refund             | -                                      | -            | -            | (175,224.60)        | (183,787.06) | (188,764.08) | (443,563.70) | (145,152.06) | (104,614.93) | (49,655.84)    |
| Adjustment for Funding from Directors | -                                      | -            | -            | -                   | 640,000.00   | 260,000.00   | 60,000.00    | 60,000.00    | -            | -              |
| Adjusted Current Assets               | 878,345.59                             | 1,475,675.39 | 1,091,107.34 | 2,198,788.96        | 2,617,559.15 | 2,267,658.67 | 1,970,521.75 | 1,073,243.25 | 1,075,446.26 | 645,393.49     |
| Current Liabilities                   | 1,709,595.97                           | 1,274,765.33 | 771,373.73   | 1,820,130.45        | 2,664,140.02 | 2,978,973.39 | 2,780,607.19 | 2,126,961.24 | 1,910,935.83 | 1,907,093.73   |
| Adjustment for Retention              | -                                      | -            | -            | (202,947.22)        | (209,544.72) | (222,318.22) | (231,915.97) | (236,983.26) | (229,175.76) | (222,666.26)   |
| Adjustment for ATO Liability          | -                                      | -            | -            | 62,655.62           | 53,689.04    | 44,239.04    | 34,679.76    | 61,919.58    | 38,627.87    | 39,002.07      |
| Adjustment for Disputed Creditor      | -                                      | -            | -            | -                   | (55,380.43)  | -            | -            | -            | -            | -              |
| Adjusted Current Liabilities          | 1,709,595.97                           | 1,274,765.33 | 771,373.73   | 1,679,838.86        | 2,452,903.92 | 2,800,894.22 | 2,583,370.99 | 1,951,897.57 | 1,720,387.94 | 1,723,429.54   |
| Adjusted Working Capital              | (831,250.38)                           | 200,910.06   | 319,733.61   | 518,950.10          | 164,655.23   | (533,235.55) | (612,849.24) | (878,654.32) | (644,941.69) | (1,078,036.06) |
| Adjusted Current Ratio                | 0.5138                                 | 1.1576       | 1.4145       | 1.3089              | 1.0671       | 0.8096       | 0.7628       | 0.5498       | 0.6251       | 0.3745         |

Based on the above, the Company appears to have a working capital deficiency from 31 August 2023, which deteriorates thereafter.

### 11.6.2 Balance Sheet Analysis

A summary of the net asset position is provided in the table below:

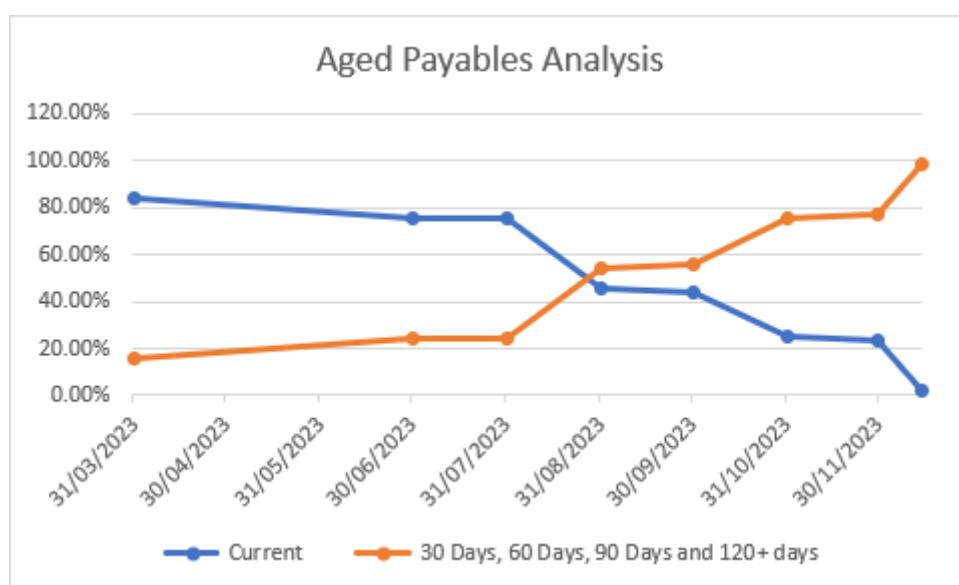
|                                | EXTERNAL<br>30-Jun-20<br>(\$) | EXTERNAL<br>30-Jun-21<br>(\$) | EXTERNAL<br>30-Jun-22<br>(\$) | MANAGEMENT<br>ACCOUNT<br>30-Jun-23<br>(\$) | MANAGEMENT<br>ACCOUNT<br>14-Dec-23<br>(\$) |
|--------------------------------|-------------------------------|-------------------------------|-------------------------------|--|--|
| Total Assets                   | 1,648,345.59                  | 1,712,638.86                  | 1,213,149.90                  | 2,162,258.31                               | 1,557,277.50                               |
| Total Liabilities              | 1,709,595.97                  | 1,914,765.33                  | 1,645,072.48                  | 2,823,829.20                               | 3,550,792.48                               |
| Net Asset Surplus/(Deficiency) | (61,250.38)                   | (202,126.47)                  | (431,922.58)                  | (661,570.89)                               | (1,993,514.98)                             |

The Company has reported a net asset deficiency since 2020, and the deficiency continues to deteriorate along the trading period until the date of appointment of the Administrators. We note that the deficiency largely reflects the loans from the Directors which were not called up.

### 11.6.3 Aged Payables Analysis

A review of the Aged Payable reports extracted from the management accounts indicate that creditors remain largely current up to July 2023. However, from August 2023, the ageing of creditor claims deteriorates significantly, indicative of the Company's insolvency from end of August 2023. Below is a summary of the Aged Payable reports and our analysis of the ageing:

| Date       | Current | 30 Days, 60 Days, 90 Days and 120+ days |
|------------|---------|---|
| 31/03/2023 | 84.29%  | 15.71%                                  |
| 30/06/2023 | 75.95%  | 24.05%                                  |
| 31/07/2023 | 75.49%  | 24.51%                                  |
| 31/08/2023 | 45.64%  | 54.36%                                  |
| 30/09/2023 | 44.12%  | 55.88%                                  |
| 31/10/2023 | 24.84%  | 75.16%                                  |
| 30/11/2023 | 23.01%  | 76.99%                                  |
| 14/12/2023 | 1.75%   | 98.25%                                  |



#### 11.6.4 Indicators of Insolvency

In addition, we have observed the following facts relevant to the solvency of the Company:

- The Company reported escalating net trading losses over recent years, particularly in FY2023 (and after). The gross profit margin decreased from 13.83% in FY2021 to 11.04% in FY2022 then dramatically decreased to 1.24% in FY2023. The Company's significant trading losses during FY2023, were representative of operating on fixed price construction



contracts, whilst production costs materially increased (an industry wide issue of recent time).

- The Directors have been contributing funding to the Company via unsecured loans, to support its working capital requirements. The Company's records indicate the outstanding Directors loan balance as at the date of appointment of the Administrators was circa \$1.6M.
- The Company appears to have entered into multiple payment arrangements with the ATO. The amounts involved were relatively minor, however, indicative of the need for accommodations in the cashflow of the business.
- The aging of the trade creditors significantly deteriorates after August 2023, illustrative of the Company's inability to pay debts as and when they fell due for payment.

In light of the above, it is our preliminary view that the Company became insolvent on a cashflow basis from around August 2023.

#### 11.6.5 Potential Amount of Claim

Determining the value of an insolvent trading or breach of duty claim will generally involve a forensic review of the debts incurred after the date on which it can be maintained that the Company was insolvent.

Based on the creditor claims reported in the Company's management accounts, we estimate that the debts incurred with external parties after 31 August 2023 totals \$1,137,054.

If the Company is placed into Liquidation, a Liquidator may conduct further enquiries on the solvency and claims.

#### 11.6.6 Defences Available

In respect of pursuing insolvent trading claims, we note that a defence may be available under the Act where a director can establish:

- There were reasonable grounds to expect that the company was solvent, and they actually did so expect;
- They did not take part in management for illness or some other good reason;
- They took all reasonable steps to prevent the company incurring the debt; or
- If the Director availed himself of the protections under the Safe Harbour regime.

We are not aware that any of the above defences are available to the Directors. However, a Liquidator would conduct further investigations and consider potential defences, before pursuing any recovery action.

#### 11.6.7 Recovery of Claim

In respect of considering whether an insolvent trading or breach of duty claim could be pursued, a Liquidator would need to have regard to the financial positions of the potential defendants, being the Directors, Mr Marc Morabito and Mrs Vicki Morabito. We have also confirmed that the Company and the Directors did not maintain a D&O insurance policy that could respond to any claims.

We have requested a statutory declaration with respect to the Directors' personal financial position. The Directors have declined to provide same.

Our investigations indicate that the Directors are the registered proprietors of two (2) properties in Castle Hill and Kellyville.

- ▲ The Castle Hill property is a commercial premise, from which the Company previously operated under a rental arrangement. Our enquiries indicate the Castle Hill property is unencumbered. The property is being marketed for sale currently at a price guide of around \$1.6M (excl GST). We note that there may be a capital gains tax liability triggered upon disposal, depending on the price achieved.
- ▲ The Kellyville property is a residential property. Publicly available information suggests that the Kellyville property may have a value of around \$2M to \$2.5M. We note that the Kellyville property has a registered mortgage over its title, which recently changed, and the equity position (if any) is unknown.

Based on this publicly available information, it appears the Directors may have financial capacity to discharge an insolvent trading claim should one be brought against them.

Whilst a Liquidator may form the view that an insolvent trading claim is available, any successful application for Insolvent Trading will result in all creditors that have been admitted to proof receiving a return (subject to sufficient funds being available after the Liquidator's remuneration and fees and any sum payable to a litigation funder). The Company's records show that director loans are recorded in its balance sheets totalling a sum of \$1.6M. If a Liquidator admits the POD lodged by the Directors for the director loans, the Directors would seek to 'notionally' receive an amount.

In the event an insolvent trading claim is pursued, we anticipate that significant costs would be incurred, for which a Liquidator would require funding, including protection from adverse costs. We are also advised that should an insolvent trading claim be commenced, the Directors would vigorously defend same and security would be sought for their costs of defending the claim. Given the unpredictable nature of litigation, it is difficult to accurately estimate the costs that may be incurred. Furthermore, insolvent trading claims are to some extent speculative and are subject to the risks of litigation and the pursuit of enforcement of any successful judgement.

Regardless, we have sought preliminary advice on the potential insolvent trading claim, including legal costs. We have also considered funding requirements to pursue such a claim, on the basis that priority creditor claims would be discharged, and external litigation funding sought to pursue the litigation. We have modelled those costs in the estimated outcome statement, for creditors consideration in a Liquidation scenario.

We note that a Liquidator (if appointed) can consider selling the causes of action on a commercial basis, to obtain a return in a quicker timeframe, usually at a substantial discount given the removal of

risk. It would be open to any creditor or any other party to submit an offer to the Liquidators, should they have such an interest.

However, in this regard, we note that the Directors have proposed a DOCA, for creditors to consider as a commercial alternate to pursuing liquidation claims, such as the potential insolvent trading claim discussed herein.

## 12. VOIDABLE TRANSACTIONS

Voidable transactions include transactions such as unfair preferences, uncommercial transactions, unfair loans, unreasonable director related transactions and circulating security interests created within six months before the relation-back day, which is the date of the appointment of the Administrators.

These transactions usually relate to the period six (6) months prior to the date of our appointment; however, in certain circumstances, this period can be extended to four (4) years in relation to transactions with related entities and up to ten (10) years if the transactions were entered into with related parties with the intention of fraud.

ARITA has issued a creditor information sheet “Offences, Recoverable Transactions and Insolvent Trading” providing further information about voidable transactions. This information sheet is attached as **Annexure “13”**.

The transactions identified, if determined to be voidable, may be recoverable under the following provisions:

### 12.1 VOIDABLE TRANSACTION PROVISIONS

#### 12.1.1 Unfair Preferences

An unfair preference results when the Company and a Creditor are parties to a transaction(s) and the Creditor receives more than it would receive if the transaction(s) are set aside, and the Creditor proved for the debt in the winding up. If it is ultimately determined that certain payments are potentially recoverable as unfair preferences, it would be necessary to establish:

- that the Company was insolvent at the time the payments were made; and
- that the recipient had reasonable grounds to suspect that the Company was insolvent at that time or would become insolvent as a result of the payment.

The clawback provisions available to the Liquidator relate only to payments to unrelated parties made within six (6) months from the date of our appointment, if the Company is insolvent at that time, known as the RBP.

We refer to our previous discussion in relation to our preliminary investigations on the Company’s solvency position. It is our preliminary view that the Company became insolvent on or around 31 August 2023. Accordingly, the RBP is 1 September 2023 to 14 December 2023.

Our preliminary investigations have identified payments totalling \$118K were paid to three (3) creditors which might be of preferential nature and thus voidable against the Liquidator, should one be appointed. A summary of these payments is provided in the table below:

| Party        | Amount<br>\$      |
|--------------|-------------------|
| ATO          | 30,000.00         |
| Party A      | 66,000.00         |
| Party B      | 22,000.00         |
| <b>Total</b> | <b>118,000.00</b> |

We provide our comments in relation to the recoverability of the above potential preference payments as follows:

- In order to prove an unfair preference payment, the onus is on the Liquidator to prove the payment was outside the ordinary course of the business, the party had suspicion of the Company's solvency difficulties and cannot rely on a defence where the payment was received in good faith;
- Pursuant to Section 588FA(3) of the Act, a creditor could rely on a running account defence to an unfair preference claim, where there are multiple transactions between the debtor and the creditor over the relevant period; and
- Recovery costs to pursue an unfair preference claim could outweigh the potential recovery amount, in which the claim may become uncommercial to pursue.

We have doubts regarding the recoverable value of the payments, due to concerns that defences are available, and the claims being insufficient to justify the costs and risks involved. Overall, we do not consider these claims to be commercially viable to pursue, other than the possible claim against the ATO.

Further investigations would be undertaken by a Liquidator if appointed.

#### 12.1.2 Unreasonable Director Related Transactions (S588FDA)

A transaction is an unreasonable Director-related transaction of the Company if:

- The transaction is a payment, a conveyance, transfer or disposition of property, the issue of securities, or incurring of an obligation to make a payment, disposition or issue by the Company.
- The transaction is to a Director or close associate of the Director or for their benefit.
- A reasonable person in the Company's circumstances would not have entered into the transaction having regard to the benefit or detriment to the Company or other parties involved in the transaction.
- The transaction was entered into during the four (4) years leading to our appointment.

As previously discussed, the Company loaned funds totalling \$950K to Morabito Holdings (a company with common directors as the Company) in respect of legal proceedings commenced against Morabito Holdings in the Supreme Court of NSW. Ultimately, Morabito Holdings was unsuccessful in defending the proceedings and judgement was awarded against Morabito Holdings.

We have considered whether the loan to Morabito Holdings could be an unreasonable director-related transaction. It appears that the Directors caused the funds to be loaned under the belief that Morabito Holdings would be successful in defending the claim, and the loan would therefore be recoverable. It is only with the benefit of hindsight, where Morabito Holdings was unsuccessful and ultimately placed into liquidation, that the Company was unable to recover this loan. Accordingly, we are of the opinion that this does not constitute an unreasonable director-related transaction. We also note that these loans were advanced over 3-4 years ago, and therefore it is difficult to argue that the loan had a direct relationship to the failure of the Company.

Our preliminary investigations have not identified any other unreasonable director-related transactions.

### 12.1.3 Unfair Loans (S588FD)

A loan is unfair if it is made to a Company at extortionate interest rates or the charges in relation to the loan are extortionate. In considering whether interest and charges are extortionate, regard must be had to the following:

- Risk the lender is exposed to;
- Value of the security;
- Term;
- Repayment schedule; and
- Amount of loan.

Our preliminary investigations have not identified any unfair loans.

### 12.1.4 Uncommercial Transactions

A transaction is considered uncommercial if it is made at a time when the Company is insolvent, and it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction having regard to:

- The benefits or detriment to the Company of entering into the transaction; and
- The prospective benefits to other parties to the transaction.

Our preliminary investigations have not identified any uncommercial transactions.

### 12.1.5 Discharge of Related Party Debts (S588FH)

A transaction is considered to have discharged a related party's debt if funds from the Company are used to pay that Creditor which has had the effect of discharging, to the extent of a particular amount, a liability (whether under a guarantee or otherwise) of a related entity the Company.

As previously discussed, the Company loaned funds totalling \$950K to Morabito Holdings in respect of legal proceedings commenced against Morabito Holdings. This was properly recorded as an unsecured loan to Morabito Holdings in the Company's financial accounts, however was written off

when Morabito Holdings was placed into liquidation in August 2021. We do not consider this to be a voidable transaction in discharging related party debts that is recoverable given the lapse of time.

We have not identified any other claim for discharge of related party debts.

#### **12.1.6 Circulating Security Interests Created Within Six Months before the Relation-Back Day (S588FJ)**

A circulating security interest in property of the Company created within six (6) months before the relation-back day may be void against a Liquidator. However, circulating security interests that are created within this period for consideration paid at or after the date of creation remains valid.

We have not identified any securities registered within six (6) months before the relation-back day.

### **13. BREACH OF DUTY CLAIMS**

We have considered whether there are any potential breach of duty claims to be pursued against the Directors or other parties.

#### **13.1 INSOLVENT TRADING**

As discussed above, the Company was likely insolvent on a cashflow basis since August 2023, which the Directors knew or ought to have known. By continuing to incur debts after this time they arguably caused loss to those unsecured creditors.

Accordingly, as an alternative course of action to an insolvent trading claim, by allowing the Company to continue incurring debts after it was arguably insolvent, the Directors may have breached their duties, where they may have:-

- ▲ Failed to act with reasonable care and diligence; and
- ▲ Failed to act in good faith.

The loss suffered by creditors in respect of this conduct is effectively a duplication of the earlier discussed insolvent trading claim.

The Directors, through their solicitors, have advised that any insolvent trading claim, should one be brought against them, would be vigorously defended and security would be sought for their costs of defending the claim. The potential recovery, and risks, are discussed elsewhere herein.

#### **13.2 LOANS TO MORABITO HOLDINGS**

We refer to the earlier discussion of the loan advanced to related entity Morabito Holdings, which were ultimately written off. We have considered whether the provision of funding to Morabito Holdings may represent a breach of duties by the Directors.

It is our preliminary view that the Directors sought to advance the Company's funds to Morabito Holdings under the belief that Morabito Holdings would be successful in defending the claim. It is difficult to perceive an argument that there was commercial merit in expending such funds without the intent to recover same.

As such, it is our preliminary view that there has not been a breach of duties by the Directors in respect of this transaction.

### 13.3 PROGRESS CLAIM DECLARATIONS

There were three (3) projects on foot at the time the Company ceased trading. We have conducted a high-level review of the most recent progress claims submitted by the Company to the clients on those projects. Noting the deterioration in the aging of creditor claims after August 2023, it appears likely that the declarations made in recent progress claims in respect of subcontractor payment may be incomplete. We note that the Directors dispute that the declarations contained errors.

This is a preliminary observation only, and a Liquidator if appointed, would need to conduct a forensic review claim-by-claim to determine whether the declarations in fact, contained omissions.

Furthermore, creditors should be aware that this matter may not result in a commercial recovery. Deficiencies in recent progress claim declarations arguably relate to the same potential insolvent trading claim discussed earlier, in respect of the losses suffered by those creditors. Accordingly, this is not an additional recovery, rather a potential offence for ASIC or the clients to consider.

## 14. SUMMARY OF POTENTIAL OFFENCES

In summary, we consider there are various potential contraventions of Act to consider in a Liquidation scenario:

| Section | Potential Offence Identified  | Summary of Offence |
|---------|---|--------------------|
| 180     | Failure to exercise reasonable care and diligence in discharge of Director's duties | Insolvent Trading  |
| 181     | Failure to act in good faith  | Insolvent Trading  |
| 588G    | Director's duty to prevent insolvent trading  | Insolvent Trading  |

### 14.1 REPORT TO ASIC

We intend to lodge a confidential report to ASIC pursuant to Section 438D of the Act, in respect of our preliminary investigations and any potential offences identified. This report will be lodged shortly.

Should the Company be wound up, a Liquidator is required to complete an investigation into the Company's affairs and, if offences are identified, or if the Company is unable to pay its Creditors more than 50 cents in the dollar, lodge a report with ASIC pursuant to Section 533 of the Act.

## 15. DEED OF COMPANY ARRANGEMENT PROPOSAL

As discussed earlier, we have been working with the Directors to explore whether a DOCA could be proposed as a commercial outcome for the Company's creditors to consider, providing a potentially improved return to creditors than a Liquidation scenario. We engaged in negotiations with the Directors and their advisors, and on 19 January 2024, we received the DOCA proposal attached at **Annexure "7"**.

We summarise the key terms of the proposal below:

- Deed Proponents are Marc Morabito and Vicki Morabito.
- Deed Administrators will be Jonathon Keenan and Peter Krejci.
- A Deed Fund will be established consisting of:
  - Funds held by the Company in Administration on execution of the DOCA;
  - The Deed Proponents will source funds to contribute \$400,000 to the Deed Fund within fourteen (14) days of execution of the DOCA;
  - All proceeds from debtors (including but not limited to retentions held by clients for book value of \$696K);
  - Any remaining plant and equipment of the Company; and
  - Any GST recoveries available to the Company.
- The Deed Fund will be distributed as follows:
  - Firstly, the Administrators' unpaid costs, including expenses, remuneration and disbursements;
  - Secondly, the Deed Administrators' unpaid costs, including expenses, costs, remuneration and disbursements;
  - To discharge all priority creditor claims (former employees); and
  - The balance of funds to be distributed to the Participating Unsecured Creditors *pari passu*.
- Upon execution of the DOCA, the Directors will execute a Deed of Forgiveness to extinguish all claims they have against the Company, including but not limited to their loan reported at \$1.65M. The Directors will not participate in any distribution from the DOCA.
- All Participating Creditor claims will be extinguished as against the Company and the Directors upon effectuation of the DOCA.
- The Deed Administrators will endeavour to declare a dividend as soon as possible, and by no later than 1 June 2025, noting that the recovery of debtor/retention amounts may take twelve (12) months from practical completion of the respective projects.
- Control of the Company will revert to the Directors upon execution of the DOCA. The Directors will ensure that the Company does not incur any new debts or liabilities during the DOCA period.
- Funds to be distributed and claims to be adjudicated, as if the Company was in Liquidation.



- Relevant provisions of Schedule 8A of the Corporations Act to be adopted.
- The DOCA will terminate upon satisfaction of its terms, or if it is determined unable to achieve its objectives, including resolution of creditor or order of the Court.
- Upon completion of the DOCA, the Directors intend to have the Company deregistered.

Our observations of the DOCA proposal are as follows:

- The DOCA proposal is viable, providing a more certain and likely improved return for participating creditors in a timely manner, as compared to Liquidation.
- The \$400K cash contribution is to be sourced by the Deed Proponents, which from our investigations into their personal financial affairs, they appear to have the capacity. We note that there is minimal risk, as the funds are required to be contributed within fourteen (14) days of the DOCA. If the Deed Proponents fail to pay the cash contribution within this timeframe, the proposal mitigates the risk by providing the Deed Administrators discretion to terminate the DOCA without delay.
- There is projected to be sufficient funds available to satisfy the costs and priority claims in full, with a partial return to unsecured creditors.
- The Directors are required to assist the Deed Administrators during the DOCA period, including to provide reasonable assistance with the recovery of the retention funds held by the clients, at no cost to the DOCA.
- The relevant provisions of the Corporations Act are included, such that a variation or termination of the DOCA could be pursued if the circumstances change.

**In conclusion, the proposed DOCA achieves the object of part 5.3A of the Act, in that our projections indicate that the DOCA may provide a more certain and improved return for the participating creditors in a timely manner, as compared to Liquidation. As such, it is our recommendation that creditors accept the proposed DOCA.**

## 16. ESTIMATED RETURN TO CREDITORS

The likelihood of a dividend being paid to creditors will be affected by a number of factors including:

- the size and complexity of the administration.
- the amount of voidable transactions recovered and the costs of these recoveries;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including secured, priority and unsecured creditor claims; and
- the volume of enquiries by creditors and other stakeholders.

Set out in **Annexure “8”** is an analysis of the estimated returns that may be available to creditors under the proposed DOCA as compared to a Liquidation scenario. Please note these figures are estimates only, and the actual results may vary materially.

In summary, the estimated return are as follows:

| Summary of Return to Creditors | DOCA<br>High<br>Cents/\$ | DOCA<br>Low<br>Cents/\$ | Liquidation<br>High<br>Cents/\$ | Liquidation<br>Low<br>Cents/\$ |
|--------------------------------|--------------------------|-------------------------|---------------------------------|--------------------------------|
| Priority Creditors             | 100                      | 100                     | 100                             | 16                             |
| Unsecured Creditors            | 29                       | 14                      | 13                              | Nil                            |

We note that the above returns are estimates only, and are subject to various estimates and assumptions which may ultimately prove to be inaccurate. As such, the returns to creditors may vary from those above. In particular, we note that the recoverable value of the retentions, or creditor claims from clients, will impact the return to the unsecured creditors.

Otherwise, in a Liquidation, any return to creditors is contingent on successfully pursuing an insolvent trading claim via litigation against the Directors, the outcome from which is uncertain. We anticipate that litigation may take at least two (2) years to run.

Overall, the proposed DOCA is projected to produce an improved return to creditors, as compared to Liquidation. As such, it is our recommendation that the creditors support the DOCA.

We encourage any creditors who have not already done so, to lodge a Formal Proof of Debt (“POD”) together with relevant supporting documentation. A copy of the POD is attached as **Annexure “2”** in this regard.

## 17. RECOMMENDATION OF ADMINISTRATORS

Pursuant to Rule 75-225(3) of the IPR, the Administrators are required to make a statement setting out the Administrators’ opinion about each of the following matters and provide their reasons for those opinions:

- Whether it would be in the Creditors’ interests for the Company to execute a DOCA;
- Whether it would be in the Creditors’ interests for the administration to end;
- Whether it would be in the Creditors’ interests for the Company to be wound up.

We set out below our opinions as to each of these options:

### 17.1 DEED OF COMPANY ARRANGEMENT

Creditors may resolve that the Company should execute a DOCA.

Under the proposal, the Deed Proponents are required to contribute \$400K within fourteen (14) days of execution of the DOCA. Furthermore, the Directors will forgive their significant loan to the Company, and not participate in any dividend. The DOCA proposal also provides for orderly accounting and potential recovery of any client debtor/retention amounts, which may add value to the Deed Fund for creditors.

We note that the Company has ceased to trade, and the DOCA proposal effectively represents a commercial compromise of any and all potential claims against the Directors in a Liquidation.

The Directors dispute that they have any exposure for insolvent trading (or other) claims, and have advised that they would defend any litigation brought by a Liquidator vigorously. In this regard, we note that pursuing litigation in a Liquidation is inherently risky and expensive. We have sought preliminary advice on the potential claims, and provided creditors with projections of the costs involved and range of recoveries, which may be nothing on a pessimistic basis.

Consistent with the object of Part 5.3A of the Act, our estimates indicate that the proposed DOCA may provide a more certain and improved return to priority and participating unsecured creditors, as compared to a Liquidation scenario where any return is uncertain and subject to litigation.

**Based on the above factors, we recommend that the creditors resolve in favour of the proposed DOCA.**

## **17.2 ADMINISTRATION TO END**

Creditors may resolve that the Administration of the Company should end and that control of the Company should be handed back to its Directors.

The Company is insolvent and not expected to return to solvency without a DOCA being implemented.

**We do not recommend that creditors resolve the Administration end on the basis that the Company is insolvent.**

## **17.3 LIQUIDATION**

Should creditors decide to wind up the Company, the Administration would convert to a Creditors Voluntary Liquidation and we would become the Liquidators, unless creditors resolved to appoint an alternative Liquidator.

One of the roles of the Liquidators would be to complete investigations into the reasons for the Company's failure and to identify any causes of action or voidable transaction recoveries against any entity or individual. The Liquidators are also required to report their findings to ASIC in the event that offences are identified.

Any return to unsecured creditors is dependent on the successfully pursuing recoveries from the potential insolvent trading claim against the Directors. As mentioned above, the Directors dispute the claim and have advised that they will defend any action brought. We have sought preliminary advice on the potential claims, and prima facie, there appears to be a reasonable claim to pursue. However, this will require litigation which is risky and will require funding to pursue. We have modelled the potential returns to creditors from that litigation, based on the available information, advice and our experience pursuing such claims.

We note that the Directors have refused to provide information about their personal financial capacity, however based on our enquiries, they appear to hold assets personally. It is likely that a Liquidator may run a public examination to test potential defences and capacity to pay, before commencing proceedings. The Liquidator would also require funding, the costs for which we have included in the estimated returns. Overall, we anticipate that a Liquidator pursuing a recovery via

litigation may take at least two (2) years, and there is no certainty of a return given the inherent risks in such claims, including capacity to recover once judgment is handed down.

In comparison, the DOCA proposal provides a more certain and likely improved return to priority and participating unsecured creditors.

**We do not recommend that creditors resolve to wind up the Company.**

## 18. RECEIPTS AND PAYMENTS

The receipts and payments up to date of this report are attached as “**Annexure 9**”.

## 19. REMUNERATION OF ADMINISTRATORS / DEED ADMINISTRATORS / LIQUIDATORS

In compliance with the ARITA Code of Professional Practice and the requirements of the Act, we are required to provide detailed information in respect of our remuneration. We attach our Remuneration Approval Report as **Annexure “10”** which details the major tasks that have been and will be conducted in this administration. Our remuneration is calculated on the time spent by staff at hourly rates used by BRI Ferrier, as detailed in our Remuneration Matrix. This document is contained within the Remuneration Report. In addition, a schedule of hourly rates are attached as **Annexure “11”**.

To date, our remuneration has been calculated on this “Time-Cost” basis, and we propose that it continue to be calculated on this basis. The Time-Cost method for calculating remuneration reflects the cost to our firm of the work undertaken, rather than a measure of the assets realised. In our view, the Time-Cost method is the preferable basis for calculating remuneration in an engagement such as this.

For Creditors’ information, ASIC information sheets (**Annexure “12”**) that relate to specific circumstances once an insolvency practitioner is appointed to a Company and approval of remuneration can be found at the following websites:

- <http://www.asic.gov.au/insolvencyinfosheets>
- <http://www.arita.com.au/insolvency-you/insolvency-explained/insolvency-fact-sheet>

### 19.1 VOLUNTARY ADMINISTRATION PERIOD

Creditors will be asked to approve the Administrators’ remuneration at the Second Meeting of Creditors for the costs incurred.

Please refer to the Remuneration Approval Report, attached as **Annexure “10”** for further details.

### 19.2 DEED OF COMPANY ARRANGEMENT PERIOD

If creditors approve the DOCA Proposal, the Deed Proponent has fifteen (15) business days to execute the DOCA. If executed, we, Jonathon Keenan and Peter Krejci, will be appointed Deed Administrators. In those circumstances, at the forthcoming meeting, we will also seek approval for our estimated remuneration to conduct the DOCA. The attached remuneration report details an estimate of the costs likely to be incurred in the DOCA. It is an estimate only and may change depending on matters which occur during the course of the DOCA.

Please refer to the Remuneration Approval Report, attached as **Annexure “10”** for further details.

### 19.3 LIQUIDATION PERIOD

If the Company is placed into liquidation at the forthcoming Second Meeting of Creditors, we will be appointed Liquidators of the Company, unless creditors resolve to appoint an alternate Liquidator. We note that we have not received an alternate consent to act as Liquidator.

If we are to be appointed Liquidators, we will also seek approval for our estimated remuneration in conducting the Liquidation. The attached remuneration report details an estimate of the initial costs likely to be incurred in a liquidation scenario. It is an interim estimate only and actual costs may be quite different, depending on the work required and/or if litigation is pursued, which may be significant. Therefore, the estimate may change depending on matters which occur during the course of the liquidation.

Please refer to the Remuneration Approval Report, attached as **Annexure “10”** for further details.

### 20. SECOND MEETING OF CREDITORS

The Second Meeting of Creditors will be held on Wednesday, 31 January 2024 at 11:00AM AEDT. The formal Notice of Meeting is attached as **Annexure “1”** for your reference. Virtual meeting facilities will be available.

The purpose of the Second Meeting of Creditors is to enable Creditors to consider the Administrators' Report pursuant to Rule 75-225 of the IPR and to determine the Company's future.

To participate as a Creditor, you should:

- Provide us with a Proof of Debt detailing your claim to be a Creditor. Proofs of Debt are enclosed as **Annexure “2”**. If you have previously provided a proof of debt and wish to supplement it, you may do so. **Otherwise, Creditors whose proofs were accepted for voting at the First Meeting are not required to be re-lodged for the Second Meeting of Creditors.**
- Creditors may attend and vote in person, by proxy or by attorney. The appointment of a proxy, copies of which is attached as **Annexure “3”**, must be in accordance with Form 532. Persons attending on behalf of a corporate entity are required to have a proxy signed on behalf of that entity. **Proxies from the First Meeting cannot be used at the Second Meeting and it is necessary for Creditors attending to submit new proxies for the Second Meeting of Creditors.**
- A specific proxy can be lodged showing approval or rejection of each proposal. Creditors, in lodging specific proxies, need to be mindful that their intended voting patterns can become academic or “contradictory” where the outcome of an earlier vote (in the order of proceedings) is determined in a way which could influence or change their intended voting. Proxy forms or facsimiles thereof must be lodged at my office by 4:00 PM one (1) business day prior to the meeting.

### 21. QUERIES

The BRI Ferrier staff member responsible for this matter is as follows:

- ▲ BRI Contact: Frane Babic
- ▲ Phone: (02) 8263 2333
- ▲ Email: [FBabic@brifnsw.com.au](mailto:FBabic@brifnsw.com.au) (preferred)
- ▲ Mailing: GPO Box 7079, Sydney NSW 2001

Yours faithfully,

**MORABUILT PTY LTD**  
**(ADMINISTRATORS APPOINTED)**



**JONATHON KEENAN**  
Joint and Several Administrator



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "1"**  
**Notice of Second Meeting of Creditors**

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**NOTICE OF SECOND MEETING OF CREDITORS**

**MORABUILT PTY LTD  
(ADMINISTRATORS APPOINTED)**

**ACN 630 816 830 / ABN 90 630 816 830  
("THE COMPANY")**

NOTICE is given that a Second Meeting of the Creditors of the Company will be held at the offices of BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000 on **Wednesday, 31 January 2024 at 11:00 AM AEDT**.

Virtual meeting technology will also be made available should creditors wish to attend the meeting virtually. To attend virtually, creditors will need to register their details at the following link:

<https://us06web.zoom.us/meeting/register/tZwvc-GpqTkrEtCiW962uTfLpeSvTCXhFENW>

**A G E N D A**

1. To receive the Report of the Administrators and receive questions from creditors.
2. To determine the current remuneration of the Administrators.
3. To determine the future remuneration of the Administrators.
4. For Creditors to resolve:
  - a. That the Company execute a Deed of Company Arrangement; or
  - b. That the administration should end; or
  - c. That the Company be wound up.
5. To consider the internal disbursements of the Administrators.
6. If Creditors resolve to enter into a Deed of Company Arrangement;
  - a. To consider approving the remuneration of the Deed Administrator(s); and
  - b. To consider approving the internal disbursements of the Deed Administrator(s).
7. If Creditors resolve to wind up the Company:
  - a. To consider approving the remuneration of the Liquidator(s);
  - b. To consider approving the internal disbursements of the Liquidator(s); and
  - c. To consider the early destruction of the Company books and records.



8. To consider the appointment of a Committee of Inspection.
9. To consider any other business that may be lawfully brought forward.

Proxies to be used at the meeting should be lodged at the office of the Administrators by 4:00 PM AEDT on the business day prior to the meeting. A creditor can only be represented by proxy or by an attorney pursuant to Insolvency Practice Rules (Corporations) (IPR) 75-150 & 75-155 or, if a body corporate, by a representative appointed pursuant to Section 250D of the Corporations Act 2001.

#### Special Instructions for Meeting

Attendees who wish to attend the meeting virtually are required to register to attend the meeting at the above link.

You will also need to provide a Formal Proof of Debt Form (including documentation to support your claim) and proxy form, if you are a corporate creditor or wish to be represented by another person.

In accordance with IPR 75-85, creditors will not be entitled to vote at this meeting unless they have previously lodged particulars of their claim against the Company with the Administrators and their claim has been admitted for voting purposes wholly or in part by the Administrators.

Upon receipt of a valid Formal Proof of Debt Form and Proxy, a link to access the virtual meeting will be emailed to you. This link will be unique for each attendee and unable to be shared with other parties. Telephone dial-in details will also be available for the virtual meeting. Those wishing to attend via telephone will also be required to complete the above registration process.

In accordance with IPR 5-5, a vote taken on a “show of hands” includes a vote taken using any electronic mechanism that indicates the intentions of a person in respect of a vote. This may include an attendee clicking a “raise a hand”, or similar button, on a virtual meeting computer program, as well as verbally indicating their vote if dialling in to the meeting.

This definition is necessary to ensure that a show of hands may be used at a virtual meeting as an alternative to a poll.

DATED this 22<sup>nd</sup> day of January 2024



JONATHON KEENAN  
JOINT AND SEVERAL ADMINISTRATOR

BRI FERRIER  
Level 26  
25 Bligh Street  
Sydney NSW 2000



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "2"**  
**Formal Proof of Debt or Claim Form**

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FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Joint and Several Administrators of Morabuilt Pty Ltd (Administrators Appointed) ACN 630 816 830

1. This is to state that the company was, on 14 December 2023 <sup>(1)</sup> and still is, justly and truly indebted to<sup>(2)</sup> (full name):

.....  
(‘Creditor’)

.....  
of (full address)

for \$ ..... dollars and ..... cents.

Particulars of the debt are:

| Date | Consideration <sup>(3)</sup><br>state how the debt arose | Amount \$ | GST<br>included \$ | Remarks <sup>(4)</sup><br>include details of voucher substantiating payment |
|------|--|-----------|--------------------|---|
|      |  |           |                    |   |

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any manner of satisfaction or security for the sum or any part of it except for the following: .....

Insert particulars of all securities held. Where the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, specify them in a schedule in the following form:

| Date | Drawer | Acceptor | Amount \$ c | Due Date |
|------|--------|----------|-------------|----------|
|      |        |          |             |          |

☐ I am **not** a related creditor of the Company <sup>(5)</sup>

☐ I am a related creditor of the Company <sup>(5)</sup>  
relationship: .....

3A.<sup>(6)\*</sup> I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

3B.<sup>(6)\*</sup> I am the creditor's agent authorised to make this statement in writing. I know that the debt was incurred and for the consideration stated and that the debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

The External Administrators' (whether as Voluntary Administrators/Deed Administrators/Liquidators) will send and give electronic notification of documents. Please provide your email address below:

Contact Name: .....

Email Address: .....

DATED this ..... day of ..... 202.....

Signature of Signatory .....

NAME IN BLOCK LETTERS .....

Occupation .....

Address .....

OFFICE USE ONLY

|                                  |     |  |    |
|----------------------------------|-----|--|----|
| POD No:                          |     | ADMIT (Voting / Dividend) - Ordinary     | \$ |
| Date Received:                   | / / | ADMIT (Voting / Dividend) – Preferential | \$ |
| Entered into CORE IPS:           |     | Reject (Voting / Dividend)               | \$ |
| Amount per CRA/RATA              | \$  | Object or H/Over for Consideration       | \$ |
| Reason for Admitting / Rejection |     |  |    |
| PREP BY/AUTHORISED               |     | TOTAL PROOF                              | \$ |
| DATE AUTHORISED / /              |     |  |    |

### Proof of Debt Form Directions

- \* Strike out whichever is inapplicable.
- (1) Insert date of Court Order in winding up by the Court, or date of resolution to wind up, if a voluntary winding up.
  - (2) Insert full name and address (including ABN) of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor.
  - (3) Under "Consideration" state how the debt arose, for example "goods sold and delivered to the company between the dates of .....", "moneys advanced in respect of the Bill of Exchange".
  - (4) Under "Remarks" include details of vouchers substantiating payment.
  - (5) Related Party / Entity: Director, relative of Director, related company, beneficiary of a related trust.
  - (6) If the Creditor is a natural person and this proof is made by the Creditor personally. In other cases, if, for example, you are the director of a corporate Creditor or the solicitor or accountant of the Creditor, you sign this form as the Creditor's authorised agent (delete item 3A). If you are an authorised employee of the Creditor (credit manager etc), delete item 3B.

### Annexures

- A. If space provided for a particular purpose in a form is insufficient to contain all the required information in relation to a particular item, the information must be set out in an annexure.
- B. An annexure to a form must:
  - (a) have an identifying mark;
  - (b) and be endorsed with the words:
    - i) "This is the annexure of *(insert number of pages)* pages marked *(insert an identifying mark)* referred to in the *(insert description of form)* signed by me/us and dated *(insert date of signing)*; and
  - (c) be signed by each person signing the form to which the document is annexed.
- C. The pages in an annexure must be numbered consecutively.
- D. If a form has a document annexed the following particulars of the annexure must be written on the form:
  - (a) the identifying mark; and
  - (b) the number of pages.
- E. A reference to an annexure includes a document that is with a form.

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The logo for BRI Ferrier, featuring the text "BRI Ferrier" in white on a dark grey rectangular background. A green triangle is positioned at the bottom right corner of the grey rectangle.

**BRI Ferrier**

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**Morabuilt Pty Ltd  
(Administrators Appointed)  
ACN 630 816 830  
ABN 90 630 816 830**

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**Annexure "3"  
Appointment of Proxy Form**

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## APPOINTMENT OF PROXY

**MORABUILT PTY LTD**  
**(ADMINISTRATORS APPOINTED)**  
**ACN 630 816 830**  
**("THE COMPANY")**

\*I/\*We<sup>(1)</sup>.....of.....  
a creditor of **Morabuilt Pty Ltd (Administrators Appointed)**, appoint<sup>(2)</sup>.....  
or in his or her absence ..... as \*my/our general/special proxy to vote at  
the Second Meeting of Creditors of the Company to be held on Wednesday, 31 January 2024 at 11:00 AM AEDT, or  
at any adjournment of that meeting.

Please mark any boxes with an

X

Proxy Type:

☐

General

☐

Special

|  | For                      | Against                  | Abstain                  |
|--|--------------------------|--------------------------|--------------------------|
| <b><u>Resolution 1:</u></b><br><i>"That the remuneration of the Joint and Several Voluntary Administrators, their partners and staff for the period 14 December 2023 to 21 January 2024, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 22 January 2024, be fixed and approved at \$135,000.00 (plus GST), and that the Joint and Several Voluntary Administrators be authorised to draw that amount."</i>                           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>Resolution 2:</u></b><br><i>"That the remuneration of the Joint and Several Voluntary Administrators, their partners and staff for the period 22 January 2024 to 31 January 2024 be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 22 January 2024 and approved to an interim cap of \$25,000.00 (plus GST), and that the Joint and Several Voluntary Administrators be authorised to draw that amount as and when incurred."</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>Resolution 3:</u></b><br><i>"That the Joint and Several Voluntary Administrators be allowed internal disbursements from 14 December 2023 to the conclusion of the Voluntary Administration at the rates of charge in the Voluntary Administrators' Remuneration Approval Report dated 22 January 2024, up to an amount of \$2,000.00 (plus GST) and that the Joint and Several Voluntary Administrators be authorised to draw that amount as accrued."</i>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

|  |                          |                          |                          |
|--|--------------------------|--------------------------|--------------------------|
| <b><u>Future of the Company:</u></b>   |                          |                          |                          |
| <b><u>Resolution 4<sup>(3)</sup>:</u></b><br><i>"That the Company execute a Deed of Company Arrangement."</i>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>Resolution 5<sup>(3)</sup>:</u></b><br><i>"That the Voluntary Administration should end."</i>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>Resolution 6<sup>(3)</sup>:</u></b><br><i>"That the Company be wound up."</i>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>If creditors resolve that the Company execute a Deed of Company Arrangement:</u></b>   |                          |                          |                          |
| <b><u>Resolution 7:</u></b><br><i>"That the remuneration of the Joint and Several Voluntary Administrators, their partners and staff for the period 1 February 2024 to execution of the DOCA, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 22 January 2024, and approved to an interim cap of \$15,000.00 (plus GST), and that the Joint and Several Voluntary Administrators be authorised to draw that amount as and when incurred."</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>Resolution 8:</u></b><br><i>"That the remuneration of the Joint and Several Deed Administrators, their partners and staff from the execution of the DOCA to the finalisation of DOCA, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 22 January 2024, and approved to an interim cap of \$85,000.00 (plus GST), and that the Joint and Several Deed Administrators be authorised to draw that amount as and when incurred."</i>        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>Resolution 9:</u></b><br><i>"That the Joint and Several Deed Administrators be allowed internal disbursements from the date of the execution of the Deed of Company Arrangement at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 22 January 2024, up to an amount of \$2,000.00 (plus GST) and that the Joint and Several Deed Administrators be authorised to draw that amount as accrued."</i>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**If creditors resolve that the Company be wound up:**

|  |                          |                          |                          |
|--|--------------------------|--------------------------|--------------------------|
| <b><u>Resolution 10:</u></b><br><i>"That the remuneration of the Joint and Several Liquidators, their partners and staff for the period 31 January 2024 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators' Second Report to Creditors dated 22 January 2024, and approved to an interim cap of \$150,000.00 (plus GST), and that the Joint and Several Liquidators be authorised to draw that amount as and when incurred."</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>Resolution 11:</u></b><br><i>"That the Joint and Several Liquidators be allowed internal disbursements for the period 31 January 2024 to the conclusion of the Liquidation at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 22 January 2024, up to an amount of \$2,000.00 (plus GST) and that the Joint and Several Liquidators be authorised to draw that amount as accrued."</i>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>Resolution 12:</u></b><br><i>"That subject to the consent of the Australian Securities &amp; Investments Commission, the Liquidators be approved to destroy the books and records of the Company at any time after the dissolution of the Company."</i>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**INSTRUCTIONS FOR COMPLETING:**

- \* Strike out if inapplicable.
- (1) Insert name and address. If a firm, strike out "I" and set out the full name of the firm.
  - (2) Insert the name, address and description of the person appointed.
  - (3) You may only vote in "favour" for one of these 2 resolutions relating to the future of the Company. You must vote "against" the other 1 resolution.

DATED this .....day of ..... 2024

\_\_\_\_\_  
Signature

**Proxies should be returned to the offices of BRI Ferrier by 4.00 PM AEDT one (1) business day prior to the meeting by: Email: [fbabic@brifnsw.com.au](mailto:fbabic@brifnsw.com.au), or Post: GPO Box 7079 SYDNEY NSW 2001**



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**CERTIFICATE OF WITNESS – (This certificate is to be completed only if the person giving the proxy is blind or incapable of writing)**

I, .....of.....certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him before he attached his signature or mark to the instrument.

DATED this .....day of ..... 2024

Signature of Witness: .....

Description: .....

Place of Residence: .....



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "4"**  
**Comparative Balance Sheets**

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**Morabuilt Pty Ltd (In Liquidation)**  
**A.C.N. 630 816 830**  
**Comparative Profit and Loss Statements**  
**For the Financial Years Ended 30 June 2020 to 30 June 2023 and Part Year Ended 14 December 2023**

|                                      | EXTERNAL<br>Year Ended<br>30-Jun-20<br>(\$) | EXTERNAL<br>Year Ended<br>30-Jun-21<br>(\$) | EXTERNAL<br>Year Ended<br>30-Jun-22<br>(\$) | MANAGEMENT<br>ACCOUNT<br>Year Ended<br>30-Jun-23<br>(\$) | MANAGEMENT<br>ACCOUNT<br>Part Period<br>14-Dec-23<br>(\$) |
|--------------------------------------|---|---|---|--|---|
| <b>Assets</b>                        |   |   |   |  |   |
| <b>Current Assets</b>                |   |   |   |  |   |
| Cash and Cash Equivalents            | 60,810.12                                   | 87,551.47                                   | 66,840.92                                   | 99,026.20  | 126,591.78  |
| Credit Card and Overdraft            | -   | -   | (2,885.35)                                  | 12,640.99  | -   |
| Trade Debtors                        | (109.99)                                    | 14,608.00                                   | 14,608.00                                   | 14,608.00  | 35,193.82   |
| Retention                            | 243,567.20                                  | 530,374.27                                  | 564,757.17                                  | 814,149.03   | 696,431.77  |
| Work in Progress                     | 505,679.11                                  | 863,657.10                                  | 483,595.97                                  | 483,595.97   | 483,595.97  |
| Tax Refund                           | 68,399.15                                   | (20,515.45)                                 | (35,809.37)                                 | 175,224.60   | 49,655.84   |
| <b>Total Current Assets</b>          | <b>878,345.59</b>                           | <b>1,475,675.39</b>                         | <b>1,091,107.34</b>                         | <b>1,599,244.79</b>                                      | <b>1,391,469.18</b>                                       |
| <b>Non Current Assets</b>            |   |   |   |  |   |
| Loan - Morabito Holdings             | 770,000.00                                  | 160,290.00                                  | -   | -  | 0.00  |
| Prepaid Borrowing Expenses/Bond Paid | -   | -   | 50,000.00                                   | 50,000.00  | 50,000.00   |
| Plant and Equipment                  | -   | 67,052.00                                   | 53,642.00                                   | 60,961.38  | 63,181.89   |
| Motor Vehicle                        | -   | 19,846.00                                   | 27,956.72                                   | 27,956.72  | 27,956.72   |
| Stock on Hand                        | -   | -   | -   | 19,291.57  | 25,407.88   |
| Payroll Clearing Account             | -   | (10,224.53)                                 | (9,556.16)                                  | 404,803.85   | (738.17)  |
| <b>Total Non-Current Assets</b>      | <b>770,000.00</b>                           | <b>236,963.47</b>                           | <b>122,042.56</b>                           | <b>563,013.52</b>  | <b>165,808.32</b>   |
| <b>Total Assets</b>                  | <b>1,648,345.59</b>                         | <b>1,712,638.86</b>                         | <b>1,213,149.90</b>                         | <b>2,162,258.31</b>                                      | <b>1,557,277.50</b>                                       |
| <b>Liabilities</b>                   |   |   |   |  |   |
| <b>Current Liabilities</b>           |   |   |   |  |   |
| Australian Taxation Office           |   |   |   |  |   |
| Trade Creditors                      | 1,614,005.97                                | 954,346.83                                  | 497,026.55                                  | 1,414,236.02   | 1,461,761.21  |
| Retention                            | 95,590.00                                   | 320,418.50                                  | 274,347.18                                  | 405,894.43   | 445,332.52  |
| <b>Total Current Liabilities</b>     | <b>1,709,595.97</b>                         | <b>1,274,765.33</b>                         | <b>771,373.73</b>                           | <b>1,820,130.45</b>                                      | <b>1,907,093.73</b>                                       |
| <b>Non Current Liabilities</b>       |   |   |   |  |   |
| Director Loans                       | -   | 640,000.00                                  | 873,698.75                                  | 1,003,698.75   | 1,643,698.75  |
| <b>Total Non-Current Liabilities</b> | <b>-</b>                                    | <b>640,000.00</b>                           | <b>873,698.75</b>                           | <b>1,003,698.75</b>                                      | <b>1,643,698.75</b>                                       |
| <b>Total Liabilities</b>             | <b>1,709,595.97</b>                         | <b>1,914,765.33</b>                         | <b>1,645,072.48</b>                         | <b>2,823,829.20</b>                                      | <b>3,550,792.48</b>                                       |
| <b>Net Assets/Liabilities</b>        | <b>(61,250.38)</b>                          | <b>(202,126.47)</b>                         | <b>(431,922.58)</b>                         | <b>(661,570.89)</b>                                      | <b>(1,993,514.98)</b>                                     |
| <b>Equity</b>                        |   |   |   |  |   |
| Accumulated Profit / Retained        | (61,450.38)                                 | (61,250.38)                                 | (202,326.47)                                | (432,122.58)   | (1,198,584.60)  |
| Share Capital                        | 200.00                                      | 200.00                                      | 200.00                                      | (200.00)   | (200.00)  |
| Profit and Loss                      | -   | (140,876.09)                                | (229,796.11)                                | (224,195.99)   | (775,178.02)  |
| Unexplained discrepancy              |   |   |   | (5,050.32)   | (19,552.36)   |
| <b>Total Equity</b>                  | <b>(61,250.38)</b>                          | <b>(201,926.47)</b>                         | <b>(431,922.58)</b>                         | <b>(656,518.57)</b>                                      | <b>(794,930.38)</b>                                       |



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "5"**  
**Comparative Profit and Loss**  
**Statements**

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Morabuilt Pty Ltd (In Liquidation)

A.C.N. 630 816 830

Comparative Profit and Loss Statements

For the Financial Years Ended 30 June 2020 to 30 June 2023 and Part Year Ended 14 December 2023

|                               | EXTERNAL<br>Year Ended<br>30-Jun-20<br>(\$) | EXTERNAL<br>Year Ended<br>30-Jun-21<br>(\$) | EXTERNAL<br>Year Ended<br>30-Jun-22<br>(\$) | MANAGEMENT<br>ACCOUNT<br>Year Ended<br>30-Jun-23<br>(\$) | MANAGEMENT<br>ACCOUNT<br>Part Period<br>14-Dec-23<br>(\$) |
|-------------------------------|---|---|---|--|---|
| <b>Income</b>                 |   |   |   |  |   |
| Sales / Revenue               | 3,398,441.22                                | 9,176,559.87                                | 6,266,685.51                                | 11,076,904.69  | 4,588,856.22  |
| Sundry Revenue                | -   | -   | 58,172.57                                   | 264.00   | 3,696.00  |
| Interest Income               | -   | -   | 82.08                                       | -  | -   |
| Capital Loss                  | -   | -   | (160,290.00)                                | -  | -   |
| <b>Total Revenue</b>          | <b>3,398,441.22</b>                         | <b>9,176,559.87</b>                         | <b>6,164,650.16</b>                         | <b>11,077,168.69</b>                                     | <b>4,592,552.22</b>                                       |
| Opening Work in Progress      | -   | 505,679.11                                  | 863,657.10                                  | -  | -   |
| Job Cost / Construction Cost  | 3,898,498.06                                | 8,265,066.18                                | 5,103,933.31                                | 10,939,460.25  | 4,673,030.91  |
| On - Cost Recovery            | -   | -   | -   | -  | -   |
| Closing Work in Progress      | (505,679.11)                                | (863,657.10)                                | (483,595.97)                                | -  | -   |
| <b>Total Direct Cost</b>      | <b>3,392,818.95</b>                         | <b>7,907,088.19</b>                         | <b>5,483,994.44</b>                         | <b>10,939,460.25</b>                                     | <b>4,673,030.91</b>                                       |
| <b>Gross Profit</b>           | <b>5,622.27</b>                             | <b>1,269,471.68</b>                         | <b>680,655.72</b>                           | <b>137,708.44</b>  | <b>(80,478.69)</b>  |
| <b>Expenses</b>               |   |   |   |  |   |
| Accounting & Auditing Fees    | -   | 4,000.00                                    | 2,710.86                                    | 16,850.00  | -   |
| Computer Consumables          | 438.00                                      | 35,375.97                                   | 32,321.61                                   | -  | -   |
| Consultant Fees               | -   | 315,454.55                                  | 55,237.50                                   | 3,100.00   | 325,000.00  |
| Depreciation                  | -   | 22,926.63                                   | 24,040.10                                   | -  | -   |
| Interest - ATO                | -   | 3,081.02                                    | 3,651.20                                    | -  | -   |
| Freight & Courier             | -   | 234.04                                      | -   | -  | 83.58   |
| General expenses              | 1,661.06                                    | 5,075.82                                    | 3,219.08                                    | (42,296.23)  | 6,922.00  |
| Hire of Plant & Equipment     | -   | -   | 2,980.39                                    | -  | -   |
| Insurance expense             | 2,190.84                                    | 66,493.26                                   | 66,337.55                                   | 48,406.92  | 32,353.40   |
| Bank Charges & interest paid  | 331.10                                      | 1,451.26                                    | 1,550.00                                    | 79,297.81  | 36,757.25   |
| Legal Fees                    | -   | 2,085.00                                    | 2,906.11                                    | -  | -   |
| Motor Vehicle expense         | -   | 24,431.11                                   | 32,112.48                                   | 40,663.58  | 20,738.22   |
| Office Fittings and Equipment | -   | 2,296.46                                    | 145.45                                      | 8,066.03   | 3,048.14  |
| Filing & Permits Fees         | 267.00                                      | 4,836.03                                    | 349.05                                      | -  | -   |
| Publications & Subscriptions  | -   | 6,046.59                                    | 8,548.13                                    | 1,921.27   | 659.25  |
| Rent                          | -   | 11,331.82                                   | 56,713.99                                   | 62,188.63  | 25,990.91   |
| IT & Software                 | -   | -   | -   | 38,612.56  | 8,070.13  |
| Staff related expense         | 38,636.08                                   | 8,878.71                                    | 25,998.40                                   | 5,660.25   | 1,098.39  |
| Stationery & Postage          | 1,169.86                                    | 5,918.72                                    | 5,087.15                                    | 5,101.76   | 1,888.62  |
| Salary & Super                | -   | 839,852.65                                  | 536,277.53                                  | 69,489.17  | 214,167.89  |
| Tools                         | 604.11                                      | 3,819.13                                    | 4,652.13                                    | -  | -   |
| Utility expense               | -   | 11,650.26                                   | 10,362.76                                   | 14,014.05  | 7,366.93  |
| Travel                        | -   | 62.72                                       | 76.83                                       | 2,152.89   | 388.85  |
| Waste Disposal                | 21,774.60                                   | 35,046.02                                   | 35,173.53                                   | -  | -   |
| Workcover                     | -   | -   | -   | 8,675.74   | 10,165.77   |
| <b>Total Expenses</b>         | <b>67,072.65</b>                            | <b>1,410,347.77</b>                         | <b>910,451.83</b>                           | <b>361,904.43</b>  | <b>694,699.33</b>   |
| <b>Net Profit / (Loss)</b>    | <b>(61,450.38)</b>                          | <b>(140,876.09)</b>                         | <b>(229,796.11)</b>                         | <b>(224,195.99)</b>                                      | <b>(775,178.02)</b>                                       |



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "6"**  
**Deficiency Statement**

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| Morabuilt Pty Ltd (Administrators Appointed)<br>A.C.N. 630 816 830 |   |                                       |                                |                    |
|--|---|---------------------------------------|--------------------------------|--------------------|
|  | Book Value<br>as at<br>14/12/2023<br>(\$) | Directors' ERV<br>(per ROCAP)<br>(\$) | Administrators'<br>ERV<br>(\$) | Deficiency<br>(\$) |
| <b>Assets</b>  |   |                                       |                                |                    |
| Cash and Cash Equivalents  | 126,592                                   | 424,003                               | 357,764                        |                    |
| Trade Debtors  | 35,194                                    | 20,586                                | 66,000                         |                    |
| Retention  | 696,432                                   | 696,232                               | -                              |                    |
| Work in Progress   | 483,596                                   | -                                     | -                              |                    |
| Prepaid Borrowing Expenses   | 50,000                                    | -                                     | -                              |                    |
| Tax Refund   | 49,656                                    | -                                     | -                              |                    |
| Plant and Equipment  | 63,182                                    | 28,000                                | 18,500                         |                    |
| Motor Vehicle  | 27,957                                    | 35,000                                | 19,000                         |                    |
| Stock on Hand  | 25,408                                    | 15,000                                | -                              |                    |
| <b>Total Assets</b>  | <b>1,558,016</b>                          | <b>1,168,820</b>                      | <b>461,264</b>                 |                    |
| <b>Liabilities</b>   |   |                                       |                                |                    |
| Priority Creditors   | 738                                       | 119,663                               | 149,288                        |                    |
| Secured Creditors  | -   | -                                     | -                              |                    |
| Unsecured Creditors:   |   |                                       |                                |                    |
| Australian Taxation Office   | -   | 38,628                                | 39,002                         |                    |
| Trade Creditors  | 1,461,761                                 | 1,484,892                             | 2,191,637                      |                    |
| Retention  | 445,333                                   | 410,902                               | -                              |                    |
| Client damages claims  | -   | -                                     | 300,000                        |                    |
| Related Party Creditors  | 1,643,699                                 | 1,625,000                             | 1,625,000                      |                    |
| Contingency  | -   | -                                     | 100,000                        |                    |
| <b>Total Liabilities</b>   | <b>3,551,531</b>                          | <b>3,679,084</b>                      | <b>4,404,928</b>               |                    |
| <b>Estimated Net Asset / (Deficiency)</b>                          | <b>(1,993,515)</b>                        | <b>(2,510,264)</b>                    | <b>(3,943,664)</b>             | <b>3,943,664</b>   |

| Morabuilt Pty Ltd (Administrators Appointed)<br>A.C.N. 630 816 830<br>Deficiency Statement |   |   |  |                  |
|--|---|---|--|------------------|
|  |   | Amount (\$)                             | Amount (\$)                                |                  |
| <b>Deficiency of Assets to Liabilities</b>   |   |   | 3,943,664                                  |                  |
| <b>Add:</b> Loss of Share Capital  |   | (200)                                   |  |                  |
| <b>Estimated Total Deficiency of Assets to meet Liabilities &amp; Share Capital</b>        |   |   | <b>3,943,464</b>                           |                  |
| These losses are represented by:   |   |   |  |                  |
| <b>a) Retained Earnings</b>  |   |   |  |                  |
| Accumulated Loss as at 30 June 2023  |   | 1,198,585                               |  |                  |
| Current Year Loss as at 14 December 2023   |   | 775,178                                 |  |                  |
| Unexplained error in reported equity on balance sheet                                      |   | 19,552                                  |  | 1,993,315        |
| <b>b) Estimated Loss on Realisation of Assets</b>  |   |   |  |                  |
| <b>Asset</b>   | <b>Book Value<br/>as at<br/>14/12/2023<br/>(\$)</b> | <b>Administrators'<br/>ERV<br/>(\$)</b> | <b>Loss on<br/>Realisation<br/>(\$)</b>    |                  |
| Cash and Cash Equivalents  | 126,592   | 357,764                                 | (231,172)                                  |                  |
| Trade Debtors  | 35,194  | 66,000                                  | (30,806)                                   |                  |
| Retention  | 696,432   | -                                       | 696,432                                    |                  |
| Work in Progress   | 483,596   | -                                       | 483,596                                    |                  |
| Prepaid Borrowing Expenses   | 50,000  | -                                       | 50,000                                     |                  |
| Tax Refund   | 49,656  | -                                       | 49,656                                     |                  |
| Plant and Equipment  | 63,182  | 18,500                                  | 44,682                                     |                  |
| Motor Vehicle  | 27,957  | 19,000                                  | 8,957                                      |                  |
| Stock on Hand  | 25,408  | -                                       | 25,408                                     |                  |
| <b>Total</b>   | <b>1,558,016</b>                                    | <b>461,264</b>                          | <b>1,096,752</b>                           | <b>1,096,752</b> |
| <b>c) Increase in Creditor Claims not disclosed in Balance Sheet</b>                       |   |   |  |                  |
| <b>Liabilities</b>   | <b>Book Value<br/>as at<br/>14/12/2023<br/>(\$)</b> | <b>Administrators'<br/>ERV<br/>(\$)</b> | <b>Unreported<br/>Liabilities<br/>(\$)</b> |                  |
| Priority Creditors   | 738   | 149,288                                 | 148,550                                    |                  |
| Secured Creditors  | -   | -                                       | -  |                  |
| Unsecured Creditors:   |   |   |  |                  |
| Australian Taxation Office   | -   | 39,002                                  | 39,002                                     |                  |
| Trade Creditors  | 1,461,761   | 2,191,637                               | 284,544                                    |                  |
| Retention  | 445,333   | -                                       | -  |                  |
| Client damages claims  | -   | 300,000                                 | 300,000                                    |                  |
| Related Party Creditors  | 1,643,699   | 1,625,000                               | (18,699)                                   |                  |
| Contingency  | -   | 100,000                                 | 100,000                                    |                  |
| <b>Total</b>   | <b>3,551,531</b>                                    | <b>4,404,928</b>                        | <b>853,397</b>                             | <b>853,397</b>   |
| <b>Deficiency as Above</b>   |   |   |  | <b>3,943,463</b> |



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "7"**  
**Deed of Company Arrangement**  
**Proposal**

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**Proposed Deed Of Company Arrangement  
Pursuant To Section 444(A) Of The Corporations Act 2001 ("the Act")  
Morabuilt Pty Ltd (Administrator Appointed)  
ACN 630 816 830  
("the Company")**

1. The Deed proponent will be Marc and Vicki Morabito, the Directors of the Company, ("Deed Proponent") with respect to a Deed of Company Arrangement ("DOCA") to be entered into by the Company.
2. The Administrators of the DOCA will be Jonathon Keenan and Peter Krejci ("Deed Administrators").
3. The purpose of the DOCA is to provide creditors with a more certain and an improved return, as compared to a winding up of the Company.
4. The Deed Administrators will have all powers set out in paragraph 2 of Schedule 8A of the Corporations Regulations 2001 (Cth) (Regulations) to the extent necessary to fulfil their responsibilities and exercise their powers under the DOCA.
5. Control of the Company will revert to the directors of the Company upon execution of the DOCA.
6. The Deed Fund will comprise of:
  - Cash at bank held by the Administrators at the end of the Voluntary Administration (VA) period;
  - Cash contribution from the Deed Proponents in the sum of \$400,000, which must be paid within fourteen days of execution of the DOCA;
  - All proceeds of debtors (including but not limited to the current retentions held by clients in respect of construction projects, which the directors of the Company estimate have a book value of \$696,432);
  - All realisable plant and equipment of the Company which has not been sold at the end of the Voluntary Administration period; and
  - Any GST recoveries that available to the Company at the end of the Voluntary Administration period
7. Upon completion of the DOCA, the Company will be deregistered.
8. Marc and Vicki Morabito, as Deed Proponents, will as a condition precedent to the entry into the DOCA execute a Deed of Forgiveness with the Company forgiving the all claims against the Company, including but not limited to, their loan which is reported in the Company's records at \$1,643,698.75.
9. During the period of the DOCA:
  - (a) The Company will comply with its ongoing statutory obligations in respect of monetary and reporting requirements with the Commissioner of Taxation, Office of State Revenue New South Wales and any other federal or state authority; and
  - (b) The Company's directors will ensure that the Company does not incur any new debts or liabilities during the DOCA period.
10. Subject to the statutory priority regime, the Deed Fund will be distributed by the Deed Administrators in accordance with the following order of priority:
  - i. To the Administrator or Deed Administrators for any amount which they are entitled to be paid under the DOCA (even though they may have ceased to be Administrator or Deed Administrator), including all debts and liabilities incurred by them during the administration and deed administration of the Company; then
  - ii. To the Employees of the Company in respect of their statutory entitlements; and then

iii. to the unsecured creditors of the Company, on a pari pasu basis.

11. Subject to the Act, the DOCA binds all parties ('Creditors') having a debt or claim against the Company, whether present or future, certain or contingent, due or to become due, liquidated or unliquidated or sounding only in damages, being debts or claims the circumstances giving rise to which occurred on or before the appointment date and would have been provable against the Company if they had each gone into liquidation on that date. Creditors who have claims relating to construction projects which the Company had entered into prior to the administrators' appointment will be bound by the DOCA notwithstanding that those creditor claims may have crystallised after the administrators' appointment.
12. If the Deed Administrators have paid to the creditors their full entitlements under the DOCA, all claims of creditors are extinguished. Creditors must accept their entitlements under the DOCA in full satisfaction and complete discharge of all debts or claims existing at the relevant date, being the date the Company entered into voluntary administration and must if called upon to do so, execute and deliver to the Company such forms of release of any such claim as the Deed Administrator may require.
13. The Administrator (and, as relevant, Deed Administrators) will be entitled to be indemnified out of, and will have a lien over, the cash held by the Company and the debtors of the Company at the time of executing the DOCA, for their remuneration and expenses for work done in the performance of their duties as Administrators and/or Deed Administrators of the Company.
14. The Deed Administrators may convene a meeting of creditors pursuant to section 445F at any time to consider whether the DOCA should be terminated, and the Company be wound up if in the Deed Administrator's opinion, acting reasonably, the DOCA cannot be given effect to in accordance with its terms.
15. If the Deed Proponents fail to pay the cash contribution referred to in clause 6 of this DOCA proposal into the Deed Fund within the time period specified, the Deed Administrators may terminate the DOCA at their discretion without a need to convene a meeting of creditors or otherwise.
16. The Deed Administrators will endeavour to declare a dividend to participating unsecured creditors as soon as possible, and by no later than 1 June 2025, noting that the completion of the defect warranty period on existing projects may take 12 months from their respective practical completion.
17. The DOCA will be effectuated upon the final payment being made from the deed fund.
18. The Directors undertake during the course of the DOCA period to:
  - (a) Use their best endeavour to ensure that the Company remains solvent and compliant in terms of all reporting and regulatory requirements;
  - (b) Provide all reasonable assistance to Deed Administrators with the recovery of any debts owed to the Company, at no cost to the creditors; and
  - (c) Preserve all insurance claims which may otherwise result in a further return to the creditors.
19. The Deed Proponents acknowledge that they have had obtained, or had a reasonable opportunity to obtain, independent tax and legal advice prior to making this proposal for a DOCA.
20. On effectuation of the DOCA, all claims of participating creditors will be released, discharged and extinguished as against the Company and the directors.

  
Marc and Vicki Morabito  
Deed Proponents

 Dated: 19 January 2024



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "8"**  
**Estimated Outcome Statement**

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| Morabuilt Pty Ltd (Administrators Appointed)<br>Estimated Outcome Statement     |   |  |   |   |  |  |
|---|---|--|---|---|--|--|
|   | Book Value<br>as at<br>14/12/2023<br>(\$) | Administrators'<br>ERV<br>DOCA<br>(High) | Administrators'<br>ERV<br>DOCA<br>(Low) | Administrators'<br>ERV<br>Liquidation<br>(High) | Administrators'<br>ERV<br>Liquidation<br>(Low) |  |
| <b>ASSETS</b>   |   |  |   |   |  |  |
| Cash and Cash Equivalents   | 126,592                                   | 357,764                                  | 357,764                                 | 357,764   | 357,764  |  |
| Trade Debtors   | 35,194                                    | 66,000                                   | 66,000                                  | 66,000  | 66,000   |  |
| Retention   | 696,432                                   | 300,000                                  | -                                       | 300,000   | -  |  |
| Work in Progress  | 483,596                                   | -  | -                                       | -   | -  |  |
| Prepaid Borrowing Expenses  | 50,000                                    | -  | -                                       | -   | -  |  |
| Tax Refund  | 49,656                                    | -  | -                                       | -   | -  |  |
| Plant and Equipment   | 63,182                                    | 18,500                                   | 18,500                                  | 18,500  | 18,500   |  |
| Motor Vehicle   | 27,957                                    | 22,000                                   | 19,000                                  | 22,000  | 19,000   |  |
| Stock on Hand   | 25,408                                    | -  | -                                       | -   | -  |  |
| <b>Total Assets</b>   | <b>1,558,016</b>                          | <b>764,264</b>                           | <b>461,264</b>                          | <b>764,264</b>                                  | <b>461,264</b>                                 |  |
| <b>Asset Realisation Costs (excl. GST)</b>                                      |   |  |   |   |  |  |
| Auctioneers Charges   |   | 12,700                                   | 15,700                                  | 12,700  | 15,700   |  |
| Other Asset Realisation costs   |   | 15,074                                   | 10,074                                  | 15,074  | 10,074   |  |
| <b>Total Asset Realisation Costs</b>  | <b>-</b>                                  | <b>27,774</b>                            | <b>25,774</b>                           | <b>27,774</b>                                   | <b>25,774</b>                                  |  |
| <b>Deed Fund</b>  |   |  |   |   |  |  |
| Deed Fund Contribution  | -   | 400,000                                  | 400,000                                 | N/A   | N/A  |  |
| <b>Deed Fund Total</b>  | <b>-</b>                                  | <b>400,000</b>                           | <b>400,000</b>                          | <b>-</b>  | <b>-</b>                                       |  |
| <b>Recoveries in Liquidation</b>  |   |  |   |   |  |  |
| Voidable Transactions   |   | N/A                                      | N/A                                     | 30,000  | -  |  |
| Insolvent Trading Claims  |   | N/A                                      | N/A                                     | 1,137,054                                       | -  |  |
| Breach of Director Duties Claims  |   | N/A                                      | N/A                                     | -   | -  |  |
| <b>Total Recovery</b>   | <b>-</b>                                  | <b>-</b>                                 | <b>-</b>                                | <b>1,167,054</b>                                | <b>-</b>                                       |  |
| <b>Administration Costs</b>   |   |  |   |   |  |  |
| Administration Costs  |   |  |   |   |  |  |
| Administrators' Remuneration from 14 December 2023 to 21 January 2024 (Accrued) |   | 135,000                                  | 135,000                                 | 135,000   | 135,000  |  |
| Administrators' Additional Remuneration (Future)                                |   | 35,000                                   | 40,000                                  | 35,000  | 40,000   |  |
| Administrators' Disbursements   |   | 1,000                                    | 2,000                                   | 1,000   | 2,000  |  |
| Administrators' Legal Fees  |   | 30,000                                   | 35,000                                  | 20,000  | 25,000   |  |
| Deed Administration Costs   |   |  |   |   |  |  |
| Deed Administrators' Remuneration and Costs                                     |   | 70,000                                   | 85,000                                  | N/A   | N/A  |  |
| Deed Administrators' Disbursements  |   | 2,000                                    | 1,000                                   | N/A   | N/A  |  |
| Deed Administrators' Legal Fees   |   | 50,000                                   | 15,000                                  | N/A   | N/A  |  |
| Accounting Fees   |   | 10,000                                   | 10,000                                  | N/A   | N/A  |  |
| Liquidation Costs   |   |  |   |   |  |  |
| Liquidators' Remuneration   |   | N/A                                      | N/A                                     | 250,000   | 150,000  |  |
| Liquidators' Disbursements  |   | N/A                                      | N/A                                     | 25,000  | 10,000   |  |
| Liquidators' Legal Fees   |   | N/A                                      | N/A                                     | 310,000   | 50,000   |  |
| Litigation Funder (40% of recovery)   |   | N/A                                      | N/A                                     | 466,822   | -  |  |
| Accounting Fees   |   | N/A                                      | N/A                                     | 10,000  | -  |  |
| <b>Total Costs of Administration Costs</b>                                      | <b>-</b>                                  | <b>333,000</b>                           | <b>323,000</b>                          | <b>1,242,822</b>                                | <b>412,000</b>                                 |  |
| <b>Estimated Surplus Available for Secured Creditors</b>                        |   | <b>803,490</b>                           | <b>512,490</b>                          | <b>660,722</b>                                  | <b>23,490</b>                                  |  |
| <b>Secured Creditor Claims (Estimated)</b>                                      |   |  |   |   |  |  |
| Secured Creditor Claims   |   | -  | -                                       | -   | -  |  |
| <b>Total Secured Creditor Claims</b>  |   | <b>-</b>                                 | <b>-</b>                                | <b>-</b>  | <b>-</b>                                       |  |
| <b>Estimated Surplus Available to Priority Creditors</b>                        |   | <b>803,490</b>                           | <b>512,490</b>                          | <b>660,722</b>                                  | <b>23,490</b>                                  |  |
| <b>Priority Creditors</b>   |   |  |   |   |  |  |
| Wages and Superannuation  | 738                                       | -  | -                                       | -   | -  |  |
| Annual Leave & Long Service Leave   | -   | 103,750                                  | 103,750                                 | 103,750   | 103,750  |  |
| PILN and Redundancy   | -   | 45,538                                   | 45,538                                  | 45,538  | 45,538   |  |
| <b>Total Priority Creditors</b>   | <b>738</b>                                | <b>149,288</b>                           | <b>149,288</b>                          | <b>149,288</b>                                  | <b>149,288</b>                                 |  |
| <b>Estimated Surplus Available to Unsecured Creditors</b>                       |   | <b>654,202</b>                           | <b>363,202</b>                          | <b>511,434</b>                                  | <b>(125,798)</b>                               |  |
| <b>Unsecured Creditors</b>  |   |  |   |   |  |  |
| Australian Taxation Office  | -   | 39,002                                   | 39,002                                  | 39,002  | 39,002   |  |
| Trade Creditors   | 1,461,761                                 | 2,191,637                                | 2,191,637                               | 2,191,637                                       | 2,191,637                                      |  |
| Retention   | 445,333                                   | -  | -                                       | -   | -  |  |
| Client damages claims   | -   | -  | 300,000                                 | -   | 300,000  |  |
| Related Party Creditors   | 1,643,699                                 | Excluded                                 | Excluded                                | 1,625,000                                       | 1,625,000                                      |  |
| Contingency   | -   | -  | 100,000                                 | -   | 100,000  |  |
| <b>Total Other Unsecured Creditors</b>  | <b>3,550,792</b>                          | <b>2,230,640</b>                         | <b>2,630,640</b>                        | <b>3,855,640</b>                                | <b>4,255,640</b>                               |  |
| <b>Estimated Surplus/(Shortfall)</b>  |   | <b>(1,576,438)</b>                       | <b>(2,267,438)</b>                      | <b>(3,344,205)</b>                              | <b>(4,381,438)</b>                             |  |

| Summary of Return to Creditors |  | DOCA<br>High<br>Cents/\$ | DOCA<br>Low<br>Cents/\$ | Liquidation<br>High<br>Cents/\$ | Liquidation<br>Low<br>Cents/\$ |
|--------------------------------|--|--------------------------|-------------------------|---------------------------------|--------------------------------|
| Priority Creditors             |  | 100                      | 100                     | 100                             | 16                             |
| Unsecured Creditors            |  | 29                       | 14                      | 13                              | Nil                            |



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "g"**  
**Summary of Receipts and Payments**

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## Summarised Receipts & Payments

Morabuilt Pty Ltd

(Administrators Appointed)

Transactions From 14 December 2023 To 21 January 2024

| A/C                               | Account            | Net          | GST      | Gross        |
|-----------------------------------|--------------------|--------------|----------|--------------|
| 72                                | Sundry Debtors (B) | 66,000.00    | 0.00     | 66,000.00    |
| 74                                | Cash at Bank       | 357,882.77   | 0.00     | 357,882.77   |
| Total Receipts (inc GST)          |                    | \$423,882.77 | \$0.00   | \$423,882.77 |
| 29                                | Bank Charges       | 119.00       | 0.00     | 119.00       |
| 36                                | Insurance          | 1,564.10     | 156.41   | 1,720.51     |
| 53                                | Stamp Duty         | 121.10       | 0.00     | 121.10       |
| Total Payments (inc GST)          |                    | \$1,804.20   | \$156.41 | \$1,960.61   |
| Balance in Hand - By Bank Account |                    |              |          |              |
| 212                               | Cheque Account     |              |          | 421,922.16   |
|                                   |                    |              |          | \$421,922.16 |



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "10"**  
**Remuneration Approval Report**

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# Remuneration Approval Report

**MORABUILT PTY LTD**  
**ACN 630 816 830**

**22 January 2024**

Jonathon Keenan and Peter Krejci  
Joint and Several Liquidators

Novabrif Pty Ltd ABN 61 643 013 610  
Level 26, 25 Bligh Street, Sydney NSW 2000  
GPO Box 7079, Sydney NSW 2001  
Phone (02) 8263 2333  
Facsimile (02) 8263 2399  
Email: [info@brifnsw.com.au](mailto:info@brifnsw.com.au)  
Website: [www.briferrier.com.au](http://www.briferrier.com.au)





## TABLE OF CONTENTS

|   |    |
|---|----|
| 1. EXECUTIVE SUMMARY .....  | 3  |
| 2. DECLARATION .....  | 3  |
| 3. REMUNERATION APPROVAL SOUGHT .....   | 4  |
| 4. DISBURSEMENTS SOUGHT .....   | 5  |
| 5. LIKELY IMPACT ON DIVIDENDS.....  | 5  |
| 6. SUMMARY OF RECEIPTS AND PAYMENTS .....   | 5  |
| 7. QUERIES & INFORMATION SHEET .....  | 6  |
| 8. ATTACHMENTS .....  | 6  |
| SCHEDULE A – DETAILS OF WORK FROM 14 DECEMBER 2023 TO THE SECOND MEETING OF CREDITORS .....                             | 7  |
| SCHEDULE B – DETAILS OF WORK FROM THE SECOND MEETING OF CREDITORS TO THE CONCLUSION OF THE EXTERNAL ADMINISTRATION..... | 13 |
| SCHEDULE C – TIME SPENT BY STAFF ON MAJOR TASKS – 14 DECEMBER 2023 TO 21 JANUARY 2024 .....                             | 20 |
| SCHEDULE D – RESOLUTIONS.....   | 21 |
| SCHEDULE E – DISBURSEMENTS .....  | 22 |

## 1. EXECUTIVE SUMMARY

We are asking creditors to approve the following remuneration and disbursements:

|                          | Remuneration<br>(\$, excl GST) | Disbursements<br>(\$, excl GST) |
|--------------------------|--------------------------------|---------------------------------|
| Voluntary Administration | 175,000.00                     | 1,000.00                        |
| If a DOCA is accepted    | 85,000.00                      | 1,000.00                        |
| If Company is liquidated | 150,000.00                     | 1,000.00                        |

Details of remuneration can be found in section 3 of this report.

Creditors have not previously approved our remuneration.

We estimate the total cost of this Voluntary Administration will be approximately \$198K. This has increased from our previous estimate of \$100K to \$150K in the Initial Remuneration Notice for the following reasons:

- Liaising with the Directors to investigate and assess the costs of completion of the projects and consider recoverability of retentions;
- Dealing with issues with the quality of the available accounting and financial information;
- Seeking further information from the Directors and interrogating same in our investigation of the Company's affairs and potential offences/claims; and
- Review draft DOCA proposals provided by the Directors, compared returns under a DOCA scenario and liquidation scenario, conduct negotiation with the Directors in relation to the draft DOCA proposals to increase returns to creditors.

## 2. DECLARATION

We, Jonathon Keenan and Peter Krejci of BRI Ferrier, have undertaken an assessment of this remuneration claim in accordance with the law and applicable professional standards. We are satisfied that the remuneration and disbursement claimed is necessary and proper.

We have reviewed the work in progress report for the Liquidation to ensure that remuneration is only being claimed for necessary and proper work performed and no adjustment was necessary.

### 3. REMUNERATION APPROVAL SOUGHT

The remuneration we are asking creditors to approve is as follows:

| For   | Period   | Amount<br>(\$, excl. GST) | Rates to apply   | When it will be drawn                                  |
|---|--|---------------------------|--|--|
| Work we have already done                     | 14 December 2023 to 21 January 2024            | 135,000.00                | Provided in our First Report to Creditors dated 15 December 2023 | It will be drawn when funds are available              |
| Future work to meeting date                   | 22 January 2024 to 31 January 2024             | 25,000.00                 | Provided in our First Report to Creditors dated 15 December 2023 | It will be drawn when funds are available and incurred |
| Future Work from meeting to execution of DOCA | 1 February 2024 to execution of the DOCA       | 15,000.00                 | Provided in our First Report to Creditors dated 15 December 2023 | It will be drawn when funds are available and incurred |
| <b>VA total</b>                               |  | <b>175,000.00</b>         |  |  |
| Future Work DOCA                              | Execution of DOCA to finalisation of DOCA      | 85,000.00                 | Provided in our First Report to Creditors dated 15 December 2023 | It will be drawn when funds are available and incurred |
| <b>DOCA total</b>                             |  | <b>85,000.00</b>          |  |  |
| Future work – Liquidation                     | 31 January 2024 to finalisation of liquidation | 150,000.00                | Provided in our First Report to Creditors dated 15 December 2023 | It will be drawn when funds are available and incurred |
| <b>Liquidation Total</b>                      |  | <b>150,000.00</b>         |  |  |

We note that remuneration incurred for the period from 14 December 2023 to 21 January 2024 totalled \$148,211.25, however, we are only seeking approval for remuneration for the sum of \$135,000.

Details of the work done for the period 14 December 2023 to 21 January 2024 and future work expected for the period 22 January 2024 to 31 January 2024 are included at **Schedule A**.

Details of future work that we intend to do (either in a DOCA or Liquidation) are included at **Schedule B**.

A breakdown of time spent by staff members on each major task for work completed from 14 December 2023 to 21 January 2024 is included in **Schedule C**.

Actual resolutions to be put to the meeting are included at **Schedule D** for your information. These resolutions also appear in the proxy form for the meeting provided to you.

We will only seek approval of the resolution for the liquidation if creditors vote to place the Company into liquidation.

#### 4. DISBURSEMENTS SOUGHT

We are not required to seek creditor approval for costs paid to third parties or where we are recovering a cost incurred on behalf of the administration, but we must provide details to creditors. To date, we have not paid any such costs in the administration.

We are required to obtain creditor's consent for the payment of a disbursement where we, or a related entity of ourselves, may directly or indirectly obtain a profit.

For more information about disbursements, please refer to the Initial Remuneration Notice sent to you on 15 December 2023.

The internal disbursements we would like creditors to approve is as follows:

| For   | Period                              | Amount<br>(\$, excl. GST) |
|---|-------------------------------------|---------------------------|
| If a DOCA is executed                           | Execution of the DOCA to conclusion | 2,000.00                  |
| If Company is liquidated - Future disbursements | 31 January 2024 to conclusion       | 2,000.00                  |

Details of disbursements incurred and future disbursements are included at **Schedule E**. Actual resolutions to be put to the meeting are included at **Schedule D** for your information. These resolutions also appear in the proxy form for the meeting provided to you.

#### 5. LIKELY IMPACT ON DIVIDENDS

The Corporations Act sets the order for payment of claims against the Company, and it provides for the remuneration of the Administrators to be paid in priority to other claims. This ensures that when there are sufficient funds, the Administrators receives payment for the work done to recover assets, investigate the Company's affairs, report to creditors and ASIC and distribute any available funds. Even if creditors approve our remuneration, this does not guarantee that we will be paid, as we are only paid if sufficient assets are recovered.

An estimated outcome statement is attached as **Annexure 8** of the Second Report to Creditors dated 22 January 2024. Any dividend payable to creditors will depend on a range of variables, particularly the decision creditors make on the future of the Company, future realisations, our estimated remuneration as we have set out in this report and creditor claims.

#### 6. SUMMARY OF RECEIPTS AND PAYMENTS

A summary of the receipts and payments as at 21 January 2024 is attached.

## 7. QUERIES & INFORMATION SHEET

If you have any queries in relation to the information in this report, please contact our office. You can also access information which may assist you on the following websites:

ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)

ASIC at <http://www.asic.gov.au> (search for INFO 85)

Further supporting documentation for our remuneration claim can be provided to creditors on request.

## 8. ATTACHMENTS

Schedule A – Details of work from 14 December 2023 to the second meeting of creditors

Schedule B – Details of work from the second meeting of creditors to the conclusion of the external administration

Schedule C – A breakdown of time spent by staff members on each major task for work completed from 14 December 2023 to 21 January 2024

Schedule D – Resolutions

Schedule E – Disbursements

## SCHEDULE A – DETAILS OF WORK FROM 14 DECEMBER 2023 TO THE SECOND MEETING OF CREDITORS

|                     |   |   |                  |  |                 |
|---------------------|---|---|------------------|--|-----------------|
| Company             | Morabuilt Pty Ltd<br>(Administrators Appointed) | Period From   | 14 December 2023 | To   | 31 January 2024 |
| Practitioner        | Jonathon Keenan & Peter Krejci                  | Firm  | BRI Ferrier      |  |                 |
| Administration Type | Administrators Appointed                        |   |                  |  |                 |
|                     |   | Tasks   |                  |  |                 |
|                     |   | Work completed (excl. GST)  |                  | Future work (excl. GST)  |                 |
| Period              |   | 14 December 2023 to 21 January 2024   |                  | 22 January 2024 to 31 January 2024   |                 |
| Amount (excl. GST)  |   | \$148,211.25, but reduced to \$135,000.00   |                  | \$25,000.00  |                 |
| Task Area           | General Description                             |   |                  |  |                 |
| Assets              |   | 26.3 Hours<br>\$14,962.00   |                  | \$3,000.00   |                 |
|                     | Debtors   | Liaise with the Directors in relation to collection of debtors during Administration  |                  | N/A  |                 |
|                     | Plant and Equipment (“PPE”) and Motor Vehicles  | Instruct O’Maras to prepare an independent valuation of the Company’s PPE and motor vehicles<br>Liaise with O’Maras in relation to the collection and realisation of the Company’s PPE and motor vehicles<br>Liaise with the Directors in relation to return of the Company’s vehicles<br>Correspondence with Directors regarding further information on motor vehicles |                  | Liaise with auctioneer in relation to finalising the auction of the Company’s PPE and motor vehicles |                 |

|           |                                    |   |  |
|-----------|------------------------------------|---|--|
|           |                                    | <p>Liaise with insurance broker regarding insurance covers and arrangements</p> <p>Negotiate with the landlord of the Company's premises (Directors) to obtain rent-free occupation during the sale of the Company's PPE</p>  |  |
|           | Assets subject to specific charges | <p>Review PPSR charge documents</p> <p>Consider validity of registered security interests</p> <p>Liaise with the Directors and PPSR creditors in relation to collection of goods on site</p> <p>Contact all of the secured parties, enquire validity</p>  | Liaise with the Directors and PPSR creditors in relation to collection of goods on site (if required)  |
|           | Retentions                         | <p>Liaise with the Directors in relation to assessment of each project, including assessment of the cost to complete</p> <p>Liaised with the Directors to assist the clients in relation to seeking alternative builders for completion of the projects</p> <p>Liaised with the Directors to obtain all documents in relation to the three (3) projects</p> <p>Review information and documents provided by the Directors and consider recoverability of retentions withheld by the clients</p> | <p>Continue liaising with the Directors to assist the clients in relation to seeking alternative service providers for completion of the projects (if required)</p> <p>Engage with the clients to assist them to complete their projects</p> |
|           | Other Asset                        | Prepare and issue correspondence to Westpac and Bendigo Bank requesting transfer of funds held in the Company's pre-appointment bank account  | N/A  |
| Creditors |                                    | <p><b>123.3 Hours</b></p> <p><b>\$58,664.00</b></p>   | <b>\$15,000.00</b>   |
|           | Creditor Enquiries                 | <p>Receive and respond to creditor enquiries</p> <p>Review and prepare correspondence to creditors and their representatives by email</p> <p>Responding to information requested by creditors</p>   | <p>Receive and respond to creditor enquiries</p> <p>Receive and follow up creditor enquiries by telephone</p> <p>Review and prepare correspondence to creditors and their</p>  |

|  |                             |   |  |
|--|-----------------------------|---|--|
|  |                             |   | <p>representatives by email</p> <p>Responding to information requested by creditors</p>  |
|  | Creditor Reports            | <p>Preparing and issuing First Report to Creditors regarding notification of appointment and convening First Meeting of Creditors</p> <p>Preparation of necessary annexures for First Report to Creditors</p> <p>Preparing Second Report to Creditors</p> <p>Preparation of necessary annexures for Second Report to Creditors</p>  | <p>Preparing and issuing Second Report to Creditors detailing investigations</p> <p>Prepare DOCA commentary analysis and projections, and supporting documentation for creditors' consideration</p> <p>Preparation of necessary annexures for Second Report to Creditors</p> |
|  | Dealing with proofs of debt | <p>Receipting and filing POD when not related to a dividend</p> <p>Maintaining register of Proofs of Debts received</p> <p>Reviewing supporting documentation from creditors</p> <p>Liaising with the Directors to obtain supporting documents in relation to the Directors' claims</p> <p>Review documents and information provided by the Directors in relation the Directors' claims</p> | <p>Receipting, processing, and filing Proofs of Debts when not related to a dividend</p> <p>Maintaining register of Proofs of Debts received</p> <p>Reviewing supporting documentation from creditors</p>  |
|  | Secured creditor reporting  | Notifying PPSR registered creditors of appointment  | N/A  |
|  | First Meeting of Creditors  | <p>Preparation of meeting notices, proxies and advertisements</p> <p>Sending Notice of Meeting to all known creditors</p> <p>Preparation of meeting file, including agenda, attendance register, list of creditors, report to creditors, advertisement of meeting and draft minutes of meeting</p>  | N/A  |



|               |  |   |  |
|---------------|--|---|--|
|               |  | Preparation and lodgement of minutes of First Meeting of Creditors with ASIC<br>Responding to stakeholder queries and questions immediately following meeting   |  |
|               | Proposal for Deed of Company Arrangement | <p>Liaising with Directors and lawyers regarding DOCA proposal</p> <p>Negotiating terms of DOCA proposal with Directors and lawyers</p> <p>Consider and analyse potential outcome for DOCA</p> <p>Explore potential tax issues with Deed Proponents</p>   | <p>Liaising with Directors and lawyers regarding DOCA proposal</p> <p>Discussions regarding funding requirements for DOCA</p>  |
|               | Second Meeting of Creditors              | Preparation of meeting notices, proxies and advertisements  | <p>Preparation of meeting notices, proxies and advertisements</p> <p>Sending Notice of Meeting to all known creditors</p> <p>Preparation of meeting file, including agenda, attendance register, list of creditors, report to creditors, advertisement of meeting and draft minutes of meeting</p> |
| Investigation |  | <b>115.3 Hours</b><br><b>\$57,054.00</b>  | <b>\$3,000.00</b>  |
|               | Conducting Investigation                 | <p>Liaising with the IT service provider in relation to prepare a backup of the Company's electronic records</p> <p>Conducting and summarising statutory searches</p> <p>Reviewing Company's books and records</p> <p>Preparation of comparative financial statements</p> <p>Review the Company's books and records in relation to the Company's historical financial position and financial performance</p> <p>Preparation of deficiency statement</p> <p>Preparation of working capital analysis</p> <p>Preparation of investigation file</p> | <p>Finalise investigations &amp; prepare summary for report to creditors</p> <p>Reporting to ASIC on potential offences</p>  |

|  |                |   |   |
|--|----------------|---|---|
|  |                | <p>Review of specific transactions and liaising with Directors regarding certain transactions</p> <p>Review ROCAP completed by Directors</p> <p>Consider recovery actions available in a Liquidation scenario</p> <p>Liaising with Directors to obtain further information and documents to conduct solvency analysis</p> <p>Various correspondence with the Directors in relation to the historical WIP position and process of assessing same during the Company's trading period</p> <p>Liaising with the Directors in relation to investigations regarding recoverability of assets recorded on the Company's balance sheets</p> <p>Conducting investigations in relation to loans provided to Morabito Holdings</p> <p>Conducting investigations in relation to acquisition of assets from Morabito Holdings</p> <p>Review claims from Directors in relation to outstanding Directors' loans</p> <p>Review aged payable schedules and prepare analysis</p> <p>Review claims from creditors and amounts disclosed in the ROCAP to calculate potential insolvent trading claimed amount in a Liquidation scenario</p> <p>Review bank statements and general ledgers extracted from the management accounts, consider potential voidable transactions which might be available to pursue in a Liquidation scenario</p> <p>Consider commerciality of pursuing the potential recovery actions available in a Liquidation scenario</p> |   |
|  | ASIC Reporting | N/A   | <p>Preparing statutory investigation reports</p> <p>Liaising with ASIC regarding lodgement of</p> |

|                       |  |  |  |
|-----------------------|--|--|--|
| <b>Employees</b>      |  | <b>5.1 Hours<br/>\$2,741.00</b>  | <b>\$1,000.00</b>  |
|                       | Employees enquiries                        | Review claims from employees<br>Attend to employees' queries   | Correspondence with employees<br>Any other tasks associated with employees   |
| <b>Administration</b> | Calculation of entitlements                | Calculating employee entitlements<br>Reviewing employee files and Company's books and records<br>Liaise with consultant in relation to outstanding employee entitlements and adjudication of claims received from employees<br>Liaise with Directors in relation to calculation of employee entitlements | Finalise calculation of employee entitlements<br>Reviewing employee files and Company's books and records<br>Correspondence with the Long Service Corporation in relation to calculation of long service leave entitlements<br>Liaising with the Directors to obtain access to the Long Service Corporation portal |
|                       |  | <b>32.9 Hours<br/>\$14,790.25</b>  | <b>\$3,000.00</b>  |
|                       | ASIC Forms and lodgements                  | Preparing and lodging ASIC forms including 505, 205, 531, 507 etc<br>Preparing and lodging ASIC PNW Advert   | Preparing and lodging ASIC forms including 5011, 530 etc<br>Preparing and lodging ASIC PNW Advert  |
|                       | Bank account administration                | Preparing correspondence opening bank account<br>Bank account reconciliations  | Bank account reconciliations   |
|                       | Correspondence                             | Correspondence with various parties  | Correspondence with various parties  |
|                       | Document maintenance/file review/checklist | Preparing and updating job checklists<br>Filing of documents   | Updating job checklists<br>Filing of documents   |
|                       | ATO and other statutory reporting          | Notification of appointment  | N/A  |
|                       | Planning / Review                          | Discussions regarding status of administration   | Discussions regarding status of administration   |

|  |              |     |  |
|--|--------------|-----|--|
|  | Finalisation | N/A | Notifying ATO of finalisation<br>Completing checklists<br>Finalising WIP |
|--|--------------|-----|--|

## SCHEDULE B – DETAILS OF WORK FROM THE SECOND MEETING OF CREDITORS TO THE CONCLUSION OF THE EXTERNAL ADMINISTRATION

|                       |   |   |   |             |   |
|-----------------------|---|---|---|-------------|---|
| Company               | Morabuilt Pty Ltd<br>(Administrators Appointed) | Period<br>From  | 1 February 2024   | To          | Conclusion  |
| Practitioner          | Jonathon Keenan & Peter Krejci                  | Firm  | BRI Ferrier   |             |   |
| Administration Type   | Administrators Appointed                        |   |   |             |   |
|                       |   |   | Tasks   |             |   |
|                       |   | If DOCA approved  |   | If wound up |   |
|                       |   | Future work from second<br>creditors' meeting 1 February<br>2024 to execution of DOCA | DOCA work   |             | Liquidation Work  |
| Period                |   | 1 February 2024 to execution of<br>DOCA   | From execution of DOCA to<br>finalisation of DOCA               |             | 31 January 2024 to conclusion                                   |
| Amount<br>(excl. GST) |   | \$15,000.00   | \$85,000.00   |             | \$150,000.00  |
| Task Area             | General Description                             |   |   |             |   |
| Assets                |   | \$1,000.00  | \$30,000.00   |             | \$30,000.00   |
|                       | Retention                                       | N/A   | Liaising with Directors in relation to<br>recovery of retention |             | Liaising with Directors in relation to<br>recovery of retention |

|                  |                                    |  |   |  |
|------------------|------------------------------------|--|---|--|
|                  |                                    |  | <p>Liaising with solicitors in relation to recovery of retention</p> <p>Meeting with Directors, solicitors and clients in relation to recovery of retentions (if required)</p>                | <p>Liaising with solicitors in relation to recovery of retention</p> <p>Meeting with Directors, solicitors and clients in relation to recovery of retentions (if required)</p>   |
|                  | PPE and motor vehicles             | Finalising sale of the Company's PPE and vehicles  | Finalising sale of the Company's PPE and vehicles (if required)   | Finalising sale of the Company's PPE and vehicles  |
|                  | Assets subject to specific charges | N/A  | N/A   | Liaise with banks regarding realising motor vehicle  |
| <b>Creditors</b> |                                    | <b>\$11,000.00</b>   | <b>\$4,000.00</b>   | <b>\$10,000.00</b>   |
|                  | Creditor Enquiries                 | <p>Receive and respond to creditor enquiries</p> <p>Review and prepare Correspondence to creditors and their representatives by email and post</p> | <p>Receive and respond to creditor enquiries</p> <p>Review and prepare correspondence to creditors and their representatives by email</p> <p>Compiling information requested by creditors</p> | <p>Receive and respond to creditor enquiries</p> <p>Review and prepare initial correspondence to creditors and their representatives</p> <p>Considering reasonableness of creditor request</p> <p>Obtaining legal advice on requests</p> <p>Compiling information requested by creditors</p> |
|                  | Creditor Reports                   | N/A  | Preparing Circular to Creditors regarding notification of execution of DOCA   | <p>Prepare Circular to Creditors regarding Liquidation</p> <p>Prepare Statutory Report to Creditors</p> <p>Preparation of necessary annexures for Statutory Report to Creditors</p>  |

|               |                             |  |   |  |
|---------------|-----------------------------|--|---|--|
|               | Dealing with proofs of debt | Receipting, processing, and filing Proofs of Debts   | Receipting, processing, and filing Proofs of Debts<br>Maintaining register of Proofs of Debts received<br>Reviewing supporting documentation from creditors | Receipting, processing, and filing Proofs of Debts when not related to a dividend<br>Maintaining register of Proofs of Debts received<br>Reviewing supporting documentation from creditors |
|               | Deed of Company Arrangement | Liaising with Directors and lawyers regarding finalising terms of DOCA<br>Liaising with Directors and lawyers in relation to DOCA contribution<br>Loan forgiveness documentation<br>Liaising with Directors and lawyers in relation to execution of DOCA | N/A   | N/A  |
|               | Meeting of Creditors        | Preparation of Minutes of Second Meeting of Creditors  | Convening creditors meeting as necessary<br>Preparation of Minutes of Meeting (if required)   | Convening creditors meeting as necessary<br>Preparation of Minutes of Meeting (if required)  |
| Investigation |                             | N/A  | N/A   | \$90,000.00  |
|               | Conducting Investigation    | N/A  | N/A   | Obtaining and reviewing further Company's books and records<br>Reviewing further Company's books and records   |

|  |                           |     |     |   |
|--|---------------------------|-----|-----|---|
|  |                           |     |     | <p>Review of specific transactions and liaising with Director regarding certain transactions</p> <p>Conducting further investigations into potential voidable transactions</p> <p>Conducting further investigations into solvency analysis</p> <p>Preparation of updated investigation file</p> <p>Lodgement of investigation with ASIC</p> <p>Preparation and lodgement of supplementary report if required</p>  |
|  | Litigation/<br>Recoveries | N/A | N/A | <p>Conducting investigations into potential claims against Directors and related parties</p> <p>Consider conducting public examinations</p> <p>Seeking funding to conduct further investigations and public examinations</p> <p>Preparing brief to solicitors</p> <p>Attend public examinations</p> <p>Consider outcome from public examinations</p> <p>Liaising with solicitors regarding recovery actions</p> <p>Prepare for litigation recovery action against Directors</p> <p>Issue demand and explore commercial settlement, if necessary</p> |

|           |                             |  |   |   |
|-----------|-----------------------------|--|---|---|
|           | ASIC Reporting              | N/A  | N/A   | Preparing statutory investigation reports<br>Liaising with ASIC<br>Preparation of application for funding to conduct further investigations   |
| Employees |                             | <b>\$1,000.00</b>  | <b>\$3,000.00</b>   | <b>\$10,000.00</b>  |
|           | Employees enquiries         | Correspondence with employees<br>Any other tasks associated with employees | Correspondence with employees<br>Any other tasks associated with employees                    | Receive and follow up employee enquiries via telephone<br>Maintain employee enquiry register  |
|           | FEG                         | N/A  | N/A   | Correspondence with FEG<br>Preparing initial questionnaire<br>Preparing FEG quotation for services<br>Request further supporting documentation from employees to substantiate their claims<br>Preparing verification spreadsheet of employee entitlements<br>Completing FEG questionnaires<br>Correspondence with FEG regarding discrepancies, if any |
|           | Calculation of entitlements | N/A  | Calculating employee entitlements<br>Reviewing employee files and Company's books and records | Calculating employee entitlements<br>Reviewing employee files and Company's books and records<br>Reconciling superannuation accounts<br>Reviewing awards  |
|           | Employee dividend           | N/A  | N/A   | Correspondence with employees regarding dividend  |



|                |                     |            |   |  |
|----------------|---------------------|------------|---|--|
| Dividend       |                     |            |   | Correspondence with ATO regarding SGC POD (if required)<br>Preparing dividend file<br>Advertising dividend notice<br>Receipting and adjudicating POD<br>Preparing distribution |
|                |                     | N/A        | \$40,000.00   | N/A  |
|                | Dividend Procedures | N/A        | Advertisement of intention to declare dividend<br>Correspondence to creditors advising of intention to declare dividend<br>Calculation of dividend<br>Adjudicate PODs and supporting documentation<br>Request further and better particulars as necessary<br>Reporting to Creditors regarding dividend quantum and timing<br>Completing outstanding tax lodgements and seeking tax clearance<br>Preparing dividend file | N/A  |
|                | Declaring Dividend  | N/A        | Correspondence with creditors   | N/A  |
| Administration |                     | \$2,000.00 | \$8,000.00  | \$10,000.00  |

|  |  |  |  |  |
|--|--|--|--|--|
|  | ASIC Forms and lodgements                  | Preparing and lodging ASIC forms               | Preparing and lodging ASIC forms<br>Correspondence with ASIC regarding statutory forms   | Preparing and lodging ASIC forms<br>Correspondence with ASIC regarding statutory forms                           |
|  | Bank account administration                | Preparing receipt and payment vouchers         | Preparing correspondence opening DOCA contribution bank account<br>Preparing receipts and payment vouchers<br>Bank account reconciliations | Preparing receipt and payment vouchers<br>Bank account reconciliations   |
|  | Books and Records/ Storage                 | N/A  | Dealing with records in storage<br>Sending job files to archive storage  | Dealing with records in storage<br>Sending job files to archive storage  |
|  | Correspondence                             | Correspondence with various parties            | Correspondence with various parties  | Correspondence with various parties  |
|  | Document maintenance/file review/checklist | Filing of documents                            | Updating job checklists<br>Filing of documents   | Filing of documents<br>File reviews<br>Updating checklists   |
|  | ATO and other statutory reporting          | N/A  | Notification of appointment<br>Preparing BAS   | Notification of appointment<br>Preparing BAS   |
|  | Planning / Review                          | Discussions regarding status of administration | Discussions regarding status of administration   | Discussions regarding status of administration   |
|  | Finalisation                               | N/A  | Notifying ATO of finalisation<br>Completing checklists<br>Finalising WIP   | Notifying ATO of finalisation<br>Cancelling ABN/GST/PAYG registration<br>Completing checklists<br>Finalising WIP |

## SCHEDULE C – TIME SPENT BY STAFF ON MAJOR TASKS – 14 DECEMBER 2023 TO 21 JANUARY 2024

Morabuilt Pty Ltd (Administrators Appointed)  
For the period 14 December 2023 to 21 January 2024

| Staff Classification         | Name             | Hourly Rates | Administration |                  | Assets      |                  | Creditors    |                  | Employees  |                 | Investigation |                  | Total             |                   |
|------------------------------|------------------|--------------|----------------|------------------|-------------|------------------|--------------|------------------|------------|-----------------|---------------|------------------|-------------------|-------------------|
|                              |                  |              | Hrs            | \$               | Hrs         | \$               | Hrs          | \$               | Hrs        | \$              | Hrs           | \$               | Hrs               | \$                |
| Appointee                    | John Keenan      | 730.00       | 2.0            | 1,460.00         | 13.1        | 9,563.00         | 22.0         | 16,060.00        | 1.0        | 730.00          | 18.0          | 13,140.00        | 56.1              | 40,953.00         |
| Appointee                    | Peter Krejci     | 730.00       | 2.2            | 1,606.00         |             |                  | 5.1          | 3,723.00         |            |                 | 1.2           | 876.00           | 8.5               | 6,205.00          |
| Senior Manager               | Katherine La     | 590.00       | 9.4            | 5,546.00         | 2.5         | 1,475.00         | 16.3         | 9,617.00         | 1.3        | 767.00          | 32.6          | 19,234.00        | 62.1              | 36,639.00         |
| Senior Manager               | Pauline Yeow     | 590.00       |                |                  | 0.8         | 472.00           |              |                  |            |                 |               |                  | 0.8               | 472.00            |
| Supervisor                   | Kristine Hu      | 480.00       | 4.2            | 2,016.00         | 3.4         | 1,632.00         | 33.4         | 16,032.00        | 2.3        | 1,104.00        | 27.8          | 13,344.00        | 71.1              | 34,128.00         |
| Senior 2                     | Joshua Coorey    | 380.00       |                |                  |             |                  | 0.3          | 114.00           |            |                 |               |                  | 0.3               | 114.00            |
| Senior 2                     | Nicole Feng      | 380.00       |                |                  |             |                  | 2.5          | 950.00           |            |                 | 5.0           | 1,900.00         | 7.5               | 2,850.00          |
| Intermediate 2               | Mankirth Mandair | 280.00       | 1.0            | 280.00           | 2.0         | 560.00           | 0.6          | 168.00           |            |                 | 0.7           | 196.00           | 4.3               | 1,204.00          |
| Intermediate 2               | Frane Babic      | 280.00       | 6.7            | 1,876.00         | 4.5         | 1,260.00         | 41.4         | 11,592.00        | 0.5        | 140.00          | 29.1          | 8,148.00         | 82.2              | 23,016.00         |
| Senior Administration        | Andrea Moulikova | 240.00       | 2.8            | 672.00           |             |                  | 0.5          | 120.00           |            |                 | 0.9           | 216.00           | 4.2               | 1,008.00          |
| Senior Administration        | Sarita Gurung    | 240.00       | 1.3            | 312.00           |             |                  |              |                  |            |                 |               |                  | 1.3               | 312.00            |
| Senior Administration        | Sonia Stelmach   | 240.00       | 3.3            | 1,022.25         |             |                  | 1.2          | 288.00           |            |                 |               |                  | 4.5               | 1,310.25          |
| <b>Grand Total</b>           |                  |              | <b>32.9</b>    | <b>14,790.25</b> | <b>26.3</b> | <b>14,962.00</b> | <b>123.3</b> | <b>58,664.00</b> | <b>5.1</b> | <b>2,741.00</b> | <b>115.3</b>  | <b>57,054.00</b> | <b>302.9</b>      | <b>148,211.25</b> |
|                              |                  |              |                |                  |             |                  |              |                  |            |                 |               |                  | GST               | 14,821.13         |
|                              |                  |              |                |                  |             |                  |              |                  |            |                 |               |                  | Total (incl. GST) | 163,032.38        |
| <b>Average rate per hour</b> |                  |              |                | <u>449.55</u>    |             | <u>568.90</u>    |              | <u>475.78</u>    |            | <u>537.45</u>   |               | <u>494.83</u>    |                   | <u>489.31</u>     |

We note that remuneration incurred for the period from 14 December 2023 to 21 January 2024 was for the sum of \$148,211.25 (plus GST), however, we are only seeking approval for remuneration for the sum of \$135,000 (plus GST).

## SCHEDULE D – RESOLUTIONS

We will be seeking approval of the following resolutions to approve our remuneration and disbursements. Details to support these resolutions are included in **sections 3 and 4** and in the attached Schedules.

**Resolution: Administrators’ Remuneration for the period 14 December 2023 to 21 January 2024**

*“That the remuneration of the Joint and Several Voluntary Administrators, their partners and staff for the period 14 December 2023 to 21 January 2024, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 22 January 2024, be fixed and approved at \$135,000.00 (plus GST), and that the Joint and Several Voluntary Administrators be authorised to draw that amount.”*

**Resolution: Administrators’ Remuneration for the period 22 January 2024 to 31 January 2024**

*“That the remuneration of the Joint and Several Voluntary Administrators, their partners and staff for the period 22 January 2024 to 31 January 2024 be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 22 January 2024 and approved to an interim cap of \$25,000.00 (plus GST), and that the Joint and Several Voluntary Administrators be authorised to draw that amount as and when incurred.”*

**If a Deed of Company Arrangement is accepted:**

**Resolution: Administrators’ Remuneration for the period 1 February 2024 to the execution of DOCA**

*“That the remuneration of the Joint and Several Voluntary Administrators, their partners and staff for the period 1 February 2024 to execution of the DOCA, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 22 January 2024, and approved to an interim cap of \$15,000.00 (plus GST), and that the Joint and Several Voluntary Administrators be authorised to draw that amount as and when incurred.”*

**Resolution: Deed Administrators’ Remuneration from the execution of DOCA to finalisation of DOCA**

*“That the remuneration of the Joint and Several Deed Administrators, their partners and staff from the execution of the DOCA to the finalisation of DOCA, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 22 January 2024, and approved to an interim cap of \$85,000.00 (plus GST), and that the Joint and Several Deed Administrators be authorised to draw that amount as and when incurred.”*

**If the Company is wound up:**

**Resolution: Liquidators’ Remuneration for the period 31 January 2024 to Conclusion**

*“That the remuneration of the Joint and Several Liquidators, their partners and staff for the period 31 January 2024 to the conclusion of the Liquidation, be calculated on a time basis in accordance with the rates of charge annexed to the Voluntary Administrators’ Second Report to Creditors dated 22 January 2024, and approved to an interim cap of \$150,000.00 (plus GST), and that the Joint and Several Liquidators be authorised to draw that amount as and when incurred.”*

## SCHEDULE E – DISBURSEMENTS

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation, and search fees. These are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally charge at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We advise that to date we have not paid any disbursements incurred during this Administration by our Firm.

We are not obliged to seek creditor approval for disbursements paid to third parties, but must account to creditors, this includes providing details of the basis of charging for these types of disbursements to creditors as part of the Remuneration Approval Report. We are required to seek creditor approval for internal disbursements where there could be a profit or advantage. Accordingly, we will be seeking approval from creditors for the following resolution:

**Resolution: Administrators' Internal Disbursements for the period 14 December 2023 to Conclusion**

*"That the Joint and Several Voluntary Administrators be allowed internal disbursements from 14 December 2023 to the conclusion of the Voluntary Administration at the rates of charge in the Voluntary Administrators' Remuneration Approval Report dated 22 January 2024, up to an amount of \$2,000.00 (plus GST) and that the Joint and Several Voluntary Administrators be authorised to draw that amount as accrued."*

**Resolution: Deed Administrators' Internal Disbursements from Execution to Conclusion**

*"That the Joint and Several Deed Administrators be allowed internal disbursements from the date of the execution of the Deed of Company Arrangement to the conclusion of the Deed of Company Arrangement at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 22 January 2024, up to an amount of \$2,000.00 (plus GST) and that the Joint and Several Deed Administrators be authorised to draw that amount as accrued."*

**Resolution: Liquidators' Internal Disbursements for the period 31 January 2024 to Conclusion**

*"That the Joint and Several Liquidators be allowed internal disbursements for the period 31 January 2024 to the conclusion of the Liquidation at the rates of charge annexed to the Voluntary Administrators' Remuneration Approval Report dated 22 January 2024, up to an amount of \$2,000.00 (plus GST) and that the Joint and Several Liquidators be authorised to draw that amount as accrued."*

Future disbursements provided by our Firm will be charged to the administration on the following basis:

| Disbursement Type                                   | Rate (excl. GST)                               |
|---|--|
| Externally provided professional services           | At cost  |
| Externally provided non-professional costs          | At cost  |
| Internal disbursements                              |  |
| ASIC Charges for appointments and notifiable events | At cost  |
| Faxes and Photocopying                              | \$0.25 per page                                |
| Postage   | At cost  |
| Staff vehicle use                                   | In accordance with<br>ATO mileage<br>allowance |



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "11"**  
**Advice to Creditors About**  
**Remuneration**

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## ADVICE TO CREDITORS ABOUT REMUNERATION

Insolvency Practice Schedule (Corporations) 70-50  
Insolvency Practice Rules (Corporations) 70-35

**MORABUILT PTY LTD (ADMINISTRATORS APPOINTED)**  
**ACN 630 816 830 / ABN 90 630 816 830**  
**("THE COMPANY")**

### A REMUNERATION METHOD

There are four methods for calculation of remuneration that can be used to calculate the remuneration of an Insolvency Practitioner. They are:

- Time based / hourly rates or "Time Cost"

This is the most common method. It provides for remuneration to be charged at an hourly rate for each person working on the matter. The hourly rate charged will reflect the level of experience each person has.

- Fixed Fee

The total remuneration for the administration is quoted at commencement of the appointment and is the total charge for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.

- Percentage

The remuneration for the appointment is based on a percentage of a particular variable, such as the gross proceeds of asset realisations.

- Contingency

The total remuneration for the matter is structured to be contingent on a particular outcome being achieved.

### B METHOD CHOSEN

Given the nature of this administration, we propose that our remuneration be calculated on the time based / hourly rates method. In our opinion, this is the fairest method for the following reasons:

- We will only be paid for work done, subject to sufficient realisations of the Company assets.
- It ensures creditors are only charged for work that is performed. Our time are recorded and charged in six-minute increments and staff are allocated to duties according to their relevant experience and qualifications.
- We are required to perform a number of tasks which do not relate to the realisation of assets, including responding to creditor enquiries, reporting to the ASIC, distributing funds in accordance with the provisions of the Corporations Act 2001.



BRI Ferrier reviews its hourly rates every twelve months. The hourly rates quoted below remain current. BRI Ferrier may increase the hourly rates charged for work performed and if hourly rates are increased, we will seek approval from creditors.

## C EXPLANATION OF HOURLY RATES

The rates applicable are set out in the table below together with a general guide to the qualifications and experience of staff engaged in administration and the role they undertake in the administration. The hourly rates charged encompass the total cost of providing professional services and are not comparable to an hourly wage rate.

| Title                 | Description   | Hourly Rates<br>(ex GST) |
|-----------------------|---|--------------------------|
| Principal             | Senior member of the firm. May be a Registered Liquidator and/or Registered Trustee. A senior accountant with over 10 years' experience who brings specialist skills and experience to the appointment. Leads staff carrying out appointments.  | \$730                    |
| Director              | An accountant with more than 10 years' experience. May be a Liquidator. Fully qualified and able to control all aspects of an appointment. May have specialist industry knowledge or skills. Assists with all facets of appointment.  | \$640                    |
| Senior Manager        | An accountant with more than 7 years' experience. Qualified and answerable to the Team Leader. Self-sufficient in completing and planning all aspects of large appointments.  | \$590                    |
| Manager               | An accountant with at least 6 years' experience. Typically qualified with well-developed technical and commercial skills. Controls and plans all aspects of medium to larger appointments, reporting to the Team Leader.  | \$550                    |
| Supervisor            | An accountant with more than 4 years' experience. Typically qualified with sound knowledge of insolvency principles and developing commercial skill. Assists to plan and control specific tasks on medium to larger appointments. Often undertaking post qualification study specialising in Insolvency and Reconstruction. | \$480                    |
| Senior 1              | An accountant with more than 2 years' experience. Typically a graduate undertaking study leading to professional qualification as a Chartered Accountant or CPA. Able to complete work on appointments with limited supervision.  | \$420                    |
| Senior 2              | An accountant with less than 2 years' experience. Typically a graduate who has commenced study leading to professional qualifications. Able to complete many tasks on medium to large appointments under supervision.   | \$380                    |
| Intermediate 1        | An accountant with less than 2 years' experience. Typically a graduate and commencing study for qualifications. Able to complete multiple tasks on smaller to medium appointments under supervision.  | \$330                    |
| Intermediate 2        | An accountant with less than 1 year's experience. A trainee undertaking degree with an accountancy major. Assists in the appointment under supervision.   | \$280                    |
| Senior Administration | Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.  | \$240                    |
| Junior Administration | Appropriately skilled and undertakes support activities including but not limited to treasury, word processing and other administrative, clerical and secretarial tasks.  | \$220                    |

## D DISBURSEMENTS

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided service disbursement is legal fees.
- Externally provided non-professional costs such as travel, accommodation and search fees. These are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

We are not required to seek creditor approval for disbursements paid to third parties but must account to creditors. However, we must be satisfied that these disbursements are appropriate, justified and reasonable.

We are required to obtain creditor's consent for the payment of internal disbursements. Creditors will be asked to approve our internal disbursements prior to these disbursements being paid from the administration.

Details of the basis of recovering disbursements in this administration are provided below.

| Disbursement Type                                   | Rate (excl GST)                           |
|---|---|
| Externally provided professional services           | At cost                                   |
| Externally provided non-professional costs          | At cost                                   |
| Internal disbursements                              |   |
| ASIC Charges for appointments and notifiable events | At cost                                   |
| Faxes and Photocopying                              | \$0.25 per page                           |
| Postage   | At cost                                   |
| Staff vehicle use                                   | In accordance with ATO mileage allowances |



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "12"**  
**ASIC Information Sheet**

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**ASIC**

Australian Securities & Investments Commission

## Insolvency information for directors, employees, creditors and shareholders

This information sheet (INFO 39) lists ASIC's information sheets for directors, employees, creditors and shareholders affected by a company's insolvency.

We have produced these with endorsement from the Australian Restructuring Insolvency & Turnaround Association (ARITA).

The information sheets give a basic understanding of the three most common company insolvency procedures – liquidation, voluntary administration and receivership – as well as the independence requirements for external administrators and approving external administrator remuneration. There is also a glossary of commonly used insolvency terms.

### List of information sheets

- [INFO 41](#) Insolvency: A glossary of terms
- [INFO 42](#) Insolvency: A guide for directors
- [INFO 43](#) Insolvency: A guide for shareholders
- [INFO 45](#) Liquidation: A guide for creditors
- [INFO 46](#) Liquidation: A guide for employees
- [INFO 54](#) Receivership: A guide for creditors
- [INFO 55](#) Receivership: A guide for employees
- [INFO 74](#) Voluntary administration: A guide for creditors
- [INFO 75](#) Voluntary administration: A guide for employees
- [INFO 84](#) Independence of external administrators: A guide for creditors
- [INFO 85](#) Approving fees: A guide for creditors

### Where can I get more information?

Further information is available from the [ARITA website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

This is **Information Sheet 39 (INFO 39)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Last updated: 01/09/2017 10:57



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**Morabuilt Pty Ltd**  
**(Administrators Appointed)**  
**ACN 630 816 830**  
**ABN 90 630 816 830**

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**Annexure "13"**  
**ARITA Information Sheet**

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# Creditor Information Sheet

## Offences, Recoverable Transactions and Insolvent Trading



### Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

|         |  |
|---------|--|
| 180     | Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.   |
| 181     | Failure to act in good faith.  |
| 182     | Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.  |
| 183     | Making improper use of information acquired by virtue of the officer's position.   |
| 184     | Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.  |
| 198G    | Performing or exercising a function or power as an officer while a company is under administration.  |
| 206A    | Contravening a court order against taking part in the management of a corporation.   |
| 206A, B | Taking part in the management of corporation while being an insolvent, for example, while bankrupt.  |
| 206A, B | Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.  |
| 209(3)  | Dishonest failure to observe requirements on making loans to directors or related companies.   |
| 254T    | Paying dividends except out of profits.  |
| 286     | Failure to keep proper accounting records.   |
| 312     | Obstruction of an auditor.   |
| 314-7   | Failure to comply with requirements for the preparation of financial statements.   |
| 437D(5) | Unauthorised dealing with company's property during administration.  |
| 438B(4) | Failure by directors to assist administrator, deliver records and provide information.   |
| 438C(5) | Failure to deliver up books and records to the administrator.  |
| 590     | Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors. |

### Recoverable Transactions

#### Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

#### Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to:

- the benefit or detriment to the company;
- the respective benefits to other parties; and,
- any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years.

The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

### **Unfair Loan**

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

### **Arrangements to avoid employee entitlements**

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person. It will only be necessary to satisfy the court that there was a breach on the balance of probabilities. There is no time limit on when the transaction occurred.

### **Unreasonable payments to directors**

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

### **Voidable charges**

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

## **Insolvent trading**

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.